



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Hinckley National Rail Freight Interchange

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

Robert Jackson BA MPhil DMS MRTPI MCIM (Panel Lead)

Graham Sword MA PGDip Urban Conservation Dip ILM(L5) MRTPI

Matthew Heron BA (Hons) MA MRTPI

10 June 2024

This page is intentionally blank

OVERVIEW

File Ref: TR050007

The application, dated 17 March 2023, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 17 March 2023.

The applicant is Tritax Symmetry (Hinckley) Limited.

The application was accepted for examination on 6 April 2023.

The examination of the application began on 13 September 2023 and was completed on 12 March 2024.

The development proposed would be a new Strategic Rail Freight Interchange on land near Junction 2 of the M69. The Proposed Development comprises:

- an intermodal freight terminal with connections to the Leicester to Nuneaton Line, capable of accommodating up to 16 trains a day of up to 775 metres long, including container storage, heavy goods vehicle parking, rail control and staff facilities;
- up to 850,000 square metres (gross internal area) of rail served or connected warehousing with ancillary service buildings covered in roof mounted photovoltaic arrays;
- new road infrastructure and works to existing road infrastructure, including a new bridge across the railway line;
- demolition and alterations to existing structures and earthworks to create development plots and landscape zones; and
- strategic landscaping and open space, including stopping up and alterations to public rights of way.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should withhold consent.

If, however, the Secretary of State is minded to grant consent, then the Examining Authority recommends that the Order should be in the form attached only if the following matters have been resolved to the Secretary of State's satisfaction:

- the submissions from Dr Moore and Mr Moore submitted at Deadline 8; and
- the Protective Provisions submitted by the Applicant at Deadline 8 in relation to the bridge across the Hinckley to Leicester railway line.

REPORT TABLE OF CONTENTS

1.	INTRODUCTION	1
1.1.	INTRODUCTION TO THE EXAMINATION.....	1
1.2.	APPOINTMENT OF THE EXAMINING AUTHORITY	1
1.3.	THE APPLICATION	1
1.4.	THE APPLICATION AS EXAMINED	8
1.5.	RELEVANT PLANNING HISTORY	8
1.6.	THE EXAMINATION	8
1.7.	OTHER CONSENTS AND UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS	12
1.8.	STRUCTURE OF THIS REPORT	12
2.	DETERMINING THE APPLICATION	14
2.1.	INTRODUCTION	14
2.2.	LEGISLATION AND POLICY.....	14
2.3.	LOCAL IMPACT REPORTS	17
2.4.	ENVIRONMENTAL IMPACT ASSESSMENT	18
2.5.	HABITATS REGULATIONS ASSESSMENT.....	18
2.6.	WATER FRAMEWORK DIRECTIVE ASSESSMENT.....	19
2.7.	TRANSBOUNDARY EFFECTS	19
2.8.	MADE DEVELOPMENT CONSENT ORDERS	19
3.	THE PLANNING ISSUES.....	20
3.1.	INTRODUCTION	20
3.2.	NEED AND ALTERNATIVES	21
3.3.	TRAFFIC AND TRANSPORT	40
3.4.	LANDSCAPE AND VISUAL.....	137
3.5.	NOISE AND VIBRATION	148
3.6.	SOCIO-ECONOMIC CONSIDERATIONS	172
3.7.	AIR QUALITY AND EMISSIONS.....	188
3.8.	BIODIVERSITY	199
3.9.	CULTURAL HERITAGE	214
3.10.	WATER AND FLOOD RISK	230
3.11.	ENERGY	246
3.12.	GEOLOGY AND SOILS.....	251
3.13.	CUMULATIVE EFFECTS.	255
4.	FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT	258
4.1.	INTRODUCTION	258
4.2.	EXA'S CONSIDERATIONS	259
4.3.	HRA CONCLUSIONS	259
5.	CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT	260
5.1.	INTRODUCTION	260
5.2.	THE PLANNING BALANCE.....	260
5.3.	HABITATS REGULATIONS ASSESSMENT.....	266

5.4.	EQUALITY ACT 2010	267
5.5.	THE HERITAGE BALANCE	268
5.6.	THE OVERALL PLANNING BALANCE	268
5.7.	CONCLUSIONS	270
6.	LAND RIGHTS AND RELATED MATTERS	271
6.1.	INTRODUCTION	271
6.2.	THE REQUEST FOR CA AND TP POWERS	271
6.3.	LEGISLATIVE REQUIREMENTS AND GUIDANCE	275
6.4.	EXAMINATION OF THE CA AND TP CASE	277
6.5.	FUNDING	299
6.6.	HUMAN RIGHTS ACT	301
6.7.	CONCLUSIONS	303
7.	DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS	305
7.1.	INTRODUCTION	305
7.2.	THE ORDER AS APPLIED FOR	306
7.3.	EXAMINATION OF THE DDCO	307
7.4.	MATTERS IN CONTENTION AND OF INTEREST	309
7.5.	SECTION 106 PLANNING OBLIGATIONS	333
7.6.	OTHER CONSENTS.....	338
7.7.	EXA’S RECOMMENDED CHANGES	338
7.8.	EXA’S CONCLUSIONS	353
8.	SUMMARY OF FINDINGS AND CONCLUSIONS	354
8.1.	INTRODUCTION	354
8.2.	CONSIDERATION OF FINDINGS AND CONCLUSIONS.....	354
8.3.	RECOMMENDATION	356
ANNEX A: ABBREVIATIONS		II
ANNEX B: SUPPORTING REFERENCE MATERIAL		III
ANNEX C: RECOMMENDED DCO		IV

LIST OF FIGURES

FIGURE 1: THE APPLICATION SITE	2
FIGURE 2: ILLUSTRATIVE CONTEXT MASTERPLAN	7
FIGURE 3: INTERMODAL STRATEGIC RAIL FREIGHT ROUTES IN THE UK	25
FIGURE 4: PROPERTY MARKET AREA AS DEFINED BY THE APPLICANT	28
FIGURE 5: GROWTH DRIVERS FOR THE LOGISTICS INDUSTRY.....	29
FIGURE 6: PROHIBITED AND KEY ADVISORY HGV ROUTES	53

FIGURE 7: EXISTING LOCAL HGV WEIGHT RESTRICTIONS.....	54
FIGURE 8: PROPOSED LOCATIONS OF ANPR CAMERAS.....	55
FIGURE 9: LARGE ARTICULATED VEHICLE SWEPT PATH THROUGH SAPCOTE (EXISTING).....	120
FIGURE 10: LARGE ARTICULATED VEHICLE SWEPT PATH THROUGH SAPCOTE (PROPOSED) ...	121
FIGURE 11: ASSESSED LINKS THROUGH SAPCOTE.....	122
FIGURE 12: VIEW OF ELMESTHORPE CHURCH SCHEDULED MONUMENT FROM JUNCTION OF B581 AND BRIDLE PATH ROAD	217
FIGURE 13: WATERCOURSE NETWORK IN VICINITY OF THE MAIN PART OF THE APPLICATION SITE	233

LIST OF TABLES

TABLE 1: TRAFFIC GENERATION, PEAK AND AADT	49
TABLE 2: CHANGES IN TRAFFIC FLOW IN EASTERN VILLAGES (2036)	68
TABLE 3: APPLICANT’S SUMMARY OF TRAFFIC EFFECTS IN SAPCOTE	71
TABLE 4: CHANGES IN TRAVEL DISTANCE ELMESTHORPE TO BURBAGE COMMON.....	81
TABLE 5: UK CARBON BUDGETS	190
TABLE 6: APPLICANT’S CLASSIFICATION OF DEVELOPMENT AGAINST FLOOD RISK	234
TABLE 7: PEAK AND ANNUAL ENERGY USE AGAINST PV POTENTIALLY GENERATED	249
TABLE 8: AFFECTED PERSONS MAKING NON-LAND RIGHT REPRESENTATIONS	298
TABLE 9: HISTORY OF DDCOS	308
TABLE 10: HISTORY OF EM AND SOC.....	308
TABLE 11: DCO PROVISIONS RECOMMENDED TO BE CHANGED.....	339



The Planning Inspectorate

ERRATA SHEET – Hinckley National Rail Freight Interchange DCO

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport dated 10 June 2024.

Page No.	Paragraph	Error	Correction
20	3.1.2	"sections 0" should be "sections 3.2"	Replace "sections 0" with "sections 3.2"
23	3.2.11	Repeats text	Delete repeated text
39	3.2.86	"Req 10" should be "Article 5"	"Req 10" should be "Article 5"
113	3.3.473	"what" should be "at"	"what" should be "at"
148	3.4.62 (final bullet)	"consideration of an NPS" – this needs to be expanded as per para 5.2.21 to make it clear that it's the development that is being considered in the context of the NPS	Replace text of bullet with "there would also be harm to both the nature and function of the Green Wedge between Hinckley, Barwell and Burbage. However, in the context of the consideration of an application for a DCO where the decision should be made primarily against the provisions of an NPS this has only moderate weight."
199	3.8.2	"section 0" should be "section 3.7"	Replace "section 0" with "section 3.7"
250	3.11.30	"whether the" is repeated	The second "whether the" is deleted
263	5.2.26	First sentence needs restructuring	Replace with "That said, possible significant residual effects would be to a relatively small number of receptors and would typically occur during worst-case scenarios. For reasons given, noise in such scenarios is likely to be lower than predicted."
329	7.4.155	"leave" should be "lead"	"leave" should be "lead"

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

- 1.1.1. This Report sets out our findings, conclusions and recommendations as Examining Authority (ExA) to the Secretary of State for Transport (the SoST) in relation to the application by Tritax Symmetry (Hinckley) Limited (the Applicant) for an Order granting development consent for the Hinckley National Rail Freight Interchange (the Proposed Development).

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 11 July 2023, Robert Jackson, Graham Sword and Matthew Heron were appointed as the ExA for the application under section (s) 61 and s65 of Planning Act 2008 (the PA2008) [[PD-004](#)] (individual document references to the [Examination Library](#) in this Report are enclosed in square brackets [] and hyperlinked to the original document held online).

1.3. THE APPLICATION

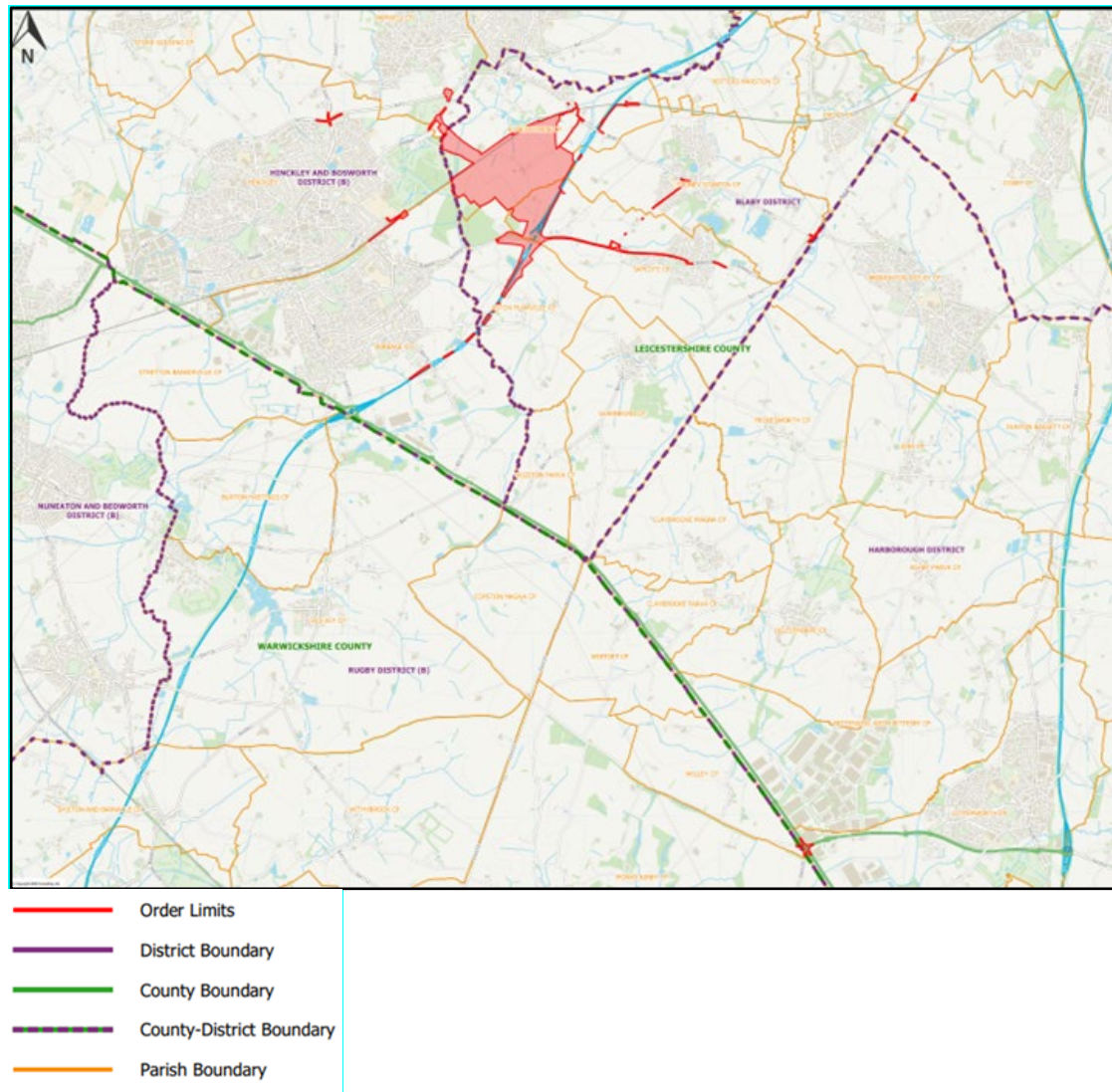
Application for Determination under PA2008

- 1.3.1. The Application was submitted by the Applicant to the Planning Inspectorate on 17 March 2023 under s31 of the PA2008. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Department of Levelling Up, Housing and Communities in its decision to accept the Application for Examination in accordance with s55 of PA2008 [[PD-001](#)].
- 1.3.2. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [[APP-002](#)] that the proposed development is an NSIP, as it set out those aspects of the development description that enable the relevant threshold test to be met, is within s14(1)(I) of PA2008, and so requires development consent in accordance with s31 of PA2008. We agree with this analysis.

The Application Site

- 1.3.3. The site lies within the administrative areas of Blaby District Council (BDC), Hinckley and Bosworth Borough Council (HBBC) and Harborough District Council (HDC), all within the administrative area of Leicestershire County Council (LCC), and within the administrative area of Rugby Borough Council (RBC) which is within the administrative area of Warwickshire County Council (WCC). The site is wholly in England. Details of the site with the administrative boundaries can be found in [[APP-084](#)] and in Figure 1.

Figure 1: The Application Site



1.3.4. The main part of the Application Site is located approximately 5 kilometres (km) to the north-east of Hinckley Town Centre, to the north-west of M69 Junction 2¹ (M69 J2). It also falls between the Hinckley to Leicester railway to the north-west and the M69 to the south-east.

1.3.5. To the north lies the village of Elmesthorpe, a linear settlement on the B581 Station Road. To the north-east are the large settlements of Barwell and Earl Shilton that are set a higher level compared to the Application Site. These villages provide long-distance views across the Application Site from certain vantage points. Other relatively large settlements in the area are Stoney Stanton and Sapcote. These are around 1.5km and 2km respectively to the east of the M69.

¹ Motorway junctions are set out as 'MX JY' where 'X' is the motorway number and 'Y' is the junction number.

- 1.3.6. The Application Site is made up of a number of parcels of land. This includes a sizeable area (around 187 hectares (ha)) between the M69 and the Hinckley to Leicester railway. This would accommodate the bulk of the Proposed Development and is henceforth referred to as 'the main part of the Application Site'. That said, the main part of the Application Site also includes a relatively narrow strip of undeveloped land adjacent to, but beyond, the railway line to the north (which would be used for structural planting).
- 1.3.7. Extending north-westwards from the main part of the Application Site is a comparatively smaller corridor of land that would accommodate a new road between the M69 J2 and the B4668. This is referred to as 'the A47 Link Road'. Additionally, away from the main part of the Application Site, there are other small areas of land for highways works and three locations where pedestrian level crossings over the railway line are proposed to be stopped up and alternative crossings made available.
- 1.3.8. The main part of the Application Site is an expansive, broadly level, area of mixed farmland comprising small and medium enclosed field parcels, although in general terms it slopes down north to south. These are typically bound by mature hedgerows and established trees. It also comprises a number of small to medium grassland fields of varying quality, together with a limited amount of amenity (garden) land adjacent to existing dwellings.
- 1.3.9. The field pattern comprises a network of hedgerows, with hedgerow trees remaining largely intact. The landscape was considerably altered by the construction of the railway in the nineteenth century and the M69 in the 1970s. Indeed, the main part of the Application Site accommodates major road infrastructure (the M69 J2 roundabout and slip roads and a footbridge over the M69).
- 1.3.10. Buildings on the main part of the Application Site include the dwellings of Woodhouse Farm, Old Woodhouse Farm, Woodfield, The Weeping Willows, Hobbs Hayes Farm and Freeholt Lodge. In addition to these are a number of ancillary agricultural structures that form farm complexes around Woodhouse Farm and Hobbs Hayes and caravans, some of which are used for human habitation.
- 1.3.11. Burbage Common Road is the principal road running through the main part of the Application Site providing access to properties and farms along its route. A separate access road off the B4669 near M69 J2 provides access to Freeholt Lodge and Hobbs Hayes within its southern portion. There is also a mobile home park and a separate Gypsy and Traveller settlement off Smithy Lane close to the southern boundary of the main part of the Application Site, west of M69 J2.
- 1.3.12. The A47 Link Road corridor is mainly agricultural in land use. The topography is gently undulating, falling from a high point of 99m Above Ordnance Datum (AOD) by the railway line to around 90m AOD across the remainder of the land. Built features within the A47 Link Road corridor comprise Burbage Common Road which runs along its southern

edge, the B4668 at the north-western end and the bridge over the railway.

- 1.3.13. Separating the main part of the Application Site and the A47 Link Road is a section of the Hinckley to Leicester railway and a bridge that allows Burbage Common Road to pass over the railway and link with Burbage Common and Woods Country Park.
- 1.3.14. The main part of Burbage Common and Woods Local Nature Reserve (LNR) is located immediately adjoining the main part of the Application Site (although there is a small part within). This is a Country Park used by the local population and includes a car park and visitors centre including a café.
- 1.3.15. In terms of trees, to the south-west of the main part of the Application Site are blocks of deciduous woodland, including Burbage Wood, Aston Firs and Freeholt Wood. In addition, there is a small strip of Broadleaved Semi-natural Woodland and an area of Broadleaved Plantation Woodland near the footbridge over the M69 and within the M69 J2 roundabout is an area of Broad-leaved Plantation Woodland. Further details relating to trees are found in section 3.4 of this Report.
- 1.3.16. Hydrological features comprise nine field ponds scattered over the main part of the Application Site, one unnamed stream corridor that passes from Freeholt Wood and travels in a north-eastern direction to the eastern boundary of the Application Site and M69, and a network of ditches, the majority of which are seasonally dry.
- 1.3.17. Further afield, the areas around M69 J2 and other highways works locations are either highways land or field edges heavily influenced by the adjacent transport infrastructure. Locations for off-site rail crossings have a specific railway and railway side character.
- 1.3.18. There are a number of other separate and discrete areas which make up parts of the Application Site. These mostly relate to proposed highway or rail associated works and are shown in the Site Location Plan [[APP-006](#)]. These are:
 - various sections of the M69 north and south of M69 J2;
 - the junction of the A47 with A447 (Ashby Road) and B4667 in Hinckley;
 - the junction of the A47 with the B4668 at the western end of the A47 Link Road;
 - various areas in Elmesthorpe on and off the B581, including a footpath to the west of Bostock Close, and the Burbage Common Road between the northern extent of the main part of the Application Site and the B581;
 - an area to the south of Thorney Fields Farm between the M69 and the Hinckley to Leicester railway line;
 - the parts of the B4669 and its junction with Stanton Lane to the west of Sapcote and south-west of Stoney Stanton;

- the junction of the B581 (Station Road and New Road) with Hinckley Road in Stoney Stanton and parts of Hinckley Road;
- the junction of the B4114 (Coventry Road) with Broughton Road south of Croft;
- the junction of the B4114 (Coventry Road) with the B581 to the east of Sapcote;
- parts of the B4669 through Sapcote;
- the area of the current Outwoods pedestrian level crossing of the Hinckley to Leicester railway line; and
- the junction of the A5 with the A4303, B4428 and Coalpit Lane to the west of Lutterworth (known as the 'Cross in Hands' junction).

These are all described in section 3.3 of this Report.

- 1.3.19. The Planning Obligation also makes provision for a contribution to the junction of the A5 with the A426 and Gibbet Lane, south of Lutterworth (known as the 'Gibbet Hill' junction). This is also described in section 3.3 of this Report.

The Proposed Development

- 1.3.20. The Proposed Development comprises the development of a new Strategic Rail Freight Interchange (SRFI). The development has the following main components.

- 1.3.21. On the main part of the Application Site:

- the demolition of all buildings and the existing bridge over the Hinckley to Leicester railway on Burbage Common Road;
- new rail infrastructure including points off the existing Hinckley to Leicester railway providing access to a series of parallel sidings at the Application Site, in which trains would be unloaded, marshalled and loaded;
- an intermodal freight terminal or 'railport' capable of accommodating up to 16 trains up to 775 metres (m) in length per day, with hard-surfaced areas for container storage and heavy goods vehicle (HGV) parking and cranes for the loading and unloading of shipping containers from trains and lorries;
- up to 850,000 square metres (m²) (gross internal area) of warehousing and ancillary buildings with a total footprint of up to 650,000m² and up to 200,000m² of mezzanine floorspace, including the potential for some buildings to be directly rail connected. These buildings might incorporate ancillary data centres to support the requirements of occupiers and operators.
- roof-mounted photovoltaic arrays with a generation capacity of up to 42.4 megawatts (MW) providing direct electricity supply to the building or exporting surplus power to battery storage in the energy centre;
- an energy centre incorporating an electricity substation connected to the local electricity distribution network, battery storage and a gas-fired combined heat and power plant (CHP) with an electrical generation capacity of up to 5MW;

- a lorry park with welfare facilities for drivers and HGV fuelling facilities;
- a site hub building providing office, meeting space and marketing suite for use in connection with the management of the Proposed Development and ancillary car parking;
- terrain remodelling, hard and soft landscape works, amenity water features and planting;
- noise attenuation measures, including acoustic barriers up to 6m in height;
- habitat creation and enhancement, and the provision of publicly accessible amenity open space;
- pedestrian, equestrian and cycle access routes and infrastructure, including a new route from Elmesthorpe to Burbage Common;
- utility compounds, plant and service infrastructure;
- security and safety provisions inside the Application Site including fencing and lighting; and
- drainage works including surface water retention ponds, underground attenuation tanks and swales.

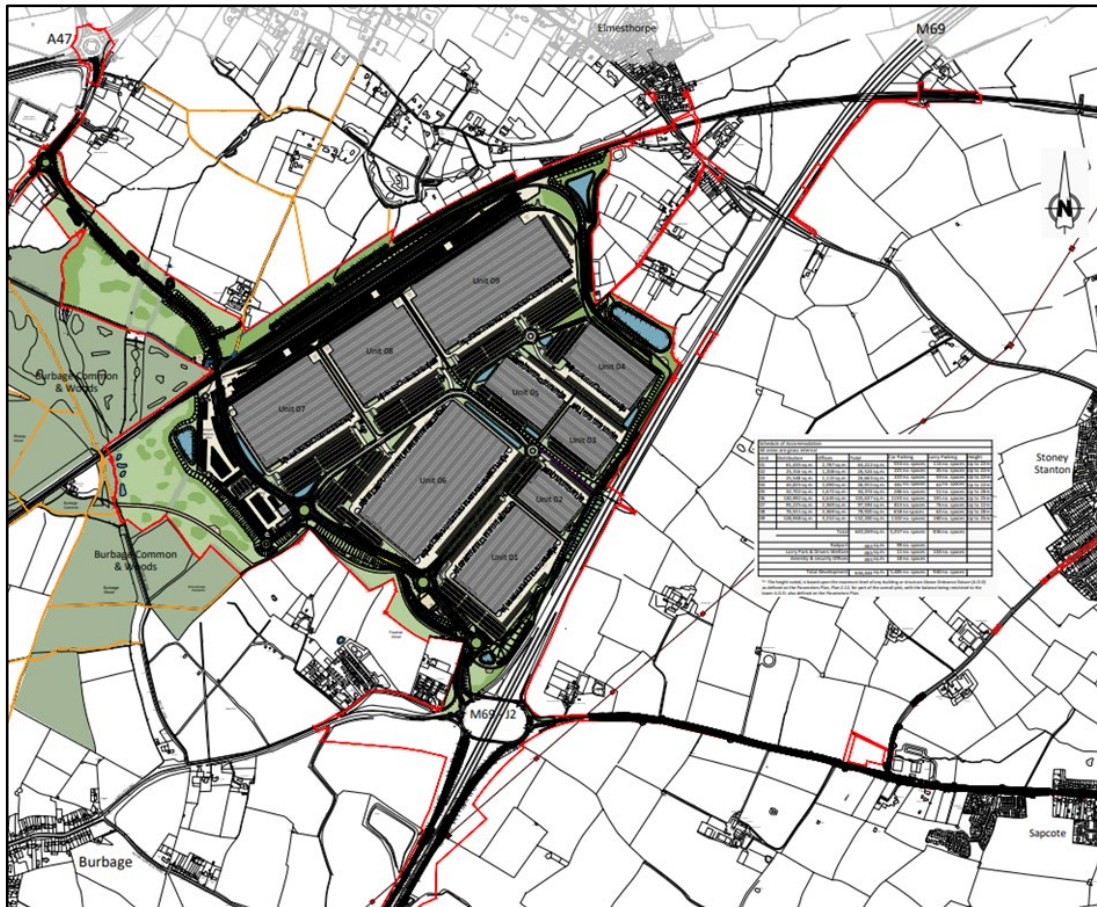
1.3.22. Associated highway works:

- works to M69 J2 comprising the reconfiguration of the existing roundabout and its approach and exit lanes, the addition of a southbound slip road for traffic joining the M69 and the addition of a northbound slip road for traffic leaving the M69;
- a new road ('the A47 Link Road') from the modified M69 J2 to the B4668/ A47 Leicester Road with a new bridge over the railway, providing vehicular access to the Proposed Development from east and west;
- modifications to several junctions and amendments to Traffic Regulation Orders on the local road network (LRN); and
- works closing four existing pedestrian level crossings on the Hinckley to Leicester railway with the associated footpaths being diverted.

1.3.23. In addition, the Proposed Development includes off-site (outside the Order Limits and ancillary to the Development Consent Order (DCO)) railway infrastructure including signals, signage and electricity connections.

1.3.24. Figure 2 shows an extract from the Illustrative Context Masterplan [[REP7-008](#)] showing a potential overall disposition of the Proposed Development on the site along with its relationship to nearby roads and settlements.

Figure 2: Illustrative Context Masterplan



- 1.3.25. The primary means of access into the railport would be gained from a roundabout on the A47 Link Road. Provision would be made for a lorry park and an empty container stacking area south of the A47 Link Road. Vehicles off-loading or collecting containers would pass under the bridge over the railway to access the railport.
- 1.3.26. A secondary access link to the railport is envisaged to be provided from the spine road through the development. This link would enable HGVs and Tugmasters (load shifting vehicles) to access the railport without crossing the A47 Link Road.
- 1.3.27. The Applicant states in paragraph 1.2 of the Market Needs Assessment (MNA)[REP4-095] that the intermodal terminal within the railport *"has been designed to utilise the east and west connections onto the network. This would enable very efficient handling and routing, with trains up to 775m long running adjacent to a full-length yard directly under gantries. Furthermore, loading and unloading can occur without the need to split and shunt train sections"*.
- 1.3.28. HGV traffic accessing and leaving the Application Site would be predominantly routed via the M69, being part of the Strategic Road Network (SRN), although they would be permitted to use the A47 Link Road. Traffic management measures would provide enforcement measures to deter HGVs using the LRN east of M69 J2. An HGV

Management Plan and Route Strategy (HGVRP) [[REP7-055](#)] (with Appendices at [[REP7-057](#)]) provides more details of how this would be enforced, and this is discussed in section 3.3 of this Report.

1.4. THE APPLICATION AS EXAMINED

1.4.1. There were no formal changes made to the Application as submitted, and it was considered as such, although the Applicant did submit various amended plans, principally in relation to details of the highway layouts, the location of the bus stop and a short, proposed right of way between the A47 Link Road and a proposed way. None of these, in our view, either individually or cumulatively amend the Application so that it could no longer be considered in substance the same as originally submitted.

1.5. RELEVANT PLANNING HISTORY

1.5.1. There have been no previous National Infrastructure projects submitted for the site or the immediate vicinity of the site which have any materiality for the consideration of the Proposed Development.

1.5.2. However, there was a previous planning application which was refused and subject to a subsequent appeal. The proposal at Land off Sketchley Lane, Burbage, Hinckley, Leicestershire LE10 3HU (Appeal Ref: APP/K2420/W/20/3260227) proposed the development of warehouses and houses on agricultural land. This was rejected by the Inspector appointed by the SoS on the grounds that the appeal scheme would not retain an appropriate transition zone in Burbage between the existing hotel/ proposed dwellings on the higher part of the site and the proposed commercial development. The Inspector also found that the scheme would harm the character and appearance of the area and that it would conflict with the National Planning Policy Framework (the Framework).

1.6. THE EXAMINATION

Summary of Events in the Examination

1.6.1. The Preliminary Meeting (PM) took place on 11 September 2023 with the Examination commencing the following day. The Examination concluded on 12 March 2024.

1.6.2. The Examination Timetable identified dates for hearings and set deadlines for receipt of written material. The original Timetable, including all deadlines can be found in our Rule 8 letter [[PD-006](#)] dated 22 September 2023.

1.6.3. Three further Rule 8 letters were issued making minor changes to the Examination Timetable as follows:

- 27 October 2023 [[PD-008](#)] relating to the:
 - removal of the Accompanied Site Inspection (ASI)
 - removal of Procedural Deadline (D) B
 - addition of an Access Required Site Inspection (ARSI)

- additional document request at D4
- 28 November 2023 [[PD-010](#)] relating to the:
 - additional hearing to be held on 24 January 2024
 - acceptance of some late submissions and setting a deadline for response.
- 26 January 2024 [[PD-012](#)] relating to the:
 - submission of summary and signposting documents towards the end of the Examination.

1.6.4. The final Examination Timetable can be found in [[PD-012](#)].

1.6.5. We issued written questions in the following forms:

- observations on the draft DCO (dDCO) in Annex F(i) to the Rule 6 letter [[PD-005](#)];
- written questions (ExQ1) [[PD-011](#)] dated 28 November 2023;
- further written questions (ExQ2) [[PD-013](#)] were issued on 19 January 2024;
- five Rule 17 letters were issued requesting further information on:
 - 22 September 2023 [[PD-007](#)];
 - 9 November 2023 [[PD-009](#)];
 - 20 February 2024 [[PD-015](#)];
 - 20 February 2024 [[PD-016](#)]; and
 - 4 March 2024 [[PD-017](#)].
- Schedule of Proposed Changes to the dDCO [[PD-014](#)].

Site Inspections

1.6.6. We held the following Unaccompanied Site Inspections (USI):

- 8 and 9 August 2023, USI1: Outline Inspection of the Application Site and environs, including junctions and level crossings [[EV1-001](#)];
- 14 September 2023, USI2: Inspection of junction of M1 J21 with M69 J3. [[EV1-002](#)];
- 2 November 2023, USI3: Inspection of Narborough Station and junction of M1 J21 with M69 J3 [[EV1-003](#)]; and
- 15 November 2023, USI4: Environs of the Application Site and wider area [[EV1-004](#)].

1.6.7. A single ARSI.

- 16 November 2023, ARSI1: Aston Firs Travellers Site and Environs [[EV1-005](#)].

1.6.8. Site notes providing a procedural record of each USI and the ARSI can be found in the Examination Library under the above references.

1.6.9. We have had regard to the information and impressions obtained during our site inspections in all relevant sections of this Report.

Hearings

- 1.6.10. We held a number of hearings to ensure the thorough examination of the relevant issues raised by the Application.
- 1.6.11. Two Open Floor Hearings (OFH) were held under s93 of PA2008:
- 30 October 2023, OFH1, [[EV5-001](#)] to [[EV5-003](#)]; and
 - 2 November 2023, OFH2, [[EV9-001](#)] to [[EV9-003](#)].
- 1.6.12. Issue Specific Hearings (ISH) were held on the subject matter of the draft DCO on:
- 13 September 2023, ISH1, [[EV3-001](#)] to [[EV3-005](#)]; and
 - 3 November 2023, ISH5, [[EV11-001](#)] to [[EV11-003](#)]
- 1.6.13. ISHs were held on the subject matter of Traffic and Transport on:
- 31 October 2023, ISH2, [[EV6-001](#)] to [[EV6-010](#)]; and
 - 24 January 2024, ISH6, [[EV12-001](#)] to [[EV12-010](#)]; this ISH also considered the issue of Noise.
- 1.6.14. ISHs were held on the subject matter of Environmental Matters (ISH3) and Need and Socio-Economic Matters (ISH4):
- 1 November 2023, ISH3, [[EV7-001](#)] to [[EV7-005](#)]; and
 - 1 November 2023, ISH4, [[EV8-001](#)] to [[EV8-005](#)].
- 1.6.15. Compulsory Acquisition Hearings (CAH) were held under s92 of PA2008 on:
- 14 September 2023, CAH1, [[EV4-001](#)] to [[EV4-004](#)]; and
 - 2 November 2023, CAH2, [[EV10-001](#)] to [[EV10-003](#)].
- 1.6.16. All persons affected by compulsory acquisition (CA) and/ or temporary possession (TP) proposals as Affected Persons (AP) were provided with an opportunity to be heard. We also used these hearings to examine the Applicants case for CA and TP in the round.

Written Processes

- 1.6.17. Examination under PA2008 is primarily a written process, in which an ExA has regard to written material forming the Application and arising from the Examination. All of this material is recorded in the Examination Library and published online. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in our conclusions. We have considered all important and relevant matters arising from them.
- 1.6.18. Key written sources are set out further below.

Relevant Representations

- 1.6.19. 1424 relevant representations (RR) were received by the Planning Inspectorate [[RR-001](#)] to [[RR-1424](#)]. These are provided in a [separate](#)

[schedule](#). All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. We have fully considered all the RRs. The relevant issues that they raise are considered in section 3 of this Report.

Written Representations and Other Examination Documents

1.6.20. The Applicant and Interested Parties (IP) were provided with opportunities to make written representations (WR) at Deadline (D) 1 and therefore comment upon them at D2, D5 and D6. Parties were also able summarise their oral submissions at hearings in writing at D1 and D4 and comment on documents issued for consultation by us including a commentary on the dDCO [[PD-014](#)] by D4.

1.6.21. All WRs and other examination documents have been fully considered by us. The relevant issues that they raise are considered in section of 3 this Report.

Local Impact Reports

1.6.22. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 PA2008.

1.6.23. Four LIRs were received by us from:

- BDC [[REP1-055](#)], [[REP1-056](#)] and [[REP1-057](#)]
- HBBC [[REP1-138](#)]
- LCC [[REP1-154](#)] and [[REP1-155](#)]
- WCC [[REP1-234](#)]

1.6.24. Later representations from some of the local authorities indicated that their position as set out in the LIR had changed. Where appropriate, this will be indicated in this Report.

1.6.25. The LIRs have been taken fully into account by us in all relevant sections of this Report.

Statements of Common Ground

1.6.26. A Statement of Common Ground (SoCG) is a statement agreed between the applicant and one or more IPs, recording matters that are agreed between them. Annex B1 sets out a list of SoCGs completed at the end of the Examination. They have been taken fully into account by us in all relevant sections of this Report.

Requests to Join and Leave the Examination

1.6.27. There were no requests to join the Examination by persons who were not already IPs at or after the PM.

1.6.28. During the Examination, as a consequence of discussion at hearings and/or discussions between relevant IPs/ APs and the Applicant, the following

persons wrote to us to inform us that their issues were settled, and their representations were withdrawn:

- Cadent Gas Limited [[REP8-045](#)];
- Parker Strategic Land Limited, Philip Ian William Bailey, Linda Margaret Bailey, David Arnold Woodward, Jane Elizabeth Woodward, Jane Lang Woodward, Jonathan Charles Woodward, Leonard Cooper Bailey, Keith William Bailey, and David John Bailey [[REP8-055](#)];
- National Grid Electricity Transmission plc [[EEAS-004](#)]; and
- National Rail Infrastructure Limited (NR) [[EEAS-005](#)].

1.6.29. NR's withdrawal only related to its RR [[RR-0988](#)] and its WR [[REP1-185](#)]; its remaining representations within the Examination were not withdrawn.

1.6.30. In response to our Rule 17 letter [[PD-017](#)] National Grid Electricity Distribution (East Midlands) plc (NGED) indicated [[REP8-038](#)] that on 8 March 2024 its "*holding objection to the Order remains in place at today's date. However, with the legal completion of the asset protection agreement expected shortly, NGED anticipates that it will be in a position to withdraw its objection shortly also*".

1.7. OTHER CONSENTS AND UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. Two Planning Obligations pursuant to s106 of the Town and Country Planning Act 1990 (as amended) (the TCPA) were submitted just before the end of the Examination. These are:

- by agreement with BDC and HBBC [[EEAS-001](#)]; and
- by unilateral undertaking in favour of LCC [[EEAS-002](#)].

1.7.2. These are discussed further where appropriate throughout this Report and specifically in section 7.5.

1.7.3. The Applicant set out in its 'Other Consents and Licences Report' [[APP-108](#)] detail of the consents and licences that it considers would be, or could be, required during the construction and operation of the Proposed Development in addition to the DCO the subject of this Report. This is considered where applicable later in this Report.

1.8. STRUCTURE OF THIS REPORT

1.8.1. The structure of this Report is as follows:

- section 1 introduces the reader to the Application, the site and its environs, together with the processes used to carry out the Examination and make this Report;
- section 2 provides an overview of key considerations governing the determination of the application;
- section 3 sets out the planning issues that arose from the Application and during the Examination;

- section 4 considers effects on European Sites and Habitats Regulations Assessment (HRA);
- section 5 sets out the balance of planning considerations arising from sections 3 and 4, in the light of the factual, legal and policy information in sections 1 and 2;
- section 6 sets out our examination of Land Rights and related matters;
- section 7 considers the implications of the matters arising from the preceding sections for the DCO; and
- section 8 summarises all relevant considerations and sets out our recommendation to the SoS.

1.8.2. This Report is supported by several annexes which are listed on the Contents pages.

2. DETERMINING THE APPLICATION

2.1. INTRODUCTION

- 2.1.1. This section identifies the key legislation and policy relevant to the consideration of the Application.
- 2.1.2. In Annex C of our Rule 6 letter [[PD-005](#)] we set out our Initial Assessment of Principal Issues as required under s88(1) of the PA2008. In making our Recommendation we have taken into account all written and oral submissions that have been received during the course of the Examination.

2.2. LEGISLATION AND POLICY

Key Legislation

Planning Act 2008

- 2.2.1. The Proposed Development is classified as a NSIP within s14(1)(l) of the PA2008 and so requires development consent in accordance with s31 of PA2008.
- 2.2.2. The Applicant confirmed that the Proposed Development is a SRFI with associated development. The capacity of the energy generating station within the overall proposal was subject of discussion during the Examination and Hearings and further commentary on this is provided in sections 3.11 and 7.4.7 to 7.4.12 of this Report.
- 2.2.3. This is an application where there is a National Policy Statement (NPS) which provides the policy context; the National Policy Statement for National Networks (NPSNN) designated in 2015. The application is therefore examined under s104 of PA2008 which sets out the matters the SoS must consider as follows:
- any national policy statement which has effect in relation to development of the description to which the application relates (s104(2)(a));
 - any relevant marine policy documents, determined in accordance with section 59 of the Marine and Coastal Access Act 2009 (s104(2)(aa));
 - any LIR submitted to the SoS before the specified deadline (s104(2)(b));
 - any matters prescribed in relation to development of the description to which the application relates (s104(2)(c); and
 - any other matters which the SoS thinks are both important and relevant to the decision (s104(2)(d)).
- 2.2.4. S104(3) of PA2008 requires the SoS to decide the application in accordance with any relevant NPS, except to the extent that one or more of the exceptions in subsections (4) to (8) applies. The exceptions are that the SoS is satisfied that:

- deciding the application in accordance with any relevant NPS would lead to the United Kingdom (UK) being in breach of any of its international obligations;
- deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on the SoS by or under any enactment;
- deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- the adverse impact of the proposed development would outweigh its benefits; or
- any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

2.2.5. This Report sets out our findings taking these matters into account and applying the approach set out in s104 of PA2008.

Human Rights Act 1998

2.2.6. The compulsory acquisition of land and rights can engage various Articles under the Human Rights Act 1998. This has been considered throughout the Examination and the implications of this for persons with an interest in the land are considered in section 6.6 of this Report.

Equality Act 2010

2.2.7. The Equality Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This has been considered throughout the Examination and the implications of this for persons with an interest in land are considered in section 5.4 of this Report.

Climate Change Act 2008 (as amended)

2.2.8. The Climate Change Act 2008, as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019, established a legally binding framework to tackle the dangers of climate change. It sets statutory climate change projections and includes the setting of legally binding targets for greenhouse gas (GHG) emission reductions in the UK of at least 100% by 2050 (Net Zero).

2.2.9. The Act also created the Committee on Climate Change which has responsibility for setting five-year Carbon Budgets covering successive periods of emissions reduction to 2050.

2.2.10. PA2008 requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS.

2.2.11. We have had regard to these objectives throughout this Report.

Other legislation

2.2.12. A summary list of other legislation relevant to the Proposed Development is set out in Annex B2 of this Report.

National Policy Statements

National Policy Statement for National Networks

- 2.2.13. The NPS which is designated in this case is the NPSNN dating from 2015.
- 2.2.14. On 14 March 2023, the Government published a new draft NPSNN (dNPSNN). This was consulted upon in the spring of 2023, and the Applicant in its original submission submitted a document entitled 'Response to Draft National Policy Statement National Networks' [[APP-348](#)]. This allowed all IPs to make representations in response as they saw fit.
- 2.2.15. On 6 March 2024 the SoST made a Written Ministerial Statement indicating that he was laying a revised National Networks National Policy Statement before Parliament pursuant to s9(8) of the PA2008. This was debated in the House of Commons on 26 March 2024 and was approved.
- 2.2.16. Given the timing of the Written Ministerial Statement and the proximity of the end of the Examination it was not possible to ask IPs for any representations that they wanted to make on the March 2024 version of the NPS. Consequently, we will only refer to the March 2023 draft version which we do so throughout this Report. The revised NPS was designated on 24 May 2024. However, for the reasons set out in this Report we are of the view that this would not change our recommendation by comparison with the March 2023 draft.

National Policy Statements for Energy

- 2.2.17. The Proposed Development includes several elements which would produce energy. NPS EN-1 is the Overarching NPS for energy. This sets out the Government's policy for the delivery of major energy infrastructure. It provides general principles and generic impacts to be taken into account in considering applications for energy NSIPs. All other energy NPSs sit under the policy framework set out in this framework. NPS EN-3 is the NPS for Renewable Energy Infrastructure.
- 2.2.18. Both NPS EN-1 and NPS EN-3 were revised during the course of the Examination and designated in January 2024, having been published in November 2023. We gave, in ExQ1.0.16 [[PD-011](#)], the opportunity for IPs to make representations upon them insofar as they would be important and relevant matters for the consideration of the Proposed Development.
- 2.2.19. Neither Energy NPS has effect in respect of s104 of the PA2008 but are relevant and important matters which we have taken into account in this Report.

Status of Revised National Policy Statement for National Networks

- 2.2.20. Paragraph 1.16 of both the March 2023 and the designated versions make clear the 2024 NPS will therefore have effect only in relation to

those applications for development consent accepted for examination after 24 March 2024.

- 2.2.21. Paragraph 1.17 goes on to state *"any emerging draft NPSs (or those designated but not having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act 2008 and with regard to the specific circumstances of each Development Consent Order application"*.

Other Relevant National Policies

- 2.2.22. Other relevant Government policy which has been taken into account includes:
- the Framework (December 2023)
 - Planning Practice Guidance (the PPG) (2016 to 2024)
 - Transport Decarbonisation Plan (July 2021 and January 2023)
 - Net Zero: The UK's Contribution to Stopping Global Warming Emissions (May 2019)
 - Ten Point Plan for a Green Industrial Revolution (November 2020)
 - Planning Policy for Travellers Sites (December 2023)
 - GBRTT Rail Freight Growth Target call for evidence (July 2022)
 - Department for Transport (DfT) and Great British Railways Transition Team (GBRTT) 'Developing Options for a Rail Freight Growth Target to 2050 (December 2023)
- 2.2.23. Annex B3 to this Report presents a summary of each of these policy documents.

Local Planning Policy

- 2.2.24. Local planning policy can be important and relevant matters in the determination of NSIP applications. Local Plan policies relevant to the Proposed Development are summarised in Annex B5 to this Report.
- 2.2.25. Subsequent sections of this Report consider in more detail to what extent the Proposed Development complies with national and local legislation, policy and guidance.

2.3. LOCAL IMPACT REPORTS

- 2.3.1. As set out in section 1.6.23 four LIRs were submitted. In addition to providing commentary on relevant local planning policies, these LIRs also provided comments regarding the following subject areas:
- Need;
 - Traffic and Transport;
 - Land use and socio-economic;
 - Landscape and Visual effects;
 - Ecology;

- Air Quality;
- Net Zero/ Sustainability;
- Noise and Vibration;
- Lighting;
- Geology and Soils;
- Surface Water and Flood Risk;
- Energy and Climate Change;
- Cultural Heritage; and
- Health and Wellbeing.

2.3.2. The Applicant submitted its comments on the LIRs in [[REP2-068](#)] to [[REP2-075](#)]. The issues raised in the LIRs are considered in detail in the relevant sections of this Report.

2.3.3. It should be noted that some later submissions by local authorities did indicate that the position originally set out in the LIR had been amended and any changes have been considered in the relevant section.

2.4. ENVIRONMENTAL IMPACT ASSESSMENT

2.4.1. The Proposed Development is development for which an Environmental Impact Assessment is required (EIA development).

2.4.2. On 14 March 2018, the Applicant submitted a Scoping Report to the SoS [[APP-135](#)] under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). It follows that the Applicant is deemed to have notified the SoS under Regulation 8(1)(b) of the EIA Regulations that it proposes to provide an ES in respect of the Project.

2.4.3. On 24 April 2018 the Planning Inspectorate provided a Scoping Opinion [[APP-136](#)].

2.4.4. The Application was accompanied by an ES [[APP-109](#)] to [[APP-345](#)] and a Non-Technical Summary [[APP-346](#)].

2.4.5. On 5 May 2023 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations had been complied with [[OD-002](#)].

2.4.6. Consideration is given to the adequacy of the ES and matters arising from it in section 3 of this Report.

2.5. HABITATS REGULATIONS ASSESSMENT

2.5.1. The Proposed Development is not development for which a Habitats Assessment Regulations Report has been provided.

2.5.2. A Shadow Habitats Regulations Assessment (sHRA) [[APP-199](#)] was submitted by the Applicant on the 13 April 2023. We have considered this further in section 4 of this Report.

2.6. WATER FRAMEWORK DIRECTIVE ASSESSMENT

- 2.6.1. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 sets objectives to prevent and reduce pollution, improve aquatic ecosystems and mitigate the effects of floods. It provides for the production of River Basin Management Plans for the sustainable management of rivers. This is discussed further in section 3.10.

2.7. TRANSBOUNDARY EFFECTS

- 2.7.1. Regulation 32 of the EIA Regulations requires the SoS, if they consider that the Proposed Development is likely to have significant effects on an European Economic Area (EEA) state, to undertake, among other matters, consultation with that EEA state. During pre-application and before a recommendation to the SoS is made, the duties under EIA Regulation 32 are carried out by the Planning Inspectorate on behalf of the SoS.
- 2.7.2. To this end the Planning Inspectorate made a Transboundary Screening on 22 May 2018 and re-screenings were undertaken on 19 January 2021 and 15 August 2023. These can all be found in [[OD-003](#)]. In each case it concluded that *"the Proposed Development is unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area State"*.
- 2.7.3. The Regulation 32 duty is an ongoing duty, and on that basis, we have considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. No relevant issues arose during the Examination, and we are therefore satisfied that the duties under Regulation 32 have been satisfied to date.

2.8. MADE DEVELOPMENT CONSENT ORDERS

- 2.8.1. Within the Explanatory Memorandum (EM) [[REP7-013](#)] the Applicant has referenced a number of made DCOs. Other made DCOs were also referenced within the Examination.
- 2.8.2. Annex B4 of this Report sets out those Made Orders that have been referred during the Examination.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

- 3.1.1. This section provides a record of the relevant issues arising from Examination processes including RRs, LIR, WR and oral submissions. These matters are also considered further in their relevant Sections.
- 3.1.2. The need for the Proposed Development and the alternatives to it are considered in section 3.2. The main planning issues are reported in sections 0 to 3.12 under the following topic headings:
- need and alternatives;
 - traffic and transport;
 - landscape and visual;
 - noise and vibration;
 - socio-economic considerations;
 - air quality and emissions;
 - biodiversity;
 - cultural heritage;
 - water and flood risk;
 - energy; and
 - geology and soils.
- 3.1.3. Each section follows a similar format:
- introduction to the topic;
 - relevant policy considerations;
 - the case for the Applicant;
 - the case for IPs;
 - the ExA's considerations; and
 - the ExA's conclusions.
- 3.1.4. Matters are generally only reported upon if we consider them to be important and relevant to the decision and they have not been agreed or adequately justified or are controversial. The planning issues sections consider the effects of the Proposed Development alone; our findings in respect of potential cumulative effects are contained in section 3.13.
- 3.1.5. The term 'impact' is used throughout this section. However, to clarify, environmental 'impacts' and 'effects' are both considered in this Report to be 'environmental effects'.
- 3.1.6. To aid the reader, we use the following approach in our assessment of the weight to be attached to each of the planning issues:
- where there is no, or neutral, weight: we consider that there are no matters relating to that issue which would weigh for or against the making of the Order. Where applicable they are 'neutral'.
 - first level: we ascribe a little weight to matters relating to the issue for or against the making of the Order.
 - second level: we ascribe moderate weight to matters relating to the issue for or against the making of the Order.

- third level: we ascribe substantial weight to matters relating to the issue for or against the making of the Order.
- fourth level: we ascribe very substantial weight to matters relating to the issue for or against the making of the Order.

3.1.7. Under the NPSNN and dNPSNN there are situations where it is indicated that "*limited weight*" should be applied. In these circumstances we have applied 'little weight' under the approach set out above.

3.1.8. Following these individual sections, we then go on to consider Habitats Regulations Assessment matters, before coming to our planning conclusions on the case for Development Consent.

3.1.9. Following our planning conclusions, we then go on to consider the case for the use of CA or TP powers in the event that the SoS is minded to grant the DCO. After that we have a section on the dDCO itself and the form we consider it should be made in, again, in the event that the SoS is minded to grant the DCO. The final section sets out our overall conclusions on all matters.

3.2. NEED AND ALTERNATIVES

Introduction

3.2.1. This section considers the policy matters relating to need and alternative sites before moving onto the Applicant's case, considering matters in the Examination and then our conclusions.

Policy

NPSNN

3.2.2. Government policy in the 2015 designated NPSNN aims to move freight from road to rail to achieve significant benefits in terms of reducing carbon dioxide (CO₂) emissions and helping to address climate change, reducing congestion on the road network and improving the quality of life. It identifies a number of key benefits of SRFI development including:

- the increasing role of SRFIs in logistics and as a driver of economic growth (paragraph 2.42);
- aiding modal shift, supporting sustainable distribution and rail freight growth and meeting the changing needs of the logistics industry (paragraph 2.47);
- generating considerable benefits to the local economy (paragraph 2.52); and
- contributing to a low carbon economy and helping to address climate change (paragraph 2.52).

3.2.3. Paragraph 2.56 states the Government's conclusion that there *is* "*a compelling need for an expanded network of SRFIs*".

3.2.4. Table 3 of the NPSNN sets out forecasts of rail freight tonnage to 2023 and 2033 for various categories of freight which are sourced from NR's Freight Market Study of October 2013. The NPSNN states that these are

considered to be robust and have been accepted by the Government for planning purposes. Paragraph 2.50 states that, while the forecasts in themselves do not provide sufficient granularity to allow site specific need cases to be demonstrated, they confirm the need for an expanded network of large SRFIs across the regions and indicate that new rail freight infrastructure are likely to attract substantial business, generally new to rail. The national need is reinforced by the paragraph 4.2 presumption in favour of granting consent for development that falls within the need established in the NPSNN.

dNPSNN

- 3.2.5. Chapter 3 of the March 2023 dNPSNN provides an overview for the need for the development of national networks. Paragraphs 3.7 and 3.8 emphasise the role transport infrastructure plays in supporting economic growth. Paragraph 3.33 references the importance of having a connected network to support economic growth.
- 3.2.6. Paragraphs 3.51 and 3.52 identify capacity constraints and challenges that need to be overcome to facilitate better connectivity to markets and ports.
- 3.2.7. Paragraph 3.56 states *"Government strongly supports growth in these sectors as they are predicted to have the greatest ability to transfer goods from road to rail, supporting the wider modal shift agenda and decarbonising our transport network. With the correct infrastructure in place, modal shift can be facilitated at pace, unlocking the benefits of rail freight"*.
- 3.2.8. Paragraph 3.63 outlines that rail freight also plays a major role in supporting the UK economy and resilient supply chains. With paragraph 3.66 emphasising that there will be a need to improve the network to support economic growth through better passenger and freight connections.
- 3.2.9. Paragraphs 3.83 to 3.108 sets out the drivers for need of rail freight interchanges, with Paragraph 3.103 stressing that there is a compelling need for an expanded network of SRFIs located near the markets they will serve and are linked to key supply chain routes. Given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited, which will restrict the scope for developers to identify viable alternative sites.
- 3.2.10. We note the provision of paragraph 4.86 of the dNPSNN 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 connections after a specified period and/or before a development threshold is reached"*.

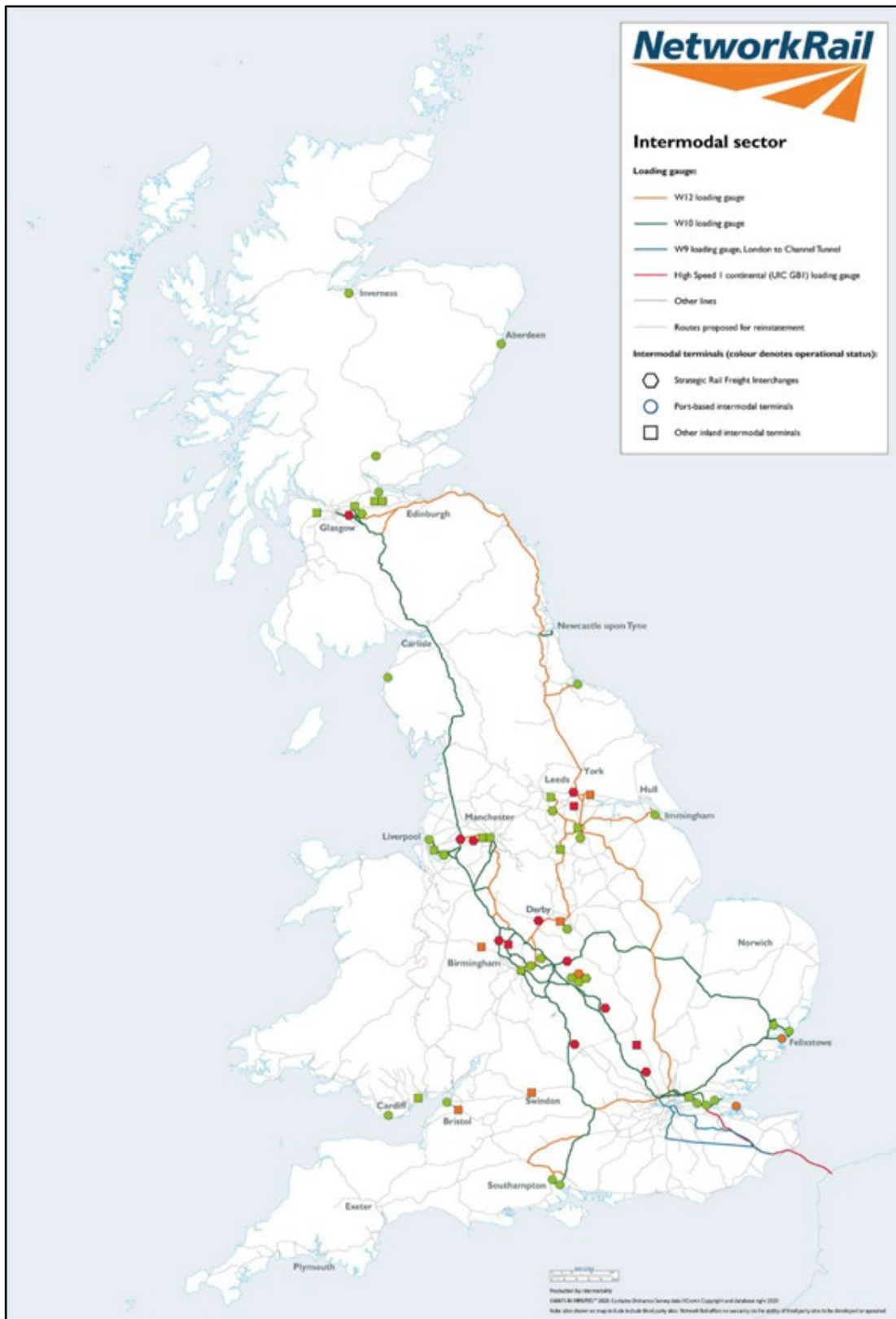
Case for the Applicant

Need

- 3.2.11. The Applicant's Planning Statement [[REP4-086](#)], contends that there is a compelling need for more SRFIs, and they claim as a matter of principle, that this is unarguable. More recent plans and reports (such as DfT's and GBRTT's 'Developing Options for a Rail Freight Growth Target to 2050' [[REP4-104](#)] and DfT's 'Policy and Rail Freight Growth Target' December 2023 [[REP4-105](#)]) referred to in the Applicant's Planning Statement emphasise the important role of SRFIs within the logistics sector for transport journeys using two or more modes to transfer goods. The Applicant considers a network of SRFIs is an imperative for the economic efficiency of the logistics sector in contributing towards the carbon free agenda and promoting economic growth within the UK. DfT's and GBRTT's 'Developing Options for a Rail Freight Growth Target to 2050' [[REP4-104](#)] and DfT's 'Policy and Rail Freight Growth Target' December 2023 [[REP4-105](#)]) referred to in the Applicant's Planning Statement emphasise the important role of SRFIs within the logistics sector for transport journeys using two or more modes to transfer goods. The Applicant considers a network of SRFIs is an imperative for the economic efficiency of the logistics sector in contributing towards the carbon free agenda and promoting economic growth within the UK.
- 3.2.12. The Applicant further asserts that there is a strong need for large sites with the potential for rail freight capabilities. The Applicant argues that this need has been confirmed in subsequent studies and that the identified need remains largely unmet. It also claims that the level of need has increased as a result of the past take-up of large warehousing units over the past 10 or so years and that the relevant local planning authorities have failed to address that need in their development plans.
- 3.2.13. The Planning Statement [[REP4-086](#)] in paragraph 9.16 further elaborates that 'compelling need' is reinforced by the strategy and vision set out in the government's cross-modal and cross-government plan for the UK freight transport sector 'Future of Freight Plan: a long term plan' published in 2022. The Plan's vision (page 7) states: "*The plan establishes government and the sector's joint ambition and commitment to a long term, cross-government and cross-modal approach to deliver our vision of a Freight and logistics sector that is cost efficient, reliable, resilient, environmentally sustainable and valued by society*".
- 3.2.14. The Applicant further supports its case with the MNA [[REP4-095](#)] and the Logistics and Demand Supply Assessment (the LDSA) [[REP3-036](#)].
- 3.2.15. The MNA sets out the Applicant's case in terms of market need. Paragraph 1.3 defines the market as: "*The local market for [Hinckley National Rail Freight Interchange] HNRFI's intermodal terminal, in addition to the adjoining warehouse development, will primarily be Coventry, Hinckley to Leicester and Leicester South, including Magna Park for deep sea traffic. A Memorandum of Understanding has been entered into with Maritime Ltd to be the rail terminal operator, subject to approval of the DCO*".

- 3.2.16. The Proposed Development would be part of a network of rail terminals serving the Midlands market, a region which has no coast and therefore must have virtually all goods and products transported to and from it by road or rail. The number of terminals in the region reflects the volume of traffic serving the region and the need to optimise both the train route and minimise the final mileage by road to and from customers (paragraph 1.4 of the MNA).
- 3.2.17. The Applicant states in its submissions that the demand for a SRFI is stimulated by the increased growth in traffic from deep sea European ferry ports. Delays at ferry ports and shortages of long-haul HGV drivers have encouraged shipping businesses to look to move more freight by alternative ports, using short sea shipping routes such as North Sea shipping lines, containerised freight, and rail where possible. This, it is contended, is an emerging market which would help remove HGVs from the roads, providing there are rail terminals in the right location, with good rail access that could minimise the final route mileage by HGV.
- 3.2.18. At D4 the Applicant submitted the Midlands Connect document 'Our Freight Route Map for the Midlands' (August 2022) [[REP4-100](#)]. As part of this document's review of constraints on the rail freight industry at page 22 it is stated "*Freight capacity and capability remain the dominant constraints across the rail network. The main rail bottlenecks for freight in our region are at Water Orton (just outside Birmingham) and Leicester*".
- 3.2.19. The Applicant has provided a map, provided as Map 1 from the MNA [[REP4-095](#)] shown at Figure 3, courtesy of NR, illustrating the Intermodal Strategic Rail Freight Routes nationally.

Figure 3: Intermodal Strategic Rail Freight Routes in the UK



3.2.20. The MNA states that the Application Site is not being developed to take market share from other terminals or SRFI developments. It would provide a terminal, in line with Midlands Connect’s plans, that would serve the Coventry to Leicester and Magna Park market within an

approximately 20 mile radius of the rail terminal and with an ability to readily serve deep-sea and short sea ports without the need to route through Birmingham. The Proposed Development includes rail served buildings, or buildings with direct access to the rail hub, on site and the potential for rail connected buildings.

- 3.2.21. The Applicant considers at paragraph 6.9 of the MNA that the Proposed Development would be the most accessible of the Midlands terminals. This would enable it to act as a hub for smaller ports and regional terminals, critical for the expansion of intermodal rail freight across other regions. As well as the most efficient connections to the major deep-sea and short-sea ports for the main shipments that businesses and the markets would use for its immediate market area. The location of the site within the Midlands region would enable a network of rail terminals to work together allowing each to be used for the most efficient local distribution by electric HGVs and would help increase the overall transfer of more freight to rail from long haul HGV.
- 3.2.22. Paragraph 6.12 of the MNA sets out that the Midlands market would primarily operate such that:
- *"West Midlands Interchange, will serve the Black Country, Southern Staffordshire*
 - *Hams Hall will serve north Birmingham and along the M42, to Solihull.*
 - *Landor St will serve Central Birmingham,*
 - *BIFT [Birmingham Intermodal Freight Terminal] will serve Tamworth and North,*
 - *HNRFI will serve Coventry through to Leicester South, including Magna Park for deep sea / east coast, west coast and domestic time sensitive flows.*
 - *East Midlands Gateway will serve Leicester North, Nottingham and Derby*
 - *DIRFT [Daventry International Rail Freight Terminal] will serve Northants Fast Moving Consumer Goods National Distribution Centres; and Magna Park for short sea, domestic and Channel Tunnel flows.*
 - *Northampton Gateway will serve a similar market to DIRFT".*
- 3.2.23. The Applicant elaborates that it is of the view that the network of rail terminals is critical to maximise the ability of the region to move more long-haul freight by rail and allow the short haul cartage to be undertaken by electrically powered HGVs (EHGV).
- 3.2.24. Paragraph 6.1 of the MNA [[REP4-095](#)] provides information that the British rail freight market has seen a significant growth in intermodal market share of rail freight, between 1998/99 and 2020/21, measured in net tonne kilometres moved. The 2015/16 change reflected a drop in coal traffic, but the Applicant contends the overall trend is one of continued growth. provides information that the British rail freight market has seen a significant growth in intermodal market share of rail freight, between 1998/99 and 2020/21, measured in net tonne kilometres moved.

3.2.25. The MNA concludes (para 7.1) by stating:

"HNRFI is an exceptional proposal for an SRFI, which is in the National and Regional interest. It is needed to secure the sustainable development and economic importance of the Midlands Engine, entirely in line with Midlands Connect's Routemap for Freight, recognising the vital importance of rail freight access for sustainable local and national economies.

"NRFI's ability to act as a national intermodal rail hub, able to efficiently consolidate mixed destination traffic from smaller regional terminals and ports, will clearly assist in enabling the growth of rail freight in line with Government policy and aspirations for levelling up.

"The scheme is required to provide the core rail infrastructure needed to achieve Net Zero targets and ensure the UK has a resilient supply chain that can maximise the use of rail and makes the best use of scarce resources, including that of HGV drivers."

3.2.26. In response to challenges from IPs during the Examination, the Applicant in its D4 submission in 'Response to D3 submissions from Action Groups' [[REP4-125](#)] (response number 1) stated:

"HNRFI therefore will be a game changer, as it is situated in the middle of the country, directly on this Cross-Country strategic freight route, able to take trains to and from virtually any location nationally, with a single train set able to do two round trips in a day to ports such as Felixstowe, London Gateway and Liverpool.

"This fundamentally changes the operating costs of rail compared to road and provides an opportunity to support smaller and emerging regional terminals with mixed destination traffic, by acting as a rail hub. In so doing, occupiers at HNRFI would have a wider choice of terminals that they too can deliver to via rail, significantly increasing the potential to use rail for secondary distribution as well as primary distribution.

"No other terminal in the Midlands can replicate this level of connectivity combined with operational efficiency".

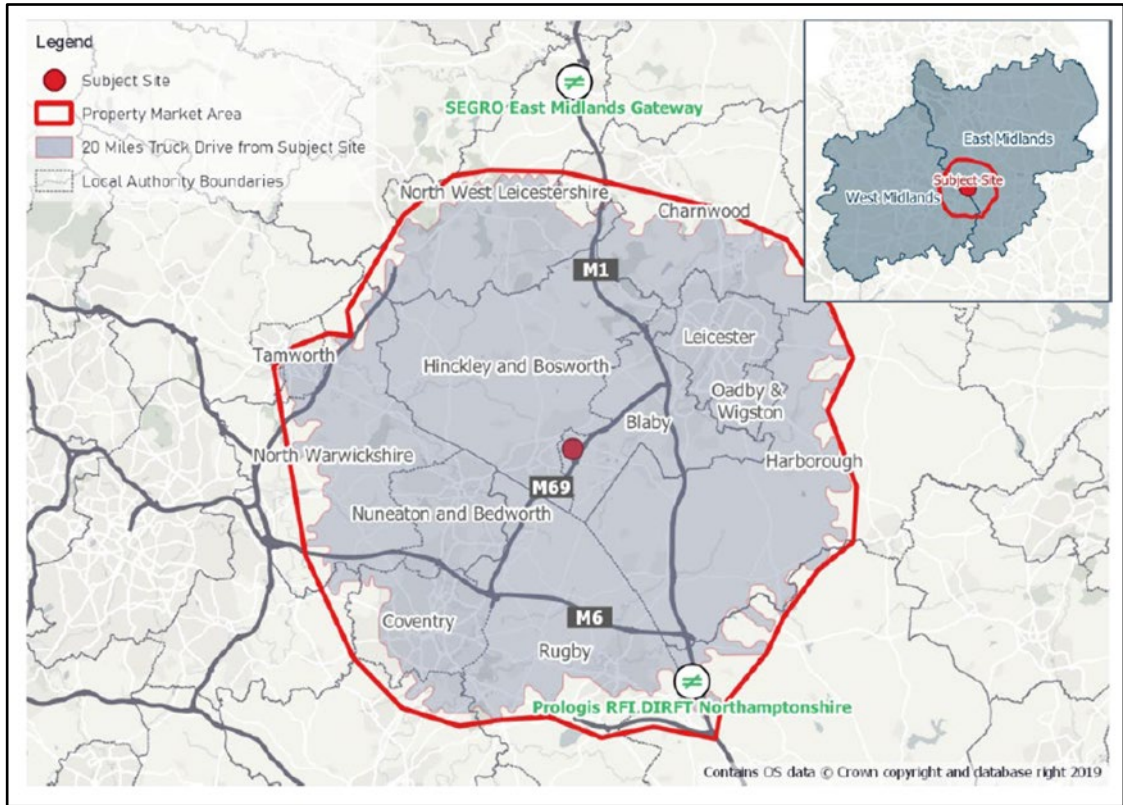
The wider area

3.2.27. Paragraph 1.1.13 of the LDSA [[REP3-036](#)] suggests that locationally the Property Market Area (PMA) within which Application Site is located is supported by both the national trends underpinning unprecedented demand in the industrial and logistics (I&L) sector as well as demand and supply dynamics specific to the area.

3.2.28. For the study, the Applicant defined the PMA taking account of both the competitor locations for large warehouse occupiers, and the travel distance I&L businesses not located within the Application Site would reasonably travel to use the proposed facility as part of their wider supply chain.

3.2.29. Chapter 2 of the LDSA details the Applicant’s approach to defining the PMA and Figure 2.1 of the LDSA [REP3-036] (provided as Figure 4) illustrates the assessment area based on a 20 mile truck drive distance which equates to a 45 minute drive time isochrone.

Figure 4: Property Market Area as defined by the Applicant



The LDSA [REP3-036] also provides an overview of the growth drivers affecting the sector, and this is illustrated at Figure 3.7 of the LDSA [REP3-036] (provided below as Figure 5).

Figure 5: Growth Drivers for the Logistics Industry



3.2.30. Section 4 of the LDSA [REP3-036] explores the evidence base in detail and refers to the GL Hearn Study (2021), 'Warehousing and Logistics in Leicester and Leicestershire' [REP5-072]. This is considered to be the primary regional evidence for large warehouses for the region and was prepared for a consortium of local authorities comprising BDC, Charnwood Borough Council, HDC, HBBC, Melton Borough Council, North West Leicestershire District Council, Leicester City Council (LCiC), LCC, Oadby and Wigston Borough Council and the Leicester and Leicestershire Local Enterprise Partnership (paragraph 4.2.1).

3.2.31. The Applicant also explores the evidence base and methodology used across the 12 local authority areas to predict future I&L floorspace demand. The Applicant contends that the GL Hearn study and local authority figures suppress demand and therefore underestimate the 'true' demand for such floorspace. This is set out in paragraph 4.4.3 of the LDSA [REP3-036]:

- "The evidence bases cover different time periods and segments of the I&L market;
- The evidence bases use a range of methodologies – past completions, labour demand, labour supply, and [Gross Value Added] GVA outputs – which have a number of flaws, such as the use of completions as a sign of demand, and results in an underestimation of future I&L demand; and
- They adopt very long lookback periods that have no relationship to today's marketplace and use different adjustments [such as using margins for flexibility, accounting for losses in floorspace, adjusting forecasts to reflect local market conditions] to reach their final estimates."

- 3.2.32. In Section 7 of the LDSA, the Applicant submits its own figures based on the Savills demand methodology. This is a methodology that estimates a market's suppressed demand when supply is below the equilibrium rate (when supply and demand are in balance). This can be added to historic demand projections and the Applicant considers this to give a more realistic picture of future demand (paragraph 4.3.22).
- 3.2.33. The demand is forecast over a 20 year plan period. As a result, the Applicant estimates future demand within the PMA for large warehouse units to be 1,772ha. It concludes that this means demand is 150% (2.5 times) higher than the 709ha of available supply presented in the 'Warehousing and Logistics in Leicester and Leicestershire' report, produced by GL Hearn on behalf of the Leicestershire local authorities. GL Hearn's methodology uses:
- a lower demand rate than past completions;
 - the use of different plot ratios for different demand models;
 - the proportion of rail-served demand is too aspirational and unrealistic, unless more rail served sites such as the Proposed Development come forward; and
 - air freight and LGV traffic are not taken into account.
- 3.2.34. The study finally concludes that the 226ha provided by the Proposed Development would help to address the 1,063ha shortfall in supply identified in the Applicant's evidence.
- 3.2.35. The Applicant submitted further information at D4 [[REP4-141](#)] and D5 [[REP5-025](#)] to clarify issues raised during ExQ1 [[PD-011](#)] and ExQ2 [[PD-013](#)]. This provided updated information in relation to the evidence base in response to ExQ1.7.12 and information on soft market testing of potential occupier interest in the units proposed through this Application in response to ExQ1.7.29. These were accompanied by revisions to the MNA [[REP4-095](#)] and the LDSA [[REP3-036](#)].
- 3.2.36. We asked the Applicant at ISH4 [[EV8-005](#)] (at 00:17:54) about its approach to market testing of the Proposed Development. The Applicant explained in a written response at D3 [[REP3-069](#)] that given the long lead in time between conception and being able to deliver a first building (over 5 years), formal marketing of the Proposed Development to occupiers had not been completed. Occupiers require certainty of delivery before being able to have worthwhile discussions regarding delivering new logistics space of the scale proposed. In this case that certainty would be in the form of the DCO being granted and the developer having purchased the land before concrete discussions take place.
- 3.2.37. However, before embarking on a project of this size and nature, the Applicant explained it is usual for developers to carry out what would be described as 'soft market testing' to establish the general demand for large scale logistics with a rail connection at this location. In this instance that soft marketing took the form of informal discussions with key occupiers' representative of the main target sectors:
- third party logistics companies;

- food retailers;
- non-food retailers;
- internet retailers;
- manufacturers.

3.2.38. The two main conclusions from the market testing were:

- from a geographical and supply chain perspective, Hinckley is an ideal location for a large-scale rail based facility;
- in all sectors there is an increasing interest in rail connected facilities as a means of taking freight off the road and reducing emissions.

3.2.39. The Applicant further elaborated in its Written Statement of Oral Case [[REP3-069](#)] that the results of the soft market testing align with paragraphs 5.2.20 to 5.2.24 of the LDSA, namely that the sectors which are typically linked to e-commerce, being Retail, Transport and Warehousing and Wholesale, account for 64% of leasing demand across the PMA. The Applicant stated that this is a positive signal for the Proposed Development as this means that the rail terminal could link into various types of downstream users, rather than rely on one type of occupier base.

3.2.40. In response to representations from BDC (see section 3.3.56 of this report) that no floorspace should be constructed prior to the completion of the railport the Applicant responded that proposals for SRFIs that have been approved through the NSIP process have enabled a proportion of the development to be constructed prior to the rail hub becoming operational, such as the East Midlands Gateway Rail Freight Interchange.

3.2.41. The Applicant added wording to Requirement (Req) 10 in the final dDCO submitted at D7 [[REP7-011](#)] in response to BDC and HBBC requests to require notification of the occupation of more than 105,000m² and to ensure the rail terminal is retained for use throughout the occupation of the warehousing. However, BDC's request to insert additions to require the appointment of a rail freight co-ordinator and regular reporting of the use of the SRFI was not accepted by the Applicant and this is highlighted in its final SOCG [[REP8-020](#)] with BDC.

Alternative Sites

3.2.42. In Chapter 4 of the ES [[APP-113](#)] the Applicant identifies alternative sites in a sub-regional context. There are seven sites identified with maps in this document (the map references are given in brackets relate to [[APP-113](#)]). The sites are:

- Brooksby, Melton;
- Syston Junction/ Fosse Way, Charnwood;
- Barkby Lane, Charnwood;
- Whetstone, Blaby;
- Littlethorpe, Narborough;
- Croft, Soar Valley, Blaby; and
- Hinckley/ Burbage

3.2.43. In addition, its D4 submission [[REP4-125](#)] the Applicant submitted that suitable alternative sites in the vicinity were not available as they would have had to be in the Green Belt, which would be inappropriate development.

Brooksby (Map 4.3)

3.2.44. This site lies on farmland in the valley of the River Wreake to the west of Brooksby. The Applicant concluded that the main reasons why this site is not the preferred location are its propensity to flood, its relatively poor access to the strategic highway network and its location outside of the identified Leicester and Leicestershire Economic Partnership Growth Areas. The site is also in conflict with the purpose of a countryside protection policy in the Charnwood Local Plan. The Applicant considers such a remote location would not meet occupier requirements for direct strategic road access, adding to road haulage operating costs and the associated environmental impacts.

Syston Junction/ Fosse Way (Map 4.4)

3.2.45. This location also features a cluster of industrial buildings at Syston Mills and a community sports pitch used by Syston Cricket Club to the west of Fosse Way. The Applicant concluded that in view of the site's relative remoteness from the motorway network, its location outside a Growth Area and the adverse flood risk it should not be investigated further.

Barkby Lane (Map 4.5)

3.2.46. This site is located between the residential suburb of Thurmaston to the west and the villages of Barkby and Barkby Thorpe to the north-east. The Applicant concluded that in view of its poor road access, which would not suit occupier requirements, its proximity to housing and the restricted access to the existing railway, the Barkby Lane site was not a preferred location.

Whetstone (Map 4.6)

3.2.47. This site lies on the northern side of the Felixstowe to Nuneaton strategic rail freight route in Blaby District on the southern edge of Leicester. Whetstone and Blaby lie to the south and the suburb of Glen Parva is to the north. The River Sence forms the northern edge of the site with the Grand Union Canal a short distance beyond. Enderby Road industrial estate lies to the west. The Applicant concluded in respect of this option that site is limited in size and lies in Flood Zone (FZ) 3. It is close to residential neighbourhoods and would cause the urban coalescence of adjacent settlements, in conflict with the purpose of a green wedge policy in the Local Plan. For these reasons the option was not selected as a preferred location.

Littlethorpe (Map 4.7)

3.2.48. This is an area of farmland south of Narborough to the south-west of Leicester. The village of Littlethorpe lies to the north-east and the larger

settlement of Cosby to the south-east. The Applicant concluded that for reasons relating to the adequacy of the highway network, the impact upon residential amenity and the limited area of land available in FZ1, this site was excluded from further consideration.

Croft (Map 4.8)

- 3.2.49. This site lies in the Soar valley in Blaby District. The village of Croft lies to the east and Stoney Stanton to the west. The Applicant concluded that in view of the limited road and rail access, high level of flood risk and pipeline constraints and the fact that the site is 'pinched' between neighbouring villages this option should not be pursued as a preferred option.

Hinckley/ Burbage (Map 4.9)

- 3.2.50. The Application Site was chosen because of its location adjacent to the strategic road and rail network, the lack of landscape designations and no designated heritage assets in the site boundary, and relatively modest impact on interests of biodiversity, hydrology, soil quality and distance away from large volumes of residential accommodation.

Applicant's Conclusion on alternative sites

- 3.2.51. The majority of the sites were discounted because of their propensity to flood, remoteness from the SRN, close to residential communities and/ or were in the countryside of particular merit.

Case for Interested Parties

Local Authorities

BDC

- 3.2.52. BDC [[REP-1055](#)] in its LIR made no specific reference or objection on the grounds of Need, and this was accepted and agreed as part of the signed SoCG submitted by the close of the Examination.
- 3.2.53. However, BDC in its WRs [[REP-1050](#)], submissions at D3 [[REP3-096](#)] and its representations at ISH4 contended that the rail hub should be built and facilitated first, prior to any of the warehousing floorspace coming into operation. This was stated to comply with paragraph 4.48 of the NPSNN which, BDC, contends indicates that "*a significant element of the buildings on site to be rail connected from the outset*" (underlining in original). While BDC accepted that other SRFIs had permitted some floorspace prior to the rail facilities being operational it considered this necessary because of "*the impacts of the Proposed Development on the road network and deficiencies in the Applicant's modelling and assessment of these impacts*".
- 3.2.54. BDC also requested that the undertaker should be required to appoint a rail freight co-ordinator and regular reporting of the use of the SRFI. This was requested so that BDC would be aware as to the extent of use of the

railport to allow it to judge whether the Proposed Development was being used as an SRFI.

HBBC

- 3.2.55. HBBC [[REP-1138](#)], did not contest Need as an argument against the Proposed Development citing the NPSNN as a context for the need for such a development.
- 3.2.56. However, HBBC did contest whether a robust site search and selection exercise had been conducted and questioned whether the Application Site was the most appropriate for the Proposed Development. At paragraph 4.4 of its LIR [[REP-1138](#)] it states: *"The option appraisal lacks much in the way of depth, or at least the information and data analysis on key criteria [rail, road, environmental and commercial] does not appear to be extensive"*.
- 3.2.57. Paragraph 4.5 further states, *"In comparative terms the preferred option at Hinckley places particular emphasis on its location on the South Leicestershire main line with connection to the M69 and M6. However, no in-depth analysis has been undertaken to show how other sites might address connectivity across the trunk road network, over which most intermodal rail freight is currently moved through the UK. The railport users benefit from access to a mainline route with W10 loading gauge and capable of handling 775m length freight trains, but this key criterion for a SRFI site might conceivably be just as effective in other sites identified in the option appraisals"*.

LCC

- 3.2.58. LCC [[REP-1154](#)] made similar comments in relation to Need. In the D7 SoCG submission [[REP7-070](#)] it qualified its acceptance by stating: *"the County Council has no objection to the principle of SRFIs, accepts the need for a SRFI is to be located in south Leicestershire. However, based on the information submitted to date (9 February 2024) the HNRFI site in Blaby District cannot be endorsed as an appropriate location given the issues raised by the County Council, including in its role as the Local Highway Authority"*. The highways issues cited are reported further at section 3.3.

WCC

- 3.2.59. WCC in its LIR [[REP1-234](#)] made no specific reference or objection on the grounds of need.

Network Rail

- 3.2.60. NR notes [[REP5-087](#)] that intermodal rail freight has grown by 59% between 2005 and 2021 and is forecast to continue grow through until the late 2040s. For this to occur there needs to be investment in high quality inland terminals in key regional locations. These are predominantly being provided by the private sector.

- 3.2.61. NR also notes the Application Site would connect into the gauge cleared strategic freight network cross country route from Felixstowe to the West Midlands and connections at Nuneaton. NR is therefore satisfied that, strategically, the Hinckley proposal would support government and rail industry targets for intermodal rail freight growth and delivering freight mode shift from road to rail.
- 3.2.62. NR considers the site is geographically well positioned within the Golden Triangle and would also have gauge cleared connections to the deep sea ports at Felixstowe, London Gateway, Southampton, Liverpool, Teesport, Tilbury and Immingham. It would also have good rail connectivity with gauge cleared lines to regional distribution clusters in London and the South East, the North West, the North East and Central Scotland.

Other IPs

- 3.2.63. A number of RRs (such as Guy Mellor [[RR-0437](#)], Shaun Tokley [[RR-1240](#)], and Stuart Winslow [[RR-1318](#)]) suggested that the Proposed Development was not needed, due to the provision of other similar facilities in close proximity to the site, and the preponderance of large warehousing facilities such as Magma Park. This was also echoed by Alberto Costa MP [[REP1-036](#)] and Dr Luke Evans MP [[REP1-114](#)]. There was also a suggestion by some IPs that there were a number of vacant premises in these facilities and that these should be filled before consent should be granted for an additional SRFI.
- 3.2.64. At D1 Sharon Scott [[REP1-214](#)] questioned the impartiality of the promotion of the Application Site to satisfy future warehousing demands. Ms Scott pointed to the Leicester and Leicestershire Strategic Distribution Study (updated March 2022), which was commissioned by the local authorities in the area, and sought the input of the Applicant in preparing the study. A copy of this document can be found at [[REP5-072](#)].
- 3.2.65. At D5 Ms Scott appended a report [[REP5-094](#)] from Mr Owen O'Neill which supported a notion that a rail line link from the West Coast Main Line (WCML) to Magna Park was feasible and should be explored as part of the site selection process associated with the Proposed Development.

ExA's Considerations

- 3.2.66. The need for the proposed SRFI has been a central issue in the Examination. This reflects the importance of this issue in establishing whether the proposal benefits from the NPSNN paragraph 4.2 presumption, and whether there is a compelling case in the public interest for the use of the CA powers which the Applicant seeks as part of the Application. This has been examined through our written questions and at ISH4 which was focused on whether the Proposed Development meets the objectives of a SRFI as set out in the NPSNN.
- 3.2.67. We have reviewed the effects of the Proposed Development in relation to need and alternative sites, and the proposed mitigation measures to address any of the potential impacts.

Need

- 3.2.68. The NPSNN sets out the Government's policy for addressing need for SRFIs, where it sees a compelling need. It notes in paragraph 2.56 that it is important that SRFIs are located near the business markets they serve and are linked to key supply chain routes. It notes that given the locational requirements for road and rail connections that the number of locations for SRFIs will be limited.
- 3.2.69. At ISH4 we afforded all IPs the opportunity to submit any views arising from the dNPSNN which they considered might have a bearing on the consideration of this application. The Applicant [[APP-348](#)] submitted at paragraph 1.3 that the dNPSNN further reinforces the need for further SRFI's.
- 3.2.70. As referenced in section 5, we afford the dNPSNN substantial weight. The dNPSNN also indicates that the compelling need continues to apply. The dNPSNN also sets out in paragraph 3.103 that even with the commitments made through the National Infrastructure process, there is still a need to develop further SRFIs across all regions. Paragraph 3.108 acknowledges there will be a natural clustering of some interchanges in the distribution heartland of the country.
- 3.2.71. In ExQ1.7.11 [[PD-011](#)] we sought views of the local authorities on the Applicant's suggestion that previous studies had underestimated the demand for warehousing in the area. LCC in its D4 submission [[REP4-181](#)] responded by stating that "*Previous employment studies undertaken for L&L [Leicester and Leicestershire] have not significantly underestimated industrial and logistics demand. They have included demand analysis for strategic warehousing (also referred to as large-scale distribution space) and have all followed recognised robust methodologies to arrive at future demand estimates*". It also provided information on recent studies, namely the 'Warehousing and Logistics in Leicester and Leicestershire: Managing growth and change' study prepared by GL Hearn with MDS Transmodal and Iceni Projects in April 2021 (amended March 2022) [[REP5-072](#)], and also the Leicester and Leicestershire Housing and Economic Needs Assessment (April 2022, updated June 2022, an updated version of the Housing Economic Needs Assessment (the HEDNA) [[REP3-129](#)]. The Managing Growth and Change study in particular included a 'margin for flexibility', equivalent to 5 years of completions, adding 643,000m² to the total of around 1.7 million square metres (Mm²), still below the Applicant's estimates.
- 3.2.72. As set out above, by the end of the Examination all local authorities agreed there was a demand for significant additional floorspace served by rail.
- 3.2.73. Ms Scott questioned the impartiality of the evidence given that the Applicant had provided data behind the report (see section 3.2.64). We questioned the Applicant and the local authorities on this issue. Both the Applicant and the local authorities confirmed that the PPG on Housing and Economic Needs Assessment (first published in 2015 and last updated in 2020) on the development of economic needs assessments

seeks the input of a range of stakeholders including developers and operators of premises to help inform forecasts and future demand and need. Mr Matt Kinghan, Director of Icen Projects Limited representing HBBC, at ISH4 [EV8-003] at 00:27:13 suggested that because of the specific locational attributes of Leicestershire, the Needs Assessment his company produced on behalf of the Leicestershire authorities, is particularly focused on strategic warehousing and distribution. We consider the methodologies employed in that study, seek to both align with the PPG but also fall in line with best practice with other studies and established methodologies that considered the needs of the sector.

3.2.74. Over the course of the examination, the Applicant submitted a number of SoCGs with local authorities and statutory bodies. At the end of the Examination the local authorities agreed on the policy position that there was a need for further SRFIs, given the position provided by the NPSNN.

3.2.75. There was also agreement between the Applicant and the local authorities of the need for an additional SFRI in the south-west Leicestershire area. While a number of other IPs disagreed with this, this was principally based on assertion rather than on evidence, that is the studies published. Whether the need could be addressed on different site(s) relates predominantly to the question of Alternatives, which we will consider below.

3.2.76. In our ExQ1.7.21 [PD-011], we asked the Applicant and the local authorities on the status of non-allocated sites that are currently coming through the planning system, and whether these should be considered as windfall sites as part of the supply and demand considerations. LCC in its D4 submission [REP4-181] at 1.7.21 suggested that it is recognised that sites without planning permission cannot form part of the current supply pipeline. It is also noted that past completions would have included previous windfall sites so the effect of historic windfall sites would have been taken into account in informing future employment 'needs'. Therefore, it may not be necessary to increase the supply in this way. Also, LCC remarked that windfall provision is not commonly used in planning for employment. However, they stated that a potential extension to DIRFT identified within the West Northamptonshire Spatial Options consultation is being explored.

3.2.77. During the Examination there was no evidence submitted that the Proposed Development would preclude any allocations made in the respective Local and other Development Plan documents. We also heard that the site had been put forward by the Applicant for the emerging new BDC Local Plan. This has little weight in our conclusions.

Conclusions on need

3.2.78. Having looked at all the evidence, and given the agreement of the local authorities, we consider that there is a compelling need for a SRFI in the south-west Leicestershire area. That does not mean that there are not other, alternative sites which would be more suitable.

Alternatives

- 3.2.79. We consider that the Applicant has undertaken a robust search for alternative sites as set out in section 3.2.42 to 3.2.51. No IP indicated to the Examination that any of the sites that had been rejected was in fact suitable.
- 3.2.80. Ms Scott's submission that other existing Logistics Parks could be rail connected was explored. In responding to the suggestion that a new rail line be provided direct to the Magna Park development the Applicant [[REP5-049](#)], stated that the suggestions *"fail to deal with the capacity constraints of the WCML, particularly through Rugby; and the cost of constructing a rail link without any enabling development, with a need to acquire all the necessary land along the route"*. It reiterated the contents of the NPSNN and dNPSNN and stressed that the Government sees a compelling need for an expanded network of rail freight interchanges to meet national need. In addition, the Leicester and Leicestershire Strategic Distribution Study [[REP5-072](#)] identified a need for further freight interchange facilities to accommodate future demand in the logistics sector.
- 3.2.81. However, we consider the cost of rail and other infrastructure connections would make this unattractive to the market due to financial viability and is therefore considered not to be a realistic option.

Conclusions on Alternatives

- 3.2.82. We consider that the Applicant has undertaken a robust search for alternative sites and that it has carefully considered this. We consider that the choice of the site was reasonable. The remaining sections of this Report will consider the effects of the choice and whether the undoubted harms, some of which the Applicant acknowledges, mean that this particular proposal is acceptable.

Floorspace before operations commence

- 3.2.83. The Applicant has included Req 10 in the dDCO [[REP7-011](#)] to enable it to construct no more than 105,000m² of warehousing before the rail freight terminal is completed to allow four 775m long trains per day. This was supported within the submitted Planning Statement ([[REP4-086](#)] paragraphs 3.154 to 3.156).
- 3.2.84. In respect of Req 10 and the enablement of the construction of 105,000m² of warehouse space before the rail hub becomes operational (which equates to approximately 11% of the total volume of the built floorspace), we note the provision of paragraph 4.86 of the dNPSNN which states that the SoS *"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 SoS will want to ensure that operational rail connections are brought forward in a timely manner, which may include using requirements that secure operational rail connections after a specified period and/or before*

a development threshold is reached". There are also accepting precedents from other similar proposals, which aligns with the dNPSNN.

- 3.2.85. We do not agree with BDC's request to have additional provisions included within Req 10 to require the appointment of a co-ordinator to report back to the local authorities on the usage of the rail hub, as we consider this does not have a justifiable planning purpose. Planning facilitates development, not that it is used.
- 3.2.86. However, to ensure that the Proposed Development would only be a SRFI and could not change use through the operation of permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), we consider that the word "only" should be inserted in Req 10 after the phrase "rail freight terminal and warehousing". This would ensure that the Proposed Development continued to meet the definition for a NSIP as set out in s14 of the PA2008 and meet the need for such developments.

ExA's Conclusions

- 3.2.87. Government policy is that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. On the evidence before us, we consider that there is a compelling need for the Proposed Development by virtue of paragraph 2.10 of the NPSNN and paragraph 3.105 of the dNPSNN. Whilst there was a number of representations from IPs that there was not a need or there were better sites, there was little evidence presented that there was not a need for the Proposed Development. The NPSNN further elaborates that the ExA and the SoS should therefore start their assessment of applications of this type on that basis.
- 3.2.88. We have carefully considered the evidence submitted on the seven alternative sites. Given their locations in areas of flood risk, remoteness from the SRN, close to residential communities and/ or location in countryside of particular merit, and consider that the assessment of alternative sites has been robustly analysed.
- 3.2.89. Turning to Req 10 and the enablement of the construction of 105,000m² of warehouse space before the rail hub becomes operational, paragraph 4.86 of the dNPSNN is explicit on this matter. Given this, and accepting precedents from other similar proposals, we consider that this forward provisioning of this part of the Proposed Development to be acceptable, as it equates to a small percentage of the overall proposed floorspace, around 11%.
- 3.2.90. We therefore conclude that that Need is given substantial weight in favour of the Proposed Development in the overall assessment and that the Applicant has appropriately considered alternatives.

3.3. TRAFFIC AND TRANSPORT

Introduction

- 3.3.1. This section considers the traffic and transport issues in relation to the Proposed Development. It also deals with public rights of way issues as routes for non-motorised users.

Policy

National Policy Statement for National Networks

- 3.3.2. Paragraphs 5.207 to 2.510 of the NPSNN deal with the Applicant's assessment of proposals for SRFIs. These indicate the use of Transport Assessments and Travel Plans to mitigate transport impacts. The latter should include measures to improve access by public transport and sustainable modes where those modes, where relevant, to reduce the need for parking and mitigate transport impacts.
- 3.3.3. Reference is made to DfT Circular 02/2013 The Strategic Road Network and the delivery of sustainable development (or prevailing policy). This Circular has now been superseded by DfT Circular 01/2022 of the same name. Given the drafting of the NPSNN, where necessary, reference will be made to Circular 01/2022.
- 3.3.4. In relation to decision making paragraph 5.211 indicates that due consideration should be given to the impacts on local transport networks and policies set out in local plans.
- 3.3.5. Paragraph 5.213 notes that SRFIs may give rise to impact on the surrounding transport infrastructure including connecting transport networks. Reasonable steps should therefore be taken to mitigate these impacts. The paragraph goes on to indicate that the mitigation measures are insufficient to reduce the impact to acceptable levels requirements and/ or planning obligations should be implemented. In this regard, provided the applicant is willing to commit to transport planning obligations and to mitigate transport impacts (including environmental and social impacts) then development consent should not be withheld. Appropriately limited (little) weight should be applied to residual effects.
- 3.3.6. Paragraphs 5.215, 5.216 and 5.218 deal with mitigation. These indicate mitigation should be proportionate and reasonable, focussed on promoting sustainable development. Accessibility impacts should be mitigated so far as reasonably possible, although there is a very strong expectation that impacts on non-motorised users should be mitigated. Paragraph 5.218 indicates that there may be circumstances where travel planning alone would not be sufficient to reduce the traffic demand to acceptable levels. Here, the applicant should work with local planning and highway authorities to consider traffic management measures and, if appropriate, how they might best be delivered.
- 3.3.7. Paragraphs 4.60 to 4.66 deal with road safety. These paragraphs emphasize the importance of road safety audits (RSA), demonstrate that

schemes minimise the risk of death and injury, contribute to an overall reduction in road casualties, and the number of unplanned incidents and contribute to improvements in road safety for walkers and cyclists.

- 3.3.8. Paragraph 4.66 indicates that the SoS should not grant consent unless satisfied that all reasonable steps have been and will be taken to minimise the risk of road casualties arising from a scheme and contribute to an overall improvement in the safety of the SRN.

dNPSNN

- 3.3.9. The policy requirements of dNPSNN are similar to the NPSNN. In paragraph 4.80 it is emphasised that adequate links to the rail and road network are essential. It is stated that rail access will vary between rail line, but should be ideally be located on a route with a loading gauge capacity of W8 or more. For road links government policy is set out in Circular 02/2013 (or relevant updated document) (see section 3.3.3).
- 3.3.10. The dNPSNN, however, has a greater emphasis on certain matters:
- mitigation measures should be proportionate and reasonable focussed on facilitating journeys by active travel, public transport and cleaner fuels (paragraph 5.272);
 - that the Applicant should provide evidence that the development improves the operation of the network and assists in capacity issues (paragraph 5.274);
 - travel planning, which should be undertaken for all major developments that generate significant amounts of transport movement. It is noted that where the implementation of a travel plan alone would not be sufficient to reduce the traffic demand of a project to acceptable levels the applicant should align with agreements made with relevant highway authority, local planning authority and the Great British Railway Transition Team, as appropriate referring back to paragraphs 4.78 to 4.87 (paragraph 5.276);
 - consideration should also be given to whether the applicant has maximised opportunities to allow for journeys associated with the development to be undertaken via sustainable modes (paragraph 5.278);
 - where a development negatively impacts on surrounding transport infrastructure including connecting transport networks, the SoS should ensure that the applicant has taken reasonable steps to mitigate these impacts (paragraph 5.280); and
 - where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the SoS should expect applicants to accept requirements and/ or obligations to fund infrastructure or mitigate adverse impacts on transport networks (paragraph 5.280).
- 3.3.11. The dNPSNN also emphasises the need to provide safe and secure cycle parking and associated facilities, high quality pedestrian environments and bus stops in close proximity to the development.

3.3.12. Paragraphs 4.56 to 4.59 of the dNPSNN reiterate paragraphs 4.60 to 4.66 of the NPSNN but also emphasise that consideration should be given to wider transport objectives, including active travel and enabling modal shift.

DfT Circular 01/2022 The Strategic Road Network and the delivery of sustainable development

3.3.13. The Circular emphasises that new development should be facilitating a reduction in the need to travel by private car and focused on locations that are or can be made sustainable. The Circular references in paragraph 14 its integration with other government policies, strategies and guidance that aim to reduce the negative environmental impacts of development including the decarbonisation agenda.

3.3.14. Paragraphs 18 to 25 deal with new connections and capacity enhancements. This notes that new connections lead to more weaving and turning which, in turn, creates additional risk to safety and reduces reliability and efficiency. Consequently, new connections should be identified at the plan-making stage. Even then, all reasonable options to deliver modal shift, promote walking, wheeling and cycling, public transport and shared transport to reduce car dependency, and locate development in areas of high accessibility by sustainable transport modes (or areas that can be made more accessible) have been exhausted.

3.3.15. Paragraph 20 indicates that where the above has not occurred there will be no new connections on motorways except for limited exceptions, none of which apply to the Proposed Development.

3.3.16. Capacity enhancements to existing junctions are considered in paragraph 23. Where acceptable, proposals would include measures to improve community connectivity and public transport accessibility, and this will be weighed against any negative safety, traffic flow, environmental and deliverability considerations, impacts on the permeability and attractiveness of local walking, wheeling and cycling routes, and alternative options to manage down the traffic impact of planned development or improve the LRN as a first preference.

3.3.17. Reference is made to the Design Manual for Roads and Bridges (DMRB), with particular reference to Safety Risk, RSAs and Walking, Cycling and Horse-Riding Assessment and Review.

3.3.18. Reference is also made in paragraph 49 to transport assessment, including additional trips from committed developments. Paragraph 50 refers to opening year assessments and that for multi-phased developments, additional associated assessments should be provided based on the opening of each phase.

3.3.19. Paragraph 51 indicates that where a transport assessment indicates that a development would have an unacceptable safety impact or the residual cumulative impacts on the SRN would be severe, the developer must identify when, in relation to the occupation of the development, transport improvements become necessary.

National Planning Policy Framework

- 3.3.20. Chapter 9 of the Framework promotes sustainable transport. It recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account in decision-making (paragraph 109).
- 3.3.21. Paragraph 113 indicates the importance of providing adequate overnight lorry parking facilities, taking into account any local shortages. Proposals for new distribution centres should make provision for sufficient lorry parking to cater for their anticipated use.
- 3.3.22. In considering proposals specific reference is made to promoting sustainable transport modes, safe and suitable access for all users, appropriate design responses taking account of the National Design Guide and National Design Code, and that significant impacts from development on the transport network (in terms of capacity and congestion), or on highway safety should be cost effectively mitigated.
- 3.3.23. Paragraph 115 states that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts would be severe.

Local Plans

Blaby

- 3.3.24. The Blaby District Local Plan (Core Strategy) Development Plan Document (the BCS) [[REP4-165](#)] in Policy CS10, Transport Infrastructure, sets out the strategic objectives. These include delivering infrastructure to meet the needs of the population including those arising from growth, to make services accessible to all, to deliver the transport needs of the District and to encourage and develop the use of more sustainable forms of transport (including walking, cycling, other forms of non-motorised transport and public transport).
- 3.3.25. It is stated that within strategic (including national and regional) and financial constraints the Council will support the exploration of realistic opportunities for improving rail-based movement of goods and people. Travel plans are required for major employers, and car share facilities, car clubs and the use of low emission motor vehicles to reduce congestion and pollution will be encouraged.

Hinckley and Bosworth

- 3.3.26. The Hinckley and Bosworth Core Strategy (the HBCS) [[REP4-178](#)] sets out as Spatial Objective 13 to reduce the high reliance on car travel, to increase the opportunities for other forms of transport by focusing the majority of development in the Hinckley urban area and through securing improvement to public transport infrastructure and facilities that promote walking and cycling and through the use of travel plans. Policy 5, dealing with transport infrastructure in the sub-regional Centre, sets out various

transport interventions, predominantly based in and around Hinckley, Burbage, Barwell and Earl Shilton.

3.3.27. In addition to various site specific measures, it is indicated that Council will support the re-opening of the Elmesthorpe passenger railway station to serve Earl Shilton and Barwell. Policy 14, dealing with transport in rural areas, makes reference to demand responsive transport networks, but this does not include the Application Site.

3.3.28. The Hinkley and Bosworth Site Allocations and Development Management Policies Development Plan Document (the HBDPD) [[REP4-177](#)] in Policy DM17 deals with Highways and Transportation. It indicates that development proposals will be supported where they use existing public transport facilities, ensure convenient and safe access for walking and cycling, no adverse impact on highway safety, the need for travel to be minimised and sustainable transport modes maximised and ensure that residual cumulative impacts are not severe.

3.3.29. We were not directed to any policies relating to those parts of the Proposed Development in either of the areas administered by RBC and HDC areas.

Design Manual for Roads and Bridges

3.3.30. DMRB contains information about current standards relating to the design, assessment and operation of motorway and all-purpose trunk roads in the UK. This is a National Highways (NH) technical document rather forming part of national policy.

Introduction

3.3.31. This Report will concentrate on those areas where significant areas of dispute remain between the Applicant and the highway authorities, that is NH, LCC and WCC. It will also look at those areas where the policies of the NPSNN and other important and relevant documents, such as DNPSNN and DfT Circular 01/2022, require appropriate analysis.

3.3.32. This section will not look at the overall location of the Proposed Development, which is considered in section 3.2, but rather the effects that it would have.

Case for the Applicant

Introduction

3.3.33. The following section sets out the Applicant's case as regard Traffic and Transport. This is done in three main sections:

- Roads;
- Rail; and
- Public Rights of Way.

3.3.34. As regards Roads, this is approached under the following sub-headings:

- Overall approach;
- Construction traffic;
- Operational Traffic:
 - traffic generation:
 - sustainable travel options,
 - routing of HGV traffic,
 - assessment years,
 - traffic models and forecasts, and
 - post-Covid updates.
 - individual junctions and road links;
 - Road Safety Audits;
 - Narborough level crossing;
 - closure of SRN; and
 - beneficial effects.

3.3.35. As the Applicant's case was clarified during the Examination, for example by taking account of changes in circumstance and responses to points made by IPs, these have set out in this section.

Roads

Overall Approach

3.3.36. Chapter 8 of the ES [[APP-117](#)] sets out the Applicant's overall Transport and Traffic Approach. This was supported by a Transport Assessment (TA), Part 1 of which is the main report [[APP-138](#)]. This was amended several times during the Examination in response to queries raised by the highway authorities and discussions within the Examination. The final version is [[REP3-157](#)].

3.3.37. The TA is made up of various parts being Appendix 8.1 to the ES. Full details of the examination references can be found in the Guide to the Application [[REP8-002](#)]. The main assessment is Part 1 of the TA [[REP3-157](#)].

3.3.38. Chapter 8 of the ES was accompanied by a number of transport documents in addition to the TA. These include:

- *Site Wide Framework Travel Plan [[REP7-031](#)] with appendices [[APP-160](#)] to [[APP-162](#)];
- *Sustainable Transport Strategy (STS) [[REP7-028](#)] with appendices [[REP7-030](#)];
- Walking, Cycling and Horse-Riding Assessment and Review [[APP-154](#)];
- *HGVRP [[REP7-055](#)] and appendices [[REP7-057](#)];
- *Construction Traffic Management Plan (CTMP) [[REP7-059](#)];
- *Public Rights of Way Appraisal and Strategy [[REP7-032](#)];
- RSAs (Interim) [[REP4-151](#)] and Stage 1 [[REP8-025](#)].

3.3.39. Those documents marked with an Asterix (*) would be certified documents under Schedule 15 of the dDCO and would be needed to be

followed in any implemented consent pursuant to any relevant requirements in Schedule 2 of the dDCO [[REP7-011](#)].

3.3.40. The TA examines the trip generation, distribution and assignment of trips associated with the Proposed Development. The Proposed Development trips have been reviewed and assigned at a strategic level using the Pan-Regional Transport Model (PRTM) which is a SATURN (Simulation and Assignment of Traffic to Urban Road Network) model and is maintained on behalf of LCC, covering the county and the wider Midlands area. The use of the PRTM model was agreed with the highway authorities.

3.3.41. The Applicant undertook modelling in a more detailed area, described as the Areas of Detailed Modelling. This was broadly defined as the Leicestershire county boundary, but also included areas outside to the north, south and west.

3.3.42. Following the Institute of Environmental Management and Assessment's (IEMA) Guidelines for Environmental Assessment of Road Traffic the Applicant initially determined whether a location had a 'sensitive receptors'. These include:

- schools;
- health facilities;
- community facilities; and
- areas with significant pedestrian movements.

This led to the Applicant assessing 101 links which are set out in Table 8.3 of Chapter 8 of the ES [[APP-117](#)].

3.3.43. The Applicant then used a grid shown in Table 8.4 to determine the magnitude of change of the Proposed Development:

- severance;
- pedestrian and cycle amenity;
- fear and intimidation;
- accidents and safety; and
- driver delay.

This assessed the following impacts against criteria of magnitude, only major or moderate effects are considered to be significant.

3.3.44. This led to an analysis against the nature of the receptor and the duration of the effect, for example during the temporary construction period or permanent as an operational effect.

Construction traffic

3.3.45. The Applicant's analysis, based on experience from East Midlands Gateway and Northampton Gateway DCO projects, indicates likely construction vehicle numbers at around 10-15% of the total forecast daily operational traffic flows predicted for the Main Site.

3.3.46. Due the 10-year construction period the minimum was a 'short/ medium term, temporary' duration.

- 3.3.47. For initial construction, the Applicant has determined that 60% of the traffic would route from the M69 using the existing slip roads with remaining 40% being from the B4669 to the west and east split equally. The Applicant takes the view that due to the short-term nature of this phase of construction (no more than 2 years) that this would not result in significant effects. In any event traffic management through the CTMP would minimise impacts.
- 3.3.48. After the southward slips and A47 Link Road were in operation, paragraph 8.71 of Chapter 8 of the ES [[APP-117](#)] says one year, the Gantt chart [[REP3-048](#)] indicates two and a half, then the Applicant envisages that construction traffic would be focussed on the SRN avoiding impacts on local roads.

Operational traffic

- 3.3.49. Traffic generation for the site is said to have been agreed by the Transport Working Group (TWG) made up of the Applicant, NH, LCC, WCC, LCiC, BDC and HBBC, and is described by the Applicant as "robust" (paragraph 6.6 of the TA [[REP3-157](#)]). This is based on data for HGVs, car and van trips from existing distribution sites in the Midlands and has been based on what is described as the 'worst case' from a site (Swan Valley, located to the north of M1 J15A) which has limited public transport access and is heavily car dependent.
- 3.3.50. The future year of 2036 (10 years after opening) is based on data produced by the PRTM. This *"is an assignment model and as such traffic is assigned to different routes across the modelled area based on an algorithm of cost and journey time"*. The Applicant indicates that this was verified and agreed with the TWG. This was then modelled onto GIS software to visually show the magnitude and location of changes.
- 3.3.51. Accident statistics have been collated through the Study Area, and an assessment through COBALT to measure the effect providing an estimate of accident risk both with and without the development in place.
- 3.3.52. The Applicant undertook its analysis in three scenarios. Firstly, 'Without Development' (WoD) (this includes committed development), secondly, 'WoD but with Access Infrastructure' and thirdly, 'With Development' (WD). This was undertaken to analyse the effect of the access infrastructure, that is the new slip roads to the M69 and associated works to junction 2 circulatory, the A47 Link Road and the upgrading of the B4668 between the end of the A47 Link Road and the A47.
- 3.3.53. Since the assessment was drawn up HBBC, RBC and Nuneaton Borough Council have all granted planning permission for what is known as the 'Padge Hall site' (plan at [[REP3-119](#)]). This lies to the south of the A5 opposite the junctions with the A47. To the east of the two junctions is a railway bridge. Presently the height of this bridge, known as the Watling Street Bridge (although erroneously referred to by other names in the documentation), is restricted with a clearance of 4.6m. As part of the planning permission there is a Planning Obligation which would require the carriageway under the bridge to be reduced in height to increase the

clearance to 5.2m, meaning that it would no longer be classified as a 'low bridge'.

Traffic Generation

- 3.3.54. For traffic generation the Applicant identified two distinct sets of traffic associated with the Proposed Development:
- Rail Freight terminal; and
 - B8 Warehousing with rail freight terminal operational.
- 3.3.55. In each case there would be HGV traffic both internal to the site and external and Light Vehicles associated with employees and visitors which would be external.
- 3.3.56. The Applicant developed a bespoke trip generation methodology which was agreed by the TWG.
- 3.3.57. Transport associated with the rail freight depot derived from various factors based on a maximum of 16 two-way train paths for weekdays. The ratio of external HGV movements to internal has been based on similar numbers for the Northampton Gateway and West Midlands Interchange projects, feedback from potential operators and NR. Subsequently, an external/ internal split of HGV movements has been set at 70/30 which aligns with similar open-access terminal sites in the Midlands.
- 3.3.58. Figure 6-1 and Table 6-3 of the TA set out the estimated numbers and splits of HGV movements during a 24-hour period. Peaks would occur between 07:00 and 08:00 hours, 12:00 and 13:00 hours and 16:00 to 18:00 hours.
- 3.3.59. For the B8 Warehousing comparisons have been made with the analysis of other Rail Freight Interchange sites set out in paragraph 6.19 of the TA. Using a mean average of these and applying them to the 860,000m² floorspace, these are then added to the traffic associated with the railport to provide a total external trip generation for the AM and PM peak hours and 24 hour Annual Average Daily Traffic (AADT). This is found in Table 6-8 of the TA and is replicated below.

Table 1: Traffic generation, peak and AADT

External Vehicle Type	AM Peak Hour (08:00-09:00)			PM Peak Hour (17:00-18:00)			24 Hour Daily Total		
	Arrive	Depart	Total	Arrive	Depart	Total	Arrive	Depart	Total
B8 LGV	899	117	1,016	351	922	1,273	8,218	8,108	16,326
NRFI LGV	0	0	0	0	0	0	56	56	112
Total LGV	899	117	1,016	351	922	1,273	8,274	8,164	16,438
B8 HGV	172	184	356	186	209	395	3,818	3,819	7,637
NRFI HGV	36	35	71	50	50	99	680	680	1361
Total HGV	208	219	427	235	259	494	4,498	4,500	8,998
Total External Trips	1,107	336	1,443	586	1,181	1,767	12,772	12,664	25,435

- 3.3.60. To this the Applicant has calculated the Travel Modes based on the Census Middle Super Output Area (MSOA) for the two areas including the Application Site. This has, as the top three modes, 75% car driver, 11% walk and 7% car passenger.
- 3.3.61. A significant number of RRs highlighted differences in the numbers of potential employees in the event that the Proposed Development was constructed as set out in the ES.
- 3.3.62. Table 7.17 of Chapter 7 of the ES [[REP3-155](#)] sets out a range of 8,400 to 10,400 Full Time Equivalent (FTE) jobs for operational workers and a range of 10,400 to 12,900 FTE jobs for on and off-site. IPs pointed out that ranges showed a difference of approximately 24%. Furthermore, paragraph 5.1 of the initially submitted version of the TA [[APP-138](#)] only showed the lowest number, 8,400.
- 3.3.63. The essential case of IPs was that by utilising the lowest jobs number, 8,400, the TA underestimated the quantum of traffic, particularly light vehicle trips including cars, travelling to and from the site. We therefore raised at the PM [[EV2-001](#)] this issue, on the basis that had an incorrect quantum been utilised there was a question as to whether the ES was of an adequate standard to allow us to examine the Proposed Development and the SoS to determine upon it.
- 3.3.64. The Applicant explained at the PM, and subsequently in its Post Hearing Submission ISH1 and CAH1 [Appendix A Employee Numbers and Trip Generation Note] [[REP1-018](#)], that it considered the employee numbers and the traffic generation figures to be consistent.
- 3.3.65. The employee numbers were calculated as follows. The Applicant takes the view that the site would be likely to accommodate a range of National Distribution Centres (NDC) and Regional Distribution Centres (RDC). It then took employment densities from the Homes and Communities Agency Employment Density Guide (2015). For NDCs this is

one job per 95m² Gross External Area (GEA) and for RDCs this is one job per 77m² GEA. It then applied a vacancy rate of 6% based on the national average over the last 10 years (being more conservative than the 2.8% in the PMA and 3% at the national level). Through an arithmetic calculation this gives a job range of 8,411 FTEs if the whole site were utilised as NDCs and 10,377 as RDCs, meeting the range of jobs identified by the Applicant.

Sustainable Travel Strategy

3.3.66. Following discussions in the Examination, the Applicant has prepared updates to the STS and Plan [[REP7-028](#)] and [[REP7-030](#)], particularly to take account of the revisions of DfT Circular 01/2022.

3.3.67. The main elements proposed are as follows:

- modal shift target – from 75% to 60% on single car occupancy in 10 years through car sharing and public transport (targets to be reviewed once data available from use).
- bus infrastructure – an interchange on the eastbound carriageway of the A47 Link Road, and a layby and bus shelter on the westbound carriageway together with crossing facilities.
- bus - private service agreements with local bus operators, to provide services between the site and the following areas from first occupation:
 - Coventry and Leicester via enhancement to the existing route (X6) operating 04:00 to 00:00 hours 7 days a week (apart from Christmas Day, Boxing Day and New Year's Day) on a minimum 60 minute service;
 - Hinckley and Nuneaton railway stations via enhancement to the existing route (8), operating 7 days a week 04:30 to 23:20 hours (apart from Christmas Day, Boxing Day and New Year's Day) on a minimum 90 minute service;
 - a free six month bus pass for any employee within 6 months of occupation of the relevant building for the above two services.
 - surrounding villages via a Demand Responsive Transport (DRT) service which could be accessed via a mobile phone 'app' monitored on a two-yearly cycle for patronage;
 - a private shuttle bus between these bus stops, and bus stops within the main site;
- Car Share Platform – an 'app', or similar, to allow all staff to share details of lift availability to and from the site.
- Active Travel – due to the distances from centres of population this would be concentrated on cycle enhancements, although the physical provision would be wide enough to be used as a footway/ cycleway.
 - within the site to link to a footway/ cycleway on the southern side of the A47 Link Road to link to existing cycle routes.
 - cycle parking, e-bike charging facilities and showers in every unit, to be monitored for adequacy and reported annually;
 - Cycle Travel Plan promotion.

- three enhanced cycle routes:
 - to Barwell, Toucan crossing on A47;
 - to Barwell, Gateway at The Common; and
 - to Hinckley and Burbage, New Cycle Lane to the B4669 between Smithy Lane and Winchester Drive.
 - Employee Travel Packs for each employee.
 - Future Mobility – every year the Travel Plan Coordinator would undertake a feasibility study for:
 - a mobility hub;
 - a bike/ e-bike share scheme;
 - a Hinckley car club scheme.
 - In the event that the car driver target modal share is not achieved, additional and/ or alternative public transport would be provided.
- 3.3.68. The Applicant's considered the effects of the STS in its Response to Deadline 3 submissions [Appendix B - Transport 2023 Update] [[REP4-131](#)].
- 3.3.69. As set out the aim of the strategy would be to reduce the modal share of single occupancy car trips from 75% to 60% over a 10-year period, with these trips being transferred to car sharing, public transport and active travel.
- 3.3.70. To seek to achieve this, the Applicant has undertaken an analysis of where journeys would originate. This was then mapped on to the traffic generation gravity model and was considered to have a positive effect on reducing development traffic through the key off-site junctions.
- 3.3.71. The Applicant's trip distribution for employees was based on a bespoke gravity model using the Magna Park and DIRFT sites as 'proxies' for trip length distribution.
- 3.3.72. In paragraph 3.9 of its Post Hearing Submission ISH1 and CAH1 [Appendix A Employee Numbers and Trip Generation Note] [[REP1-018](#)] the Applicant reviewed the absolute projected trip generation figures from the entire development as equating to 8,200 light vehicle trips (which includes cars) to and from the site across 24 hours. Utilising the higher number of employees this arithmetically identified that 79% of travel to and from the site would be by car.
- 3.3.73. Thus, the Applicant took the view that although the employee figures and the traffic generation figures had been calculated separately, they both were robust in their gestation and thus there was no inconsistency. Furthermore, the traffic generation was based on the upper level of on-site employment and thus represented a 'worst case' scenario.
- 3.3.74. It should also be noted that subsequent iterations of the TA ([[REP1-011](#)] and [[REP3-157](#)]) both replaced the 8,400 job figure in paragraph 5.1 with the range '8,400 to 10,900'.

HGV Route Plan and Strategy

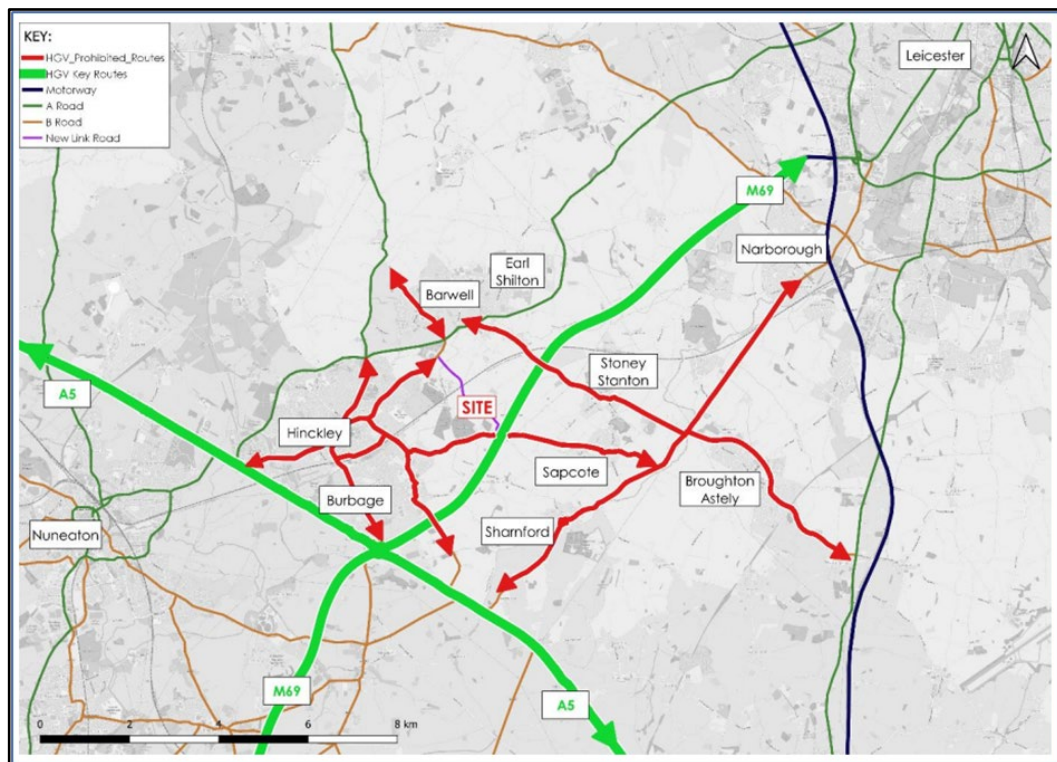
- 3.3.75. The HGV traffic utilising the Application Site would be subject to the HGVRP. This would require HGVs to utilise either M69 J2 or the A47 Link Road. This would be monitored by Automatic Number Plate Recognition (ANPR) software and could lead to financial penalties for those involved in 'persistent breaches'.
- 3.3.76. The HGVRP [REP7-055] aims to develop a plan and strategy to promote desirable routes and manage prohibited routes for HGVs associated with the Proposed Development during the operational phase. It would apply to all occupiers of the site.
- 3.3.77. Since HGVs should primarily utilise the SRN the HGVRP [REP7-055] sets out two categories:
- *Advisory HGV Routes - roads suitable for HNRFI HGVs routing via the primary highway network including the M69, M1, A5, M6, A47, M42, M40, M5 and A46.*
 - *Prohibited HGV Routes – roads unsuitable for HNRFI HGVs routing through villages and towns identified in consultation with Leicestershire and Warwickshire and HNRFI HGVs should only route via these prohibited routes when either providing or receiving goods and services from premises in these areas for business purposes.*
- 3.3.78. The 'Advisory HGV Routes' are set out in paragraphs 3.3 to 3.8 of the HGVRP [REP7-055]. Access would also be permitted along the A47 Link Road and B4668 to gain access to the A47.
- 3.3.79. It should be noted that due to the current height restriction on the A5 at the Watling Street railway bridge, 'overheight' HGVs from the Application Site wishing to travel to the north-west of Hinckley would leave the site via the A47 Link Road in a westerly direction to the new roundabout on the B4668, travel in a north-easterly direction to the to be upgraded roundabout with the A47 and then travel along the A47 south to join the A5 (in a reverse route to access the site). Following discussions with the highway authorities, the Applicant estimates that around 20% of HGVs travelling to the north-west would currently not be able to travel under the A5 Watling Street railway bridge.
- 3.3.80. At ISH6 there was a discussion about the effects of lowering the carriageway for 'taller' HGVs, as rather than travelling via the A47 Link Road, the B4668 and A47 to get to the A5 they would be able to travel via M69 J1. As a result, the Applicant produced a 'Junction 1 Sensitivity Padge Hall Farm' paper [REP5-031] to assess the effects of potentially increased traffic on this junction. This concluded that with this potential re-routing there would be "no material impact on the operation of M69 Junction 1. Therefore, no mitigation measures are required".
- 3.3.81. As well as the strategic network of the M69, M1, M6, M42 and A5 where HGV traffic is to be directed, the HGVRP also identifies the main local roads from which the site would be accessible. These are:

- the B4669 Sapcote Road/ Hinckley Road which provide the existing accesses to M69 J2;
- the B581 which runs through Elmesthorpe and Stoney Stanton to the north of the Application Site;
- the A47 which is the major route to the north and west of Hinckley;
- the B4114 which runs in along a roughly parallel alignment to the M69 to the east of Sapcote between Leicester and the A5; and
- Burbage Common Road which is a rural 'lane' linking the B4668 and the B581.

3.3.82. HGVs would be "discouraged" from using local roads. In addition to the lorry restrictions in Leicestershire shown in Figure 5.1 of the HGVRP [REP7-055], all HGVs arriving and departing from site would also be discouraged from using the B4669 and the B581 unless delivery is local. The mechanisms are discussed in section 3.3.92 and 3.3.93.

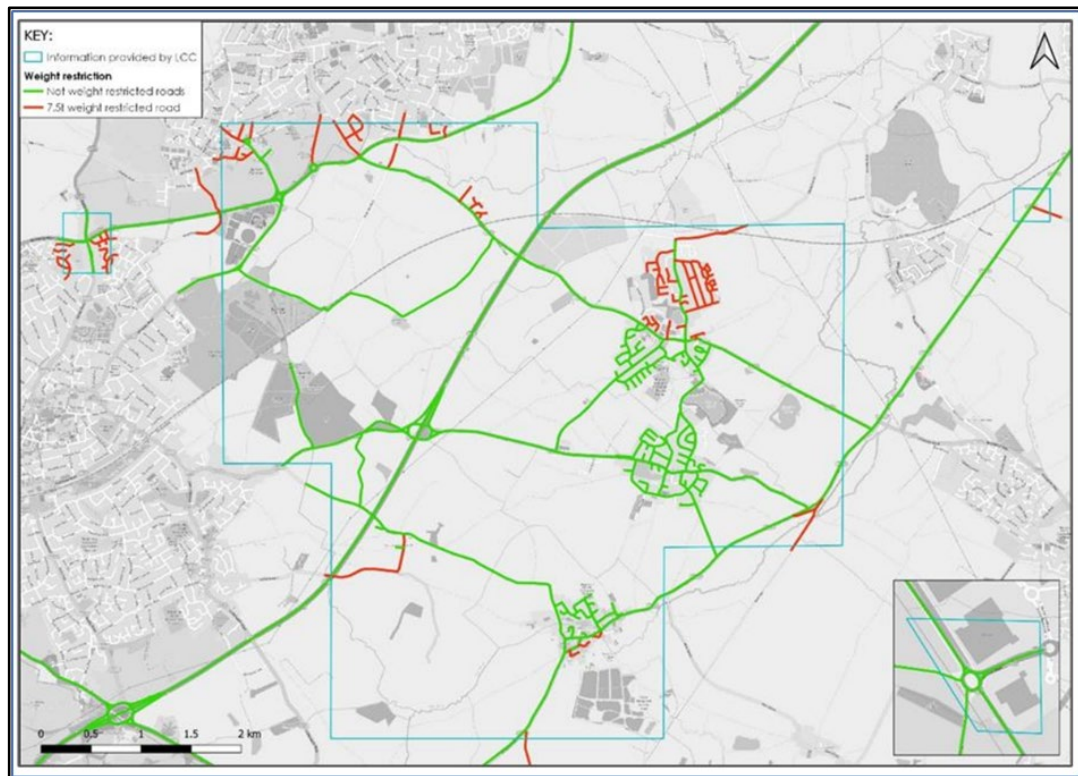
3.3.83. The Prohibited and Key Advisory HGV Routes in the local vicinity of the Application Site are set out in Figure 6 (source Figure 4 HGVRP [REP7-055]).

Figure 6: Prohibited and Key Advisory HGV Routes



3.3.84. There are various local 7.5 tonne HGV weight restrictions in the area. These are shown in Figure 7 (source: Figure 5 HGVRP [REP7-055]) with the prohibitions identified in red.

Figure 7: Existing Local HGV weight restrictions



3.3.85. During discussions at ISH2 the Applicant explained [EV6-006] at 26'45" to 27'13" that it would not be possible to extend weight restrictions (other than for access) on the B4669 to the east of M69 J2 or the B581 as both are classified as 'B' roads.

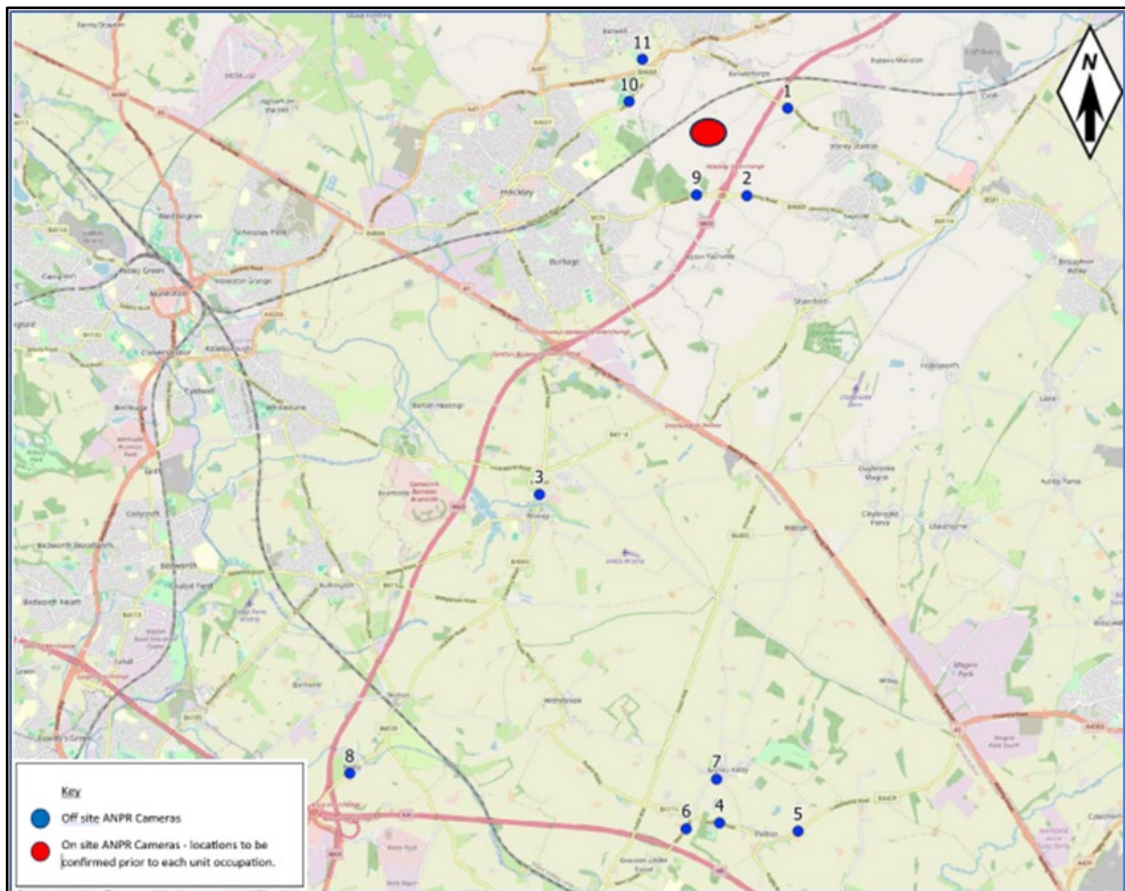
3.3.86. The HGVRP [REP7-055] identifies in section 4 various on-site management measures to assist in the operation of the facility. It is stated by the Applicant that these have been used in other rail freight interchanges and are said to be common to the logistics industry:

- Vehicle Booking System to 'time' when HGVs arrive and depart;
- Driver Welfare Facilities associated with drivers utilising the site;
- Early Arrival Bays at 11% of on-plot provision;
- Restricted Parking through a Traffic Regulation Order provided in the dDCO (Article 19 – Clearways and no waiting) and management on site;
- Control of HGVs on site and parking facilities in the event of closures or disruption to the SRN;
- Back loading (using spare capacity on both legs of a delivery journey to and from a seaport).

3.3.87. The Applicant indicates that the Site Management Company would set up a reporting system and a 'monitor and manage' process liaising with the HGV Strategy Steering Group, which includes local planning and highway authorities. Reports would be issued quarterly for the first year of occupation and annually thereafter. These would be forwarded to Parish Councils where there is a breach and includes a reference to Sapcote Parish Council 'on average' HGV figures through that parish.

- 3.3.88. There would be a series of encouragement and enforcement measures. The former would include an information campaign publicising the preferred routes, discussions with occupiers to understand origin/destination of HGV traffic and routing policies and practices.
- 3.3.89. As part of the enforcement measures ANPR cameras would be set up both at the entry/ exit points of the site and in various locations agreed with LCC and WCC which would be operational before any occupations. This would be a private system facilitated by agreements under Section 50 of the Highways Act 1980 (as amended).
- 3.3.90. The Applicant indicates it would provide a fund of £200,000, secured via Requirement (Req) 18 in the dDCO, for measures to be identified and implemented after the development were to become operational to discourage HGV routing through any of the prohibited routes. Measures could include strategic signing or Traffic Regulation Orders.
- 3.3.91. The general locations of the proposed off-site ANPR cameras are shown in Figure 8 (taken from Figure 6 of [REP7-055]) and in more detail in [REP7-057]. The precise locations would depend on power supply, signage and subject to consultation with LCC and WCC.

Figure 8: Proposed Locations of ANPR cameras



- 3.3.92. There would be three stages of management interventions in the event of breaches of the routing arrangements. Firstly, management interventions to confirm that the occupier, its staff and suppliers are actively seeking

to comply with the HGVRP. Secondly, financial penalties for those considered to be 'persistently breach', with a maximum of £1,000 per breach (index linked). A persistent breach is set out in Table 4. The financial penalties would be added to the fund referred to in section 3.3.90.

- 3.3.93. Thirdly, should there be over 10 HGVs one way on any of the prohibited routes on an average day then the HGVRP would be considered to have failed. In this event, an assessment would be undertaken making suggestions for further measures and/ or revision of the Strategy. Individual Parish Councils would be consulted on mitigation measures proposed for their villages.

Assessment Years

- 3.3.94. The Applicant utilised an opening year of 2026 and a future year of 2036. When questioned about this at ISH2 ([EV6-002](#)) at 22'42" to 28'04", on the basis that the Proposed Development had a 10-year construction programme and that would only just be fully occupied, meaning that traffic would not have been fully settled, the Applicant said that this year had been agreed with LCC and came out of the PRTM modelling. All three highway authorities were content with this approach (Item 3a, [\[REP3-045\]](#)).

Future Year forecast

- 3.3.95. In order to understand the effect of the highway infrastructure works, principally the two additional slip roads on M69 J2 and the A47 Link Road, the Applicant undertook three different analyses in both the opening year (2026) and future year (2036).

- 3.3.96. These are:

- Without Development (WoD)- Do Nothing
- Without Development with Proposed Access Infrastructure (WoDWPA) - Do Minimum
- With Development (WDWPA) with Proposed Access Infrastructure – Do Something

- 3.3.97. The Applicant confirmed at ISH2 that the WoDWPA models includes, the south facing slip roads on the M69 Junction, the A47 Link Road and the B4668 works, but that it does not include for other mitigation works proposed [\[REP3-045\]](#).

- 3.3.98. The Applicant looked at 55 junctions set out in Table 7-1 based on the traffic flow outputs have been taken from the latest version of the PRTM (v2.2). The traffic flows have subsequently been through a furnishing process (discussed below) to approximate the turning flows against observed traffic data. The SATURN model was used to identify junctions which might operate at or over capacity in the future and thus require further detailed assessment.

3.3.99. Initially for those junctions outside Leicestershire the Applicant used flows generated by the PRTM at the entry points to the WCC modelled zones which were then run through the validated models by the WCC team. This helped to identify impacts on local and strategic roads in Warwickshire.

Rugby Rural Area Model (RRAM)

3.3.100. The RRAM is a traffic model of the area between the A5 and A46. The area is illustrated in Figure 1 of the 'Applicant's Rugby Rural Area Model (RRAM) Modelling Summary' [AS-024]. The Applicant accepted that this area would be likely impacted by the Proposed Development.

3.3.101. The Applicant set out four scenarios with the first and last being the 2031 base of Background Growth and Committed Development, and 2031 WD with HGV Routing Restrictions and Mitigation at M69 J1. The Applicant's position was that the Proposed Development, that is with route restrictions and mitigation, resulted in an improvement during the AM period in 2031 with a reduction of 22 seconds in the mean delay across the RRAM network. In the PM period there would be an increase in mean delay of 9 seconds.

3.3.102. Therefore, the Applicant concluded in paragraph 4.2 of the RRAM Modelling Summary [AS-024] that the Proposed Development would be projected to have a negligible impact across the majority of the network and would be mainly localised to the approach areas of M69 J1. It, however, noted that the RRAM modelling utilised fixed time signals at this junction while the VISSIM (a proprietary traffic flow simulation) model of M69 J1 utilises the MOVA (Microprocessor Optimised Vehicle Actuation) solution, a second proprietary system, to optimise flows. This means, in the Applicant's view, that there would be an overall betterment and no further mitigation is required.

Post-Assessment updates

3.3.103. In November 2023 the Applicant undertook revised traffic modelling to respond to points raised by the highway authorities. The main areas considered were:

- updated junction modelling in light of post Covid-19 traffic data;
- modelling of the A5/A47 junctions, including the effect of reducing the carriageway level of the Watling Street Bridge;
- the effect of the STS on car trips through the junctions;
- modelling of the M1 J21/ M69 J3 junction with the approved Lutterworth Urban Extension mitigation scheme.

3.3.104. The last three of these are dealt within the consideration of the individual junctions.

Post Covid-19 Update

- 3.3.105. As part of our Rule 17 letter of 22 September 2023 [[PD-007](#)] the Applicant was asked to consider three documents which affect traffic forecasting:
- a revised version of 'TAG Unit M4 – Forecasting and Uncertainty' this document was published by DfT in May 2023. It makes particular reference to changes in traffic since the Covid-19 pandemic';
 - Road Traffic Estimates in Great Britain, 2022: Traffic on England's road networks', was published by DfT in July 2023; and
 - 'Environmental Assessment of Traffic and Movement' published by the Institute of Environmental Management and Assessment in July 2023.
- 3.3.106. The Applicant's Response [[REP2-077](#)] indicated that the PRTM would be unlikely to be fully re-based using 2023 data, and thus post-Covid-19, flows until mid to late 2024 thus putting it outside the timeframe for this Examination. Using Automatic Travel Count data for March 2019 and March 2023 in Leicestershire showed there has been a reduction of 5.8% and 8.1% in traffic volume between 2019 and 2023 for the AM Peak (08:00 to 09:00) and PM Peak (17:00 to 18:00) hours respectively. The Applicant indicated at this stage that NH and WCC data had yet to be interrogated.
- 3.3.107. In light of this the Applicant concluded that the only realistic approach to taking matters forward was to use the 'global' approach, rather than a more specific, local analysis.
- 3.3.108. The Applicant's view was that the DfT traffic estimates show that lorry miles travelled have generally stayed level throughout the pre- and covid years and are now slightly higher, with miles travelled by car not quite at pre-pandemic levels by the end of 2022. They do not however reflect 2023.
- 3.3.109. In response to the IEMA Guidance the Applicant concluded "*the assessment undertaken for the HNRFI is still valid and the assessor is comfortable with the outcomes*".
- 3.3.110. This D2 response was further updated by the Applicant's response to D3 submissions [Appendix A - Post Covid Update following Deadline 3 submission (18.6.1 Transport General Update)] [[REP4-130](#)].
- 3.3.111. This allowed the Applicant to further discuss this with the consultants who maintain the PRTM model on behalf of LCC. It concluded that forecast flow change broadly shows reductions across the network in both peak hours, as would be expected from a global application of the percentage reductions outlined above. Changes on the M69 are smaller than other parts of the network, though they remain reduced compared with the original analysis. This is likely to be due to existing congestion.
- 3.3.112. Outputs from the forecast delay change indicate similar patterns, with lower level of delay recorded in the Covid-19 sensitivity model run, this includes approaches to M1 J21.

- 3.3.113. The Applicant takes the view that the original model outputs continue to provide a robust case for assessing the impact of the development and its infrastructure. However, as agreed with the highway authorities, further surveys, additional modelling and testing of sensitive junctions was undertaken.
- 3.3.114. For the M1 J21 area, the percentage change in forecast flows for the Covid-19 sensitivity tests is generally lower than surrounding links. For the M69 eastbound approach to the M1 J21, the forecast flows are slightly higher for both the 2036 'WoD (COVID-19 sensitivity test)' and 2036 'WD (COVID-19 sensitivity test)' scenarios.
- 3.3.115. The maximum volume to capacity ratios for individual entries into junctions also show that M69 J1 and M1 J21/ M69 J3 are forecast to remain operating at or over capacity with above 85% maximum volume to capacity ratios for the 2036 'WoD (COVID-19 sensitivity test)'. For the 2036 'WD (COVID-19 sensitivity test)' scenario, in addition to M69 J1 and M1 J21/ M69 J3, high maximum volume to capacity ratios (i.e. above 85%) are also forecast for M69 J2.

Junction and Link Modelling

- 3.3.116. Furnessing is a method to forecast traffic flows through junctions without undertaking measurements of all turning movements using predicted traffic volumes and observed traffic flows to forecast how traffic would move. This proved to be one of the most difficult to resolve matters in the Examination, particularly in light of the changes in traffic following the Covid-19 pandemic.
- 3.3.117. The Applicant's approach, as set out in Appendix 8.1 Traffic Assessment [Part 9 of 20] Furnessing Methodology [[APP-146](#)], apart from at M69 J2, was to use linear interpolation between 2018 PRTM base and calculate absolute differences in link flows between the calculated 2018 PRTM and the respective future year PRTM flows. The absolute differences were then added to the 2018 observed flows to derive future forecast link flows. Updates were undertaken in June 2021 and April 2022 as well in the autumn of 2023.
- 3.3.118. Of the 55 junctions, the Applicant determined that 23 existing junctions required detailed capacity assessment. These used a number of software packages: VISSIM, LinSig (for signalised junctions) and Junctions 10 (for (ARCADY (priority roundabouts) and PICADY (priority T-junctions)) models as appropriate. Junction numbers in brackets in the sub-headings are the numbers given in the TA [[REP3-157](#)].

Main Access Points

- 3.3.119. The Applicant also undertook modelling of the two new main access points to the Proposed Development at M69 J2 and the new roundabout at the junction of the A47 Link Road and the B4668.

M69 J2 (Junction 20)

- 3.3.120. For M69 J2, because of the additional arms, the Applicant took the view that observed turning movements could not be used for the purpose of identifying traffic movements on the junction. Instead, the Applicant used the PRTM turning counts for the respective future year scenarios as a prior matrix to furnish the matrices. This methodology utilised observed counts to calculate what the Applicant considered a more realistic link flow at the junction whilst accounting for the redistribution of traffic anticipated at M69 J2 with the inclusion of new arms to the junction. A similar approach was taken for the secondary access. Here, turning counts were used for the respective future year scenarios to furnish the matrices.
- 3.3.121. Furthermore, at M69 J2 the Applicant utilised a VISSIM model from NH and recalibrated it to provide a basis for future year assessment.
- 3.3.122. Under the model there would be an increase in delay in all WD scenarios. However, as this junction would be increased from a three-arm to a five-arm junction and signalised, the Applicant is of the view that this junction would have sufficient capacity to operate satisfactorily in all scenarios.
- 3.3.123. In the 2023 update [[REP4-131](#)] the Applicant assessed the operation of this junction. It takes the view that the overall speed of the network decreases, whilst average delay increases within the network. It considers that this is to be expected, as the junction currently operates as a priority-controlled roundabout and, as part of the development, traffic signals are being introduced which would add some delay to the junction. However, the junction would operate within capacity in the 2036 scenario and thus the Applicant considers that the Proposed Development would not have a material effect on the operation of the junction.
- 3.3.124. The Applicant has also considered the effects of the Pegasus crossing a short distance to the north on the A47 Link Road. The Applicant indicates that this has been checked and would not have a material impact on the modelling conclusions, notwithstanding that the check data has not been submitted to LCC.

A47 Link Road and B4668

- 3.3.125. For the junction of the A47 Link Road and the B4668 the Applicant's analysis [[REP3-157](#)] shows that the junction should be acceptable without significant delays.

Other junctions and links affected by the Proposed Development

- 3.3.126. This section deals with other junctions which would be affected by the Proposed Development.

M1 J21/ M69 J3 (Junction 15)

- 3.3.127. As well as the junction of these two roads, this junction also is a junction from the east with the A5460. The M1 is on a fly-over, with the M69 from the west joining to the under roundabout. However, there are also slip roads from the M69 eastbound to the M1 northbound and from the M1 southbound to the A5460 and from the A5460 to the M1 southbound which by-pass the main roundabout. This junction provides the main southern access/ egress for Leicester.
- 3.3.128. The Applicant acknowledges that bridge constraints and pinch-points on the A5460 under roundabout at this junction have significant impacts in the study area and it constrains traffic flow. The Applicant considers that the greatest effects of HGVs to and from the Proposed Developments would be on the northbound on-slip and the southbound off-slip, that is to and from the M1, while light vehicles would make east/ west movements towards Leicester.
- 3.3.129. Table 8-7 in the TA sets out the volumes of traffic associated with the Proposed Development at this junction, and Table 8-8 provides the Volume over Capacity (VoC) changes in the WoD and WD scenarios.
- 3.3.130. We note that with the exception of the M69 westbound in the AM and PM peaks all the arms of the junction have a VoC in excess of 0.95 with most in excess of 1.00. This means that all are in an 'over capacity' situation. The range of change associated with the Proposed Development would be between a 2.6% decrease on the M1 northbound Merge 1 in the AM peak, and a 2.1% increase on the M1 southbound diverge in the PM peak. Most changes would be less than 0.5%.
- 3.3.131. The Applicant notes that the Leicester Western Access project is anticipated to be coming forward in the Road Investment Strategy (RIS) 3 programme. Before this is implemented, the Applicant considers the impact of the Proposed Development at this junction is not forecast to be large enough to trigger physical interventions.
- 3.3.132. The Applicant explained that bridge constraints and pinch-points on the A5460 under roundabout, combined with low percentage impact would not warrant the significant costs associated with major structural changes.
- 3.3.133. The highway authorities requested that the Applicant model an unconstrained flow around this junction. This would have removed existing capacity constraints in the model to understand the future demand at the junction. However, the Applicant takes the view that it would not accurately reflect what is the worst case for the County Network. This is because it would not be a realistically implementable scenario.
- 3.3.134. As it set out in its Final Summations and Signposting document [[REP8-027](#)] "*As set out in Paragraph 49 of Circular 01/2022 'planned improvements to the SRN or local road network should be considered in any assessment where there is a high degree of certainty that this will be*

delivered'. Given there is no scheme committed or even foreseeable to address these existing issues at Junction 21, LCC's PRTM2.2 model reflects the current arrangement" (paragraph 16.45). The Applicant therefore declined to undertake this modelling.

- 3.3.135. The modelling of the existing constrained situation, shown in Table 8-6 of the TA, indicates in the AM peak that there would be a reduction of approximately 10 vehicles at the junction as traffic redistributes through the revised M69 J2. In the PM peak there would be an increase in 114 vehicles which is principally from the A5460 arm. However, as a 3.5% increase in traffic the Applicant maintains this change does not necessarily directly correlate to the Proposed Development.
- 3.3.136. The Applicant's primary view is that the change of traffic on this already congested junction is *"proportionately low and therefore is not considered that the Proposed Development has a material impact on the junction"*.
- 3.3.137. The Applicant has, however, had discussions with LCiC on the effect on the A5460 Narborough Road which have focussed on the public transport proposals.
- 3.3.138. The Applicant's response to deadline 3 submissions [Appendix B - Transport 2023 Update] [[REP4-131](#)] introduced consideration of the Lutterworth Urban Extension (LUE) which was granted planning permission in May 2022 (see response to Action Point No. 127 [[REP5-075](#)]). As part of this development works would be undertaken consisting of widening the M1 northbound off-slip to provide two lanes and a flare at the roundabout junction, as well as widening the western circulatory carriageway from three to four lanes. The resulting arrangement would provide *"two dedicated lanes onto the A5460, a single dedicated lane onto M1 northbound on-slip and a third offside lane shared between the two movements"*. These are shown in Figure 5.1 of [[REP4-131](#)].
- 3.3.139. The Applicant takes the view that due to the existing constraints or other issues in the network some of the background demand traffic does not currently travel through the junction. However, LCC requested a sensitivity test if no re-routing occurs with the Proposed Development in situ.
- 3.3.140. Three scenarios were assessed:
- Scenario 1: 2036 WoD AM/PM
 - Scenario 2: 2036 WD AM/PM
 - Sensitivity Test: 2036 WoD AM/PM + Development Traffic
- The last of these is that requested by LCC.
- 3.3.141. Without the STS (see section 3.3.66ff) the Applicant takes the view that the differences between the WoD and WD are minimal, and the junction does not require any further mitigation beyond that provided from the LUE.

- 3.3.142. The Applicant's assessment is that in the AM Peak hour both the northbound and southbound M1 off-slip approaches operate within capacity in all scenarios, with the M69 approach to the roundabout being slightly over capacity in all scenarios, but the impact would be minimal across all. The A5460 approach is over capacity in all scenarios but the impact would be minimal even when accounting for the sensitivity scenario requested by LCC. During the PM Peak hour all arms are within capacity in all scenarios, except the sensitivity scenario on the A5460 approach which is shown at operating at 92% (still within 100% Degree of Saturation (DoS) of the capacity of the junction).
- 3.3.143. The Applicant considers that the impact of the traffic from the Proposed Development is not deemed severe when compared to forecast background traffic flows at this junction. The implementation of the STS shows a small degree of improvement, but the overall conclusion is not altered.

M69 J1 (Junction 13)

- 3.3.144. As a result of the proposed slip roads at junction 2, the Applicant's modelling [[REP4-131](#)] indicates that there would be significant changes in flows on all approaches to this junction.
- 3.3.145. The Applicant has modelled various journey times through the junction, both across it, along the M69 and A5, and the various turning manoeuvres. These show that for most journeys there would be improvements, with a maximum of over 4 minutes (along the A5 southbound and from the A5 southbound to the B4109 southbound) in the AM peak in 2036. However, there would be one significant (over 2 minute) increase in delay (from B4109 southbound to A5 southbound) caused by reduced flows from the M69 northbound and consequent changes to the traffic signal timings to achieve overall optimum flow.
- 3.3.146. The Applicant's assessment of the junction performance is in the AM peak, where there would be an increase in queue length from the B4109 southbound, but a noticeable reduction in queue length on the A5 southbound. Changes in the PM peak would be negligible.
- 3.3.147. Overall, the Applicant considers the Proposed Development would have no material impact on the operation of M69 J1. Therefore, no mitigation measures would be required. This remained the situation after the assessment of the lowering of the carriageway under the Watling Street bridge, and is discussed in the next section.

A47/ A5 junctions (Junctions 4 and 14)

- 3.3.148. These junctions can be seen in the TA [[REP3-157](#)] in Tables 8-17 and 8-29.
- 3.3.149. NH provided the Applicant with a VISSIM network of the two junctions of the A47 with the A5. The westerly of the two junctions, Longshoot, is a signalised 'T' junction with a separated slip road from the A5 westbound

to the A47 southbound. The easterly, Dodwells, is a roundabout with a fourth arm to the B4666.

- 3.3.150. The Applicant's 2023 analysis shows that in general there is a reduction in traffic flows forecast in the PRTM between the WoD and WD scenarios. The model includes traffic to and from the Padge Hall Farm development.
- 3.3.151. Initially, the Applicant identified there would be improvements in journey times in the WD scenario during the PM peak hour period but an increase in journey times eastbound along the A5 in 2036 AM peak hour period. A review of the model indicated that this was due to the Reduced Speed Area input into the model to reflect queues from M69 J1.
- 3.3.152. However, the modelling of that junction indicated that queues at M69 J1 would no longer extend back to the Dodwells junction and consequently the model was re-run. This showed that there would be a reduction in journey time in the WD scenario when compared to the WoD situation.
- 3.3.153. The Applicant concluded that the Proposed Development would not have a material impact on the operation of the junctions and therefore no mitigation measures was still required.

A5 Cross in Hand (Junction 27)

- 3.3.154. This junction can be seen in the TA [[REP3-157](#)] in Table 8-35.
- 3.3.155. This junction is a 5-arm priority controlled roundabout junction near Magna Park. The A4303 is a dual carriageway, whilst all other arms are single carriageways. The Junction is lit, no signals are present and there are no facilities for cyclists/ pedestrians.
- 3.3.156. Under the original TA mitigation was proposed on all arms which would have formed Work No 16 in Schedule 1 of the dDCO. However, the 2023 modelling indicates that in the AM peak in the 2036 WoD scenario there would be capacity issues on Coal Pit Lane (the western arm) which would be exacerbated by the Proposed Development.
- 3.3.157. As a result, a different scheme was then proposed. Coal Pit Lane would be widened to provide a short flare and two lanes at the give way line, along with changes to the geometry on the B4027. The Applicant's modelling indicates these changes would not only mitigate the effects of the Proposed Development but would also resolve the WoD issue.
- 3.3.158. In February 2024 WCC requested further analysis based on the RRAM and PRTM flows. As a result, WCC confirmed that they were no longer seeking mitigation on the Coal Pit Lane or the B4027 arms. However, as removing these changes had not been agreed with NH or LCC the original works remained as part of the Proposed Development.
- 3.3.159. In the event that a revised solution is agreed in the future, the Applicant has included a new sub-paragraph (3) in Req 5 to address the ongoing discussions and to enable the parties to agree that alternatives may be provided. This is discussed further in section 3.3.486.

A5/ A426/ Gibbet Lane, south of Lutterworth (Junction 26)

- 3.3.160. This junction can be seen in the TA [[REP3-157](#)] in Table 8-33.
- 3.3.161. This junction falls outside the Application Site but was considered in the TA. It is a 5-arm roundabout to the south of Lutterworth. All arms are single carriageways. The junction is lit, no signals are currently present, and no facilities are provided for cyclists/ pedestrians.
- 3.3.162. Under the original TA NH had identified a proposed signalisation scheme. However, this is no longer to be pursued due to land ownership issues. NH are designing a new scheme and are securing contributions. However, this has not yet been made publicly available.
- 3.3.163. At D7 the Applicant submitted a Cross in Hand and Gibbet Roundabout Technical Note [[REP7-076](#)] to take account of the 2023 traffic surveys and concerns raised by NH regarding the distribution of forecast background traffic at the Gibbet Hill Roundabout. This was because there was a high proportion of additional traffic turning from the A5 South to the A426 South, once the furnishing process had been completed. Similarly, WCC also raised concerns with the background turning movements predicted as they suggested a high proportion of traffic using Gibbet Lane.
- 3.3.164. Table 1 of [[REP7-076](#)] shows the results of what the Applicant described as 'sensitivity testing'. This illustrates that Gibbet Lane would operate over capacity in all of the 2036 AM modelling scenarios and A5 South would operate over capacity in all 2036 AM and PM modelling scenarios under the existing layout.
- 3.3.165. With NH's former mitigation scheme in place (widening on Gibbet Lane, A5 South and A426 Rugby Road south) the model was re-run. Table 2 shows the results which indicate, according to the Applicant, that Gibbet Lane and the A5 South would operate better in the 2036 WD scenario than the 2036 WoD scenario in the existing layout and thereby mitigate the effects of the Proposed Development.
- 3.3.166. As part of the discussions prior to the submission of this data, WCC queried the 2036 furnished background traffic as it appeared that the traffic flows on Gibbet Lane increased disproportionately for a "*quiet secondary route*". Responding to WCC's query this was then reassessed, or as the Applicant put it 'sensitivity tested', with the traffic flows for the Proposed Development added.
- 3.3.167. This shows that the junction would still operate overcapacity on Gibbet Lane and the A5 south in the AM and PM peaks. The Applicant understands that a number of schemes have contributed towards the costs of a larger scheme, and therefore the Applicant has put forward a contribution of what it considers to be a proportionate amount. This is explained in [[REP8-026](#)] and discussed further in section 3.3.493.

Junction of A47 and A447, Hinckley (Junction 1)

- 3.3.168. This junction can be seen in the TA [[REP3-157](#)] in Table 8-11.
- 3.3.169. This junction is a 4-arm signalised junction operating under MOVA control, with two lane flared entries at each arm. There are dropped kerb pedestrian crossings and markings on the carriageway, but there are no signals for pedestrians at the existing junction.
- 3.3.170. Under the Proposed Development a scheme of mitigation including geometric improvements such as lengthened flares on all arms and introducing an indicative right turn from Normandy Way (W) to Ashby Road (S) as well as providing two lanes through the junction in a westbound direction and pedestrian crossing phasing. While the Applicant's results showed that the junction performance would be better compared with the results in the TA this would not mitigate the Proposed Development effects in full. However, the Applicant considers the Proposed Development would result in significant improvements in pedestrian accessibility.
- 3.3.171. The 2023 update additionally modelled a scenario where the signal-controlled pedestrian crossings would not be included. The modelling indicates that the Proposed Development would bring the junction within capacity.
- 3.3.172. Due to the benefits to pedestrian connectivity the Applicant has left the signal-controlled pedestrian elements within the Proposed Development with the effects lessened depending on how frequently and often the pedestrian phase is called.

Junction of A47, B4668 and The Common, south-east of Barwell (Junction 24)

- 3.3.173. This junction can be seen in the TA [[REP3-157](#)] in Table 8-31.
- 3.3.174. This is a 4-arm priority roundabout. A shared footway/cycleway exists around the junction with crossing points on all arms.
- 3.3.175. Under the 2023 update this junction is expected to operate within capacity in the AM peak. However, in the PM peak with the Proposed Development the Ratio of Flow to Capacity (RFC) reaches 96%.
- 3.3.176. The Applicant is proposing a scheme of mitigation introducing a small flare on the entry arm from the B4668 with the carriageway being widened from 8.5m to 10.6m. In addition, a Toucan crossing would also be provided on the western arm of the junction as part of the STS which has also been assessed within the mitigation scheme.
- 3.3.177. With this mitigation in place the Applicant contends the junction is forecast to operate within capacity in the WD scenario.

Eastern villages

- 3.3.178. This section of the Report deals with the Applicant's assessment of the effects of the Proposed Development on the area collectively known as the 'Eastern Villages'. These are all located to the east of the M69 between it and the B4114. They are, north to south, the villages of Stoney Stanton, Sapcote, Sharnford and Aston Flamville.
- 3.3.179. Providing south facing slip roads at M69 J2 and the new A47 Link Road would have a number of effects which the Applicant has set out in paragraph 5.105 of Chapter 8 of the ES [APP-117]. This supposes that some traffic would utilise this junction in preference to existing junctions (particularly the M1 J21/ M69 J3 and M69 J1) and thus would route through the 'Eastern villages' of Sapcote, Stoney Stanton and Sharnford. This is paraphrased as 'rerouting traffic'.
- 3.3.180. During the gestation of the project, the Applicant's considered providing a 'Eastern villages bypass' around either Stoney Stanton or Sapcote (see paragraph 4.4.4 of the Consultation Report [APP-091]). However, the Applicant did not pursue this due to what it describes as a "very negative response" to consultation and as it was found not to be necessary to manage traffic either from the SRFI or re-routing traffic (paragraph 6.8.5).

Traffic on links through Eastern villages

- 3.3.181. As set out in paragraph 8.48 within Chapter 8 of the ES [APP-117] the Applicant undertook an assessment of 101 links where traffic levels or the numbers of HGVs would increase by more than 30% or, in "specifically sensitive areas" where traffic flows would increase by more than 10%.
- 3.3.182. Unfortunately, the submission did not include geographic information as to the locations of the links and, as some had the same name, this information was of limited use.
- 3.3.183. Consequently, as part of our Rule 17 letter of 22 September 2023 [PD-007] we requested maps to an Ordnance Survey base with the links shown. These were submitted at D2 [REP2-024] to [REP2-058] with the key at [REP2-023]. Regrettably this information was not comprehensive or accurate, and this was raised at ISH2.
- 3.3.184. The Applicant therefore submitted revised information at D3 [REP3-027] to [REP3-032] with a revised key at [REP3-026]. A list of the links by sheet number can be found at [REP3-166].
- 3.3.185. The area of the Eastern villages is shown on the following plans:
- Sheet 20: M69 J2 and B4669 to east [REP2-043]
 - Sheet 21: Village of Stoney Stanton and north part of village of Sapcote [REP3-029]
 - Sheet 24: Village of Aston Flamville [REP2-047]

- Sheet 25: South part of village of Sapcote and village of Sharnford [REP3-031]

3.3.186. The links considered in these areas are set out in Table 2 with the WoD and WD scenarios for 2036. This information is taken from Table 8.19 [APP-117] in Chapter 8 of the ES and set out AADT figures and are thus two-way.

Table 2: Changes in Traffic Flow in Eastern Villages (2036)

Link No	Sheet No	Location	2036 AADT Total Vehicles			2036 AADT HGV		
			WoD	WD	%age change	WoD	WD	%age change
West of Sapcote								
39	20	B4669 Hinckley Road from M69 J2 east to junction with Stanton Lane	10241	18143	77.2	304	589	93.6
Sapcote								
41	21 & 25	B4669 Hinckley Road from Lime Avenue to Stanton Road	8017	12961	61.7	197	472	139.6
43	25	B4669 Leicester Road from Stanton Road to Sharnford Road	9017	12817	42.1	142	404	184.6
92	25	B4669 Leicester Road from Sharnford Road to Grace Road	11688	13897	18.9	198	426	114.8
46	25	East end of B4669 near junction with B4114	5712	9119	59.7	52	349	573.7
Stoney Stanton								
42	21	Hinckley Road past Boundary Farm, Sapcote	1850	4808	42.1	86	107	184.6
87	21	Hinckley Road between Underwood Drive and New Road/ Station Road	2242	5239	133.7	110	117	6.6

Link No	Sheet No	Location	2036 AADT Total Vehicles			2036 AADT HGV		
			WoD	WD	%age change	WoD	WD	%age change
44	21	Long Street between B581 and Clint Hill Drive	5723	8720	52.4	20	20	0
Aston Flamville								
5	24	Aston Lane/ Hinckley Road between B4669 and outskirts of Aston Flamville	2021	4310	113.2	54	63	15.7
90	24	Hinckley Road between outskirts of Aston Flamville and Lychgate Lane	1167	3844	1667	42	57	35.7
16 ²	24 & 25	Aston Lane between Lychgate Lane, Aston Flamville and Holyoak Drive, Sharnford	3037	5199	69.2	47	58	23.6
4	25	Aston Lane between Holyoak Drive and B4114, Sharnford	2063	4273	107.1	0	0	0

3.3.187. The Applicant's analysis of the area of influence is shown in Figure 8.2 of Chapter 8 of the ES [APP-117]. From a combination of magnitude of traffic flow change and the receptor sensitivity as described in section 3.3.42 to 3.3.44 the Applicant has determined its view as to the overall significance of traffic effects. Both the B4669 through Sapcote and the road between Sapcote and Stoney Stanton (the northern section is known as Hinckley Road, the southern as Stanton Lane) are seen as having a 'Major Magnitude'.

3.3.188. From this, the Applicant used the criteria to determine the magnitude of change and sensitivity criteria in Tables 8.4 and 8.5 of Chapter 8 the ES [APP-117] to determine the significance of the traffic effects. This is shown in Figure 8.3. The area of the Eastern Villages is shown as being of 'Minor Significance'.

3.3.189. The Applicant then considered whether the Proposed Development would result in severance (Table 8.20). In three, Links 39, 46 and 44, the

² This is incorrectly shown as being on Sheet 34 on the Index [REP3-166]

Applicant concluded that these effects would be 'Minor Adverse', but in all others there would be 'negligible' severance. It similarly assessed whether the Proposed Development would result in Driver Stress and Delay, and found that for Links 4, 16, 41 and 44 this would be 'Minor Beneficial', for Link 39 'Minor Adverse' and for Link 46 'Major Adverse'; for the remainder the Proposed Development would have negligible effect.

- 3.3.190. Turning to Pedestrian Delay and Amenity the Applicant looked at the delay caused by traffic flow in the peak hour, and existing facilities, footways, crossings and the like, and compared the existing situation with the Proposed Development including the interventions proposed. The Applicant has only looked at links where pedestrian amenity has been classified as 'very poor', 'poor', 'average', 'good' or 'excellent', based on professional judgement and experience rather than fixed thresholds. Therefore, of the links set out in Table 2: Changes in Traffic Flow in Eastern Villages (2036), four links (Links 4, 5, 16 and 39) were not considered further. Of those assessed, the Applicant maintains that the Proposed Development would be moderately beneficial in Links 42 (Stanton Lane) and 43 in Sapcote. For Link 43 this is principally due to the proposed pedestrian crossing in the area outside the Co-operative village store.
- 3.3.191. Due to the location of the Eastern Villages, the Applicant does not consider them to be in a location where these would be sensitive to cyclist delay and amenity from the effects of the Proposed Development.
- 3.3.192. Turning to Fear and Intimidation, along the links the Applicant has assessed each on an individual basis, using a scale of negligible, minor, moderate, or major. It should be noted that the level of fear and intimidation assessed relates to traffic rather than personal security in general.
- 3.3.193. The centre of the village of Sapcote is constrained due to the width of the carriageway with buildings on the back edges of the footways. The alignment is an 'S' bend along the east/ west line of the B4669. There is an off-set crossroads, with Stanton Road joining from the north and Church Street from the south. Immediately to the east of the Church Street junction is a Co-operative store with bus stop in an area of hardstanding on the B4669. This is akin to a layby, but the area between the stop and the carriageway is hatched. There is an uncontrolled crossing made up of two islands with tactile paving allowing for the crossing of the road in three sections. From the south, firstly across the bus stop, and then across the main carriageway in two parts.
- 3.3.194. The footway on the north side of the carriageway to the east of this crossing is narrow, around 1.0m in width. A short distance to the west of the junction with Stanton Road is another uncontrolled crossing with a traffic island. To the west of the junction of Church Lane with the B4669 the footway on the south side is effectively non-existent.

- 3.3.195. The Proposed Development would remove the double islands and replace them with a formal pedestrian crossing. To the west of the proposed crossing the footway would be widened to the junction with Stanton Way. The bus stop would be relocated a short distance to the east but on carriageway. The existing bus stop area would be laid with a contrasting block paviour and to allow for "deliveries to Co-Op and waiting school bus service". This can be seen on 'General Arrangement Sheet 18' of [\[REP5-004\]](#).
- 3.3.196. This drawing has on it as a note regarding the island to the west of Stanton Lane "Potential for small island that is regularly overrun to be removed subject to assessment by RSA team".
- 3.3.197. Within [\[REP5-004\]](#) is a series of drawings showing vehicle tracking for a 'Max Legal Length (UK) Articulated Vehicle (16.5m)' and a 'Rigid Truck', a '7.5T Box Van Loading' outside the Co-operative and 'Bus utilising Stop in front of Co-op'.
- 3.3.198. For the existing situation for the articulated vehicle there are four notes (east to west):
- Large vehicles unable to pass each other
 - Large vehicles must use middle of road to avoid mounting kerb
 - Central pedestrian refuge is overrun
 - Overrunning of central island is common
- 3.3.199. The first three notes are replicated in relation to the Rigid Vehicle.
- 3.3.200. For the proposed layouts for these two examples there is a single note on both drawings:
- Removal of pedestrian refuge islands provides more space for large vehicles and reduces risk of kerb mounting in pedestrian area.
- 3.3.201. The Applicant does not explicitly set out an overall assessment of the effect of the Proposed Development in Sapcote. However, Table 8.31 of Chapter 8 of the ES [\[APP-117\]](#) set out a 'Summary of effects'. Only two of the three links in Sapcote (see Figure 11: Assessed links through Sapcote) are considered by the Applicant to result in effects. These are set out Table 3: Applicant's summary of traffic effects in Sapcote.

Table 3: Applicant's summary of traffic effects in Sapcote

Link	Description of Impact	Significance of effect	Mitigation	Residual effect
41: B4669 Hinckley Road from Lime Avenue to Stanton Road	Driver Street and Delay	Minor Beneficial	N/A	Minor Beneficial

Link	Description of Impact	Significance of effect	Mitigation	Residual effect
43: B4669 Leicester Road from Stanton Road to Sharnford Road	Pedestrian Delay and Amenity	Major Adverse	Widening of existing footways where possible and additional of zebra crossing and relocation of bus stop	Moderate Adverse

B581 Station Road/ New Road and Hinckley Road, Stoney Stanton (Junction 37)

- 3.3.202. This junction can be seen in the TA [[REP3-157](#)] in Table 8-38.
- 3.3.203. The Hinckley Road/ B581 junction is a 3-arm mini roundabout in the middle of Stoney Stanton village with dropped kerb pedestrian crossing facilities provided on the southern arm. The western arm is known as Station Road, the eastern New Road and the southern Hinckley Road.
- 3.3.204. WoD this junction operates above capacity in all the 2036 peak hour scenarios. As a result, under the original TA the roundabout was to be replaced by a 3-arm signal-controlled junction with the footway realigned to provide pedestrian access points.
- 3.3.205. Under the 2023 review and following the Interim RSA the proposals for this junction have been slightly revised regarding positioning of the existing car park exits. The Applicant's modelling shows that this revised scheme would work within capacity in all peak hour scenarios. Given the existing junction is over capacity in the WoD scenario this would be a benefit of the Proposed Development.

B4669 Hinckley Road and Stanton Lane, west of Sapcote (Junction 39)

- 3.3.206. This junction can be seen in the TA [[REP3-157](#)] in Table 8-41. This is a 3-arm priority T-junction to the west of Sapcote village. The B4669 (Hinckley Road) is subject to a 50 mph speed limit. No facilities are provided for pedestrians.
- 3.3.207. In the WD scenarios, this junction would operate over capacity in both AM and PM peak hours. To resolve this the 2023 update proposes a 3 arm 2 stage signal-controlled junction. This would then mitigate the traffic effects, but would not include any pedestrian phases. To deliver this there would be a requirement for an 'all stop' for vehicles which would negatively affect junction capacity. If this is done the Applicant maintains that the junction would then work within capacity albeit that there would only be a pedestrian crossing across Stanton Lane.

Conclusions on Eastern Villages

- 3.3.208. For those links in the Eastern Villages, the Applicant considers the Proposed Development would have a 'Minor Impact' on Links 39, 44 and 46. We note that this is described as a 'Minor Impact' rather than positive or negative, but for each can be implied to be a 'Minor Adverse' effect.

B4114 Coventry Road/ B581 Broughton Road, south of Croft (Junction 3)

- 3.3.209. This junction can be seen in the TA [[REP3-157](#)] in Table 8-14.
- 3.3.210. This is currently a staggered part signal, part ghost island priority junction. The B581 crosses the B4114 between Stoney Stanton and Broughton Astley in the form of a 3-arm signal-controlled junction (towards Broughton Astley) and a 3-arm ghost-island priority junction (towards Stoney Stanton). The southern and eastern arms of the signalised junction comprise two lanes, and the northern arm one lane. The southern arm benefits from an advanced stop line for cyclists.
- 3.3.211. Under other development proposals this junction is to be altered to provide a fully signal controlled staggered crossroads. Under the 2023 modelling this junction would still operate within capacity in the WD scenario so the Applicant believes no further works are required.
- 3.3.212. However, in the event that the agreed scheme did not come forward, the Applicant has committed to delivering an alternative scheme (Work No. 17 in the dDCO) which is similar to the agreed scheme but omits the widening of the Coventry Road east approach as it considers this is not required to accommodate the Proposed Development.

B4114 Coventry Road/ Croft Road, south-west of Narborough (Junction 6)

- 3.3.213. This junction can be seen in the TA [[REP3-157](#)] in Table 8-21.
- 3.3.214. This is a 3-arm signalised junction to the east of Croft village. Coventry Road includes a 30m long left-turn lane in the southbound direction and a 65m long right-turn lane in the northbound direction, that operates under a separate traffic phase. Croft Road includes one lane only. There is a footway adjacent to the southern side of Coventry Road, but signals for pedestrians are excluded.
- 3.3.215. The 2023 modelling indicates that this junction would operate within capacity in the AM peak, but in the PM peak, the junction is expected to exceed capacity even in the WoD scenario. Under the Proposed Development, the 'flare' on Coventry Road to the north would be extended.
- 3.3.216. The Applicant's analysis is that this would improve both the AM and PM peak scenarios. However, in the PM peak this does not mitigate the full effect of the Proposed Development. In the Applicant's view, the mitigation scheme reduces the impact of the Proposed Development to 0.8% which the Applicant considers not to be significant.

New Road/ Long Street/ Broughton Road/ Stanton Road junction, Stoney Stanton (Junction 38)

- 3.3.217. This junction can be seen in the TA [REP3-157] in Table 8-40. There is one junction where no works are proposed that we consider should be highlighted. This is described in the TA [REP3-157] as the New Road/ Long Street/ Broughton Road junction and is located in Stoney Stanton. This is a four-way mini roundabout, effectively in a cross-roads formation.
- 3.3.218. Table 8-40 of the TA [REP3-157] shows the capacity analysis. This shows that in the WoD scenario, the junction operates at overcapacity in the AM peak (Long Street (with a RFC of 113%) and New Road (91%)) and PM peak (New Road (88%)). In the WD scenario, in the AM peak the RFC for Long Street rises to 123%, but reduces in New Road to 82%. In the PM peak there would be overcapacity on both Broughton Road (91%) and New Road (106%).
- 3.3.219. The Applicant indicates that it reviewed this junction for potential mitigation but given the constraints of buildings, the extent of adopted highway and narrow footways, in its view the only potential option would be to signalise this junction.
- 3.3.220. A LinSig model was applied. This showed that in the AM peak the Long Street arm would operate at 96.6% DoS and New Road at 99.6% DoS. In the PM peak Long Street would operate at 114.3% DoS, Broughton Road at 110.2% DoS and New Road at 93.6% DoS. The Applicant concluded that *"the junction would see a negative impact on the capacity as a result of introducing signals at the junction"* (paragraph 8.131 of TA [REP3-157]).
- 3.3.221. It also indicated that providing the signals equipment would be likely to reduce the width of already narrow footways and limited options for mounting signal heads on the eastern side due to buildings. Refuge arms would also limit potential movements by larger delivery vehicles or buses.
- 3.3.222. The Applicant took the view that the existing form of junction was the best available and therefore no physical mitigation was to be proposed.

Road Safety Audits

- 3.3.223. Due to the lack of agreement during the Examination on various traffic matters the Applicant was not able to submit a formal request for a RSAs of the various proposed works. As a result, the Applicant requested informal Stage 1 RSAs which were undertaken in October 2023. These and its responses were submitted at D4 [REP4-151] and led to the Applicant making a number of, what it saw as, minor amendments to the Proposed Development. These were all within the red line of the Order limits and related to the detailed design.
- 3.3.224. Further Stage One RSAs were undertaken and submitted at D8 [REP8-025]. At some of the locations no safety issues were found. Of

those areas where the auditors found issues the Applicant either agreed or partially agreed with the recommendations. The main areas where there was only partial agreement related to:

- the proposed speed limit of 40 mph on Stanton Lane and Hinckley Road between Sapcote and Stoney Stanton and whether it would be viewed as 'appropriate' by drivers. The Applicant did agree to undertake further speed surveys and/ or to agree any further measures that might be implemented to aid compliance.
- turning in and out of the car park to the west of the B581, Hinckley Road, Stoney Stanton junction. Here the Applicant notes that the current situation exists, albeit to a mini roundabout rather than the proposed signal controlled junction, and, in any event, the main access point to the car park was in a different location. The Applicant indicated that it would seek to work with the landowner to see if they were willing to amend the gates.
- the lay-by outside the shop in Sapcote with potential confusion from multi-uses, particularly the school bus waiting. Here the Applicant notes that this is essentially the current situation.

Narborough Level Crossing

- 3.3.225. As a result of the Proposed Development there would be effects at the Narborough Level Crossing as the train paths to and from the Application Site would result in new or extended closures. The Applicant's assessment was that, because the 'closed' time of the crossing (from initial warning siren to opening of the barrier) would be less than the "*rail industry barrier down time limits for a town centre level crossing down time of 45 minutes maximum*" NR's Rail Report [[REP5-087](#)], this was acceptable.
- 3.3.226. However, this did not quantify the extent of the additional 'closed' time, and whether, in particular, the additional freight services would be scheduled so that the existing crossing would remain closed for extended periods and thus mean that the queues of traffic would not clear leading to congestion.
- 3.3.227. In response to our Rule 17 letter [[PD-007](#)] the Applicant commissioned a survey of the crossing. This was submitted as [[REP2-076](#)]. This considered effects of the 10 additional trains (each way) using Narborough. The remaining 6 additional trains would travel to and from the west to access the Proposed Development.
- 3.3.228. There was criticism by LCC about the timing of the survey extending over the October 2023 half term. In response to this, the Applicant undertook additional surveys in November 2023, but, following this, took the view that the 'worst case' occurred on Wednesday 11 October 2023, outside the half-term period. This then became the Applicant's base line.
- 3.3.229. We undertook some analysis of the information provided which led to our ExQ2.11.9 [[PD-013](#)]. This set out in Annex 1 a table setting out what we believed to be the extent of the closures. This indicated that the down time increased from 4 hours 54 minutes and 43 seconds to 5 hours 33

minutes and 45 seconds (an increase of 39 minutes and 2 seconds) in a 24-hour period. The Applicant indicated [REP5-036] that "*the ExA's calculations are representative of the worst-case sample crossing down times and the additional time at 10 trains each way*".

- 3.3.230. We asked the Applicant to undertake an analysis of the queue lengths and whether it is anticipated that the queues would clear the crossing between each lowering of the barrier. We also asked for information on the Maximum Mean Queues.
- 3.3.231. The Applicant's response can be found in its 'Narborough Level Crossing Traffic Modelling' [REP4-118]. As can be seen in Figures 1 and 2 of [REP4-118] the maximum queues in the AM and PM peaks respectively currently extend beyond the next junctions north (Leicester Road/ Station Road mini roundabout) and south (Station Road/ Riverside Way priority junction). This results in congestion as traffic not going through the level crossing is unable to traverse. On the north side of the crossing the queue then to the west also results in congestion at the next junction (Leicester Road/ Coventry Road/ School Lane/ Desford Road mini roundabout).
- 3.3.232. The Applicant compared the observed queues with those derived from the PRTM and considered that they were a good fit and thus the model was fit for purpose.
- 3.3.233. From this it forecast the hourly flows across the level crossing in the WoD and WD scenarios. These can be found in Table 5 in [REP4-118]. These show a reduction in the 24-hour period of 342 Passenger Car Units (PCU) southbound but an increase of 24 PCUs northbound because of the Proposed Development. A PCU is a single car, and HGV counts as 2 PCUs. The Applicant considers most of the differences in any hour are very small, 1 or 2 PCUs, but in the AM peak, there would be an increase of 14 vehicles southbound and 53 northbound. In the PM peak there would be a decrease of 70 PCUs southbound and 48 northbound.
- 3.3.234. The Applicant then uses this information to calculate the queue at the crossing during each hour. Again, the Applicant considers the differences would be very small, 1 or 2 PCUs, most of the time, but in the AM peak the queue length northbound would increase by 11 PCUs. The PM scenarios are slightly different since the queue northbound would increase by 9 PCUs between 16:00 and 17:00 hours but reduce northbound between 17:00 and 18:00 hours by 1 PCU.
- 3.3.235. The Applicant points out that due to timetabling restrictions there would be no scheduled trains to and from the Application Site in the AM Peak meaning that this increase in queue length would be as a result in background traffic rather than being as a result of the Proposed Development.
- 3.3.236. Regarding the 16:00 to 17:00 hours queue, according to the Applicant's calculations, this would take an additional 26 seconds clearance time. This would extend the total time for the queue to dissipate to 242

seconds. The Applicant states this *"remains well within the average available uptime of 506 seconds during that period"*.

3.3.237. In order to sensitivity test this, as the PRTM forecasts a general reduction in hourly flows from the 2036 WoD to WD scenarios, the same calculations have been undertaken using the WoD figures and the proposed additional train times. As with the WD scenario the Applicant forecasts there would be an increase in the 16:00 to 17:00 hours queue, but as this would only be an additional 23 seconds clearance time, in the Applicant's view this makes no difference to the overall conclusions that *"neither the traffic nor trains associated with HNRFI would materially exacerbate queuing at the Narborough Level Crossing"*.

3.3.238. The Applicant points out [REP1-030] that through freight trains give a closure of the level crossing of around 2 minutes 30 seconds while stopping passenger trains would result in a closure of between 4 and 5 minutes.

Closure of SRN

3.3.239. Several of the RRs made comment about the effects of traffic should the M69 or other roads be closed for any reason. This was discussed at ISH2 following which the Applicant submitted a document entitled 'M69 Closure Emergency Plan' [REP3-043].

3.3.240. In this document the Applicant asserts *"the inconvenience caused and potential amenity impacts arising from unusually high vehicular flows, would not be made material [sic] worse by the operation of"* the Proposed Development. It also takes the view that the location of the Proposed Development would not have a direct bearing on the frequency of closures of the SRN, which are not directly related to the volume of traffic. *"Accidents may happen for a range of reasons and cannot be modelled for frequency."*

3.3.241. However, the Applicant then states that in the event of a closure that the Emergency Routing Plan would come into force. This is referred to in paragraph 3.16 of the HGVRP [REP5-022] and would consist of the 'HNRFI HGV Strategic Road Network Incident Plan'. This would include for *"operators where possible to remain on-site, using spare capacity for temporary layover in unit demises or the lorry park while congestion on the external network clears"* (paragraph 4.12 of [REP5-022]). Planned closures, of both the SRN and rail line, would be dealt with by pro-active management to all occupiers on site.

Beneficial Road Traffic Effects of the Proposed Development

3.3.242. The Applicant has identified what it considers to be several beneficial effects from the Proposed Development. These are shown in Figure 8.4 and Table 8.27 of Chapter 8 of the ES [APP-117]. These are principally in the built-up area of Hinckley and Burbage and on the B4114 south of the B581 and on the B581. This is from the diversion of traffic via the revised M69 J2. None of the links identified would be above a 'Minor' effect.

Rail

- 3.3.243. The Applicant's principal assessment of the physical and operational aspects of what it describes as the 'railport' is set out in Appendix 3.1 to the ES, the 'Rail Operations Report' [[REP4-048](#)].
- 3.3.244. As set out in section 1.3.6 the Application Site lies on the Leicester to Nuneaton Railway line with passenger services running usually one train per hour in either direction with stops at Hinckley. The nearest station to the west is Hinckley 2.7km away and the next station to the east is Narborough some 10km away. This line links the Midlands Main Line (MML) and the WCML and is known in engineering terms as the Wigston North Junction to Nuneaton South Line.
- 3.3.245. The line consists of two parallel railway tracks. It is not electrified and is used for diesel hauled freight and passenger traffic.
- 3.3.246. The site is located on the south of the railway line with two connections proposed to the main line with crossovers to allow freight to move from one track to another.
- 3.3.247. The design speed of the turnouts has been agreed with NR at 25 mph (paragraph 7.2.2 of [[REP5-087](#)]) to avoid delays for other traffic on the main line. Freight trains consisting of containers to the site would enter the site from either direction and would run to sidings served by reach stackers or gantry cranes for loading and unloading. Other non-container trains would go to reception sidings before being moved for goods transfer via a proposed 'run-around chord' on the northern part of the Application Site.
- 3.3.248. The sidings and run-around would include space for future electrification using overhead equipment. A headshunt and locomotive release road would be provided at the eastern end of the terminal.
- 3.3.249. The Applicant indicates that it has carried out a detailed timetabling exercise which has been verified by NR. This has determined that there is capacity in the existing timetable to accommodate 16 intermodal freight trains per day at the Application Site based on 775m long trains with a maximum speed of 75 mph as a 'worst case' scenario.
- 3.3.250. The timetable study finds that there would be capacity for 10 trains each way per day to run to and from the east (towards Wigston North Junction) and 6 trains each way per day to run to and from the west (towards Nuneaton South). The Applicant maintains that beyond this the wider timetable can accommodate the additional traffic "*as they are linked into the Strategic Freight Network at these nodes, with capacity to a wide variety of locations*" (paragraph 3.16 of [[REP4-048](#)]). This is said to be consistent with the approach taken by NR at other SRFIs at this stage in the development cycle.
- 3.3.251. The Applicant indicates that signalling and the operational interface has been considered with NR and positioning of signals and alterations to

main line signals validated including communication between NR's signaller and the railport.

- 3.3.252. The initial construction would be to allow four 775m trains per day which would be diesel hauled. This would be located within a secure site with ancillary office, maintenance, mess room and car parking for railport staff. The initial container operation would be worked by reach stackers.
- 3.3.253. Empty containers may be stacked in the separate empties area using reach stackers or within the main loading and storage slab area.
- 3.3.254. The Applicant states that as operations increase incrementally additional sidings and a dedicated run-around loop and a headshunt track would be added.
- 3.3.255. To increase the capacity to sixteen 775m trains per day, up to four mobile rail mounted gantry cranes and up to four rubber tyred gantries serving the container stack would be required. Similarly, the slab for the container stack would be extended to run along most of the length of the sidings at the north-western side of the site. The height of the container stack being controlled by Req 11 in the dDCO [[REP7-011](#)].
- 3.3.256. The Applicant indicates that space has been allowed in the initial phases for overhead electrification, but this may not be required depending on alternatives such as hybrid hydrogen powered engines. If used, electrified locomotives would be decoupled from the trains as these are unable to operate under gantry cranes. Local shunting would be undertaken, either through diesel haulage or other alternative fuels.
- 3.3.257. As shown in the Illustrative Sections through railport drawing [[APP-066](#)] the option would exist for direct rail connections to some of the warehouses (Zones B3, D and E as shown on the Parameters Plan [[REP4-016](#)]). This could be either a platform with level access into the warehouse or for the sidings to be physically inside the warehouses. These direct rail connections would not be possible in Phase 1 until the headshunt is constructed.
- 3.3.258. The Applicant states that the railport would be an 'open access' facility run by a "*suitably experienced operator*". The preferred operator was confirmed at ISH2 to be Maritime (see [[REP3-045](#)]). This would mean that any Freight Train Operator may use the terminal for delivery of trains to be unloaded and loaded and any haulier can collect and drop containers which would have been or would be transported by rail, including empty containers.

Public Rights of Way

- 3.3.259. Appendix 11.2 to the ES [[REP4-059](#)] sets out the Applicant's Public Rights of Way Appraisal and Strategy. The Applicant's view was that the off-site highway works would have no effect on the PRow in their vicinity and that the effect of the closure of the existing pedestrian level crossings could be looked at separately.

- 3.3.260. The current PRow network in the vicinity of the Application Site is shown in Figure 11.3 [[APP-287](#)]. This plan also shows open access land, the Burbage Common and Woods Country Park and the Leicestershire Round Promoted Route and other routes with permitted access. The open access land is part of the Burbage Common and Woods Country Park.
- 3.3.261. There are sections of five footpaths and one bridleway within the main part of the Application Site, and an additional bridleway runs along the south-western site boundary. The on-site PRowS extend to or have connections beyond the main site. There is also a single bridleway within the part of the site for the proposed A47 Link Road. The main part of the Application Site includes five public footpaths that cross the railway. These are individually shown on the level crossing plan sheet 1 [[REP2-009](#)].
- 3.3.262. A survey of usage was undertaken in July 2019, October 2019 and June 2021. The results can be found in Annex 3 of the 'Public Rights of Way Appraisal and Strategy' [[REP4-059](#)] with a summary in Table 1.3. Average daily use of the five pedestrian level crossings from surveys in 2018 and 2020 are also given.
- 3.3.263. There are no formal equestrian facilities on the main part of the Application Site, although Woodhouse Farm, which would be demolished, offers an off-road horse ride and surrounding liveries and stables. The horses kept here use Burbage Common Road, the single bridleway and the Common for commuting and exercising horses.
- 3.3.264. Under the Proposed Development all the PRowS within the main site would be affected. These are shown on Figure 11.14 [[REP7-041](#)]. There would be a replacement bridleway running from the point where Burbage Common Road would be stopped up at its southern end (Point X on Sheet 2 of the Access and Rights of Way Plan [[APP-018](#)]). From this point the new bridleway would run in an easterly direction to close to the boundary with the M69 when it would then run parallel to the motorway before rejoining the existing bridleway to the north-west of M69 J2. This would be in a landscaped area. There would be a Pegasus crossing of the access road into the site, and the bridleway would continue at the bottom of the embankment to the A47 Link Road to the easterly of the two on-site roundabouts where it would go around the sides of the proposed lorry park and then through part of the new informal public open space to join with Smithy Lane at Burbage Common and Woods.
- 3.3.265. Both the Barwell and Earl Shilton level crossings would need to be closed as the Proposed Development would sever the footpaths. As part of the signalling review and the need to ensure that if trains were stopped outside the site, it is also proposed to close the Elmesthorpe, Thorney Fields and Outwoods level crossings.
- 3.3.266. The footpaths at the Elmesthorpe and Thorney Fields crossings would be diverted over existing rail bridges and the Outwoods crossing would be re-provided through a new pedestrian footbridge. The Applicant believes each alternative would offer equivalent access. An illustrative design for

the footbridge is shown at [\[REP5-006\]](#) which would include a fully ramped crossing. The Applicant indicates that the maintenance of this structure would be by NR and the surface by LCC.

- 3.3.267. One other section of the existing PRow network would be altered. This would be as a result of the demolition of the existing bridge on Burbage Common Road and its reprovision slightly to the south as part the overall A47 Link Road. Here an existing footpath would be extended to the south and cross the A47 Link Road to provide access to Burbage Common and Woods.
- 3.3.268. A minor change submitted at D7 showed a proposed bridleway link just to the north of the A47 Link Road bridge between that road and the managed public access area to the south. It would also link with bridleway U51 which is subject to a contribution secured under the s106 Planning Obligation [\[EEAS-001\]](#) for its resurfacing and a new permissive route which would be delivered by HBBC on the north side and parallel to the railway line, where the Applicant would make a financial contribution towards delivery.
- 3.3.269. In response to the discussions at ISH2 [\[EV6-002\]](#) the Applicant submitted a table and plans [\[REP3-054\]](#) showing the various distances different categories of user would be required to travel as a result of the closure of Burbage Common Road between points 1 and X as shown on the Rights of Way Plans [\[REP4-004\]](#) and [\[APP-018\]](#). The current distance between the two points is 1.6km. The distances are shown in Table 4.

Table 4: Changes in travel distance Elmesthorpe to Burbage Common

User Group	Proposed Distance	Increase in distance to current	Benefits cited by the Applicant
Vehicle Users	4.95km	3.35km	On primary vehicle route
Cyclists	2.40km	0.8km	Within development site
Bridleway users	4.90km	3.35km	Dedicated route away from vehicular highway
Pedestrians	Option 1: Through development site on permissive route:		Range of options, from direct route to safe green corridor around perimeter of site.
	2.40km	0.8km	
	Option 2: Around north of site using PRow network:		
	3.6km	2.0km	
	Option 3: Following proposed bridleway route:		
4.90km	3.35km		

- 3.3.270. Figure 11.14 [REP4-077] also shows a number of proposed permissive footpath/ cycleways, effectively along the internal roads. The Applicant indicated in response to ExQ1.11.32 [REP4-141] that a commitment had been made in the Public Rights of Way Appraisal Strategy (paragraph 1.98 of [REP5-014]) for public access which would only be restricted for maintenance purposes or safety reasons. The Applicant also points out that the *"amenity of these routes has been considered with a commitment to tree-lined avenues and separation from vehicular traffic included in the Design Code"*.
- 3.3.271. The Public Rights of Way Appraisal Strategy [REP5-014] at paragraph 1.98 states that security of access would be secured through the details to be agreed as part of the obligations of Req 25 in the dDCO (public rights of way strategy).
- 3.3.272. The Applicant accepts that the M69 and the Hinckley to Leicester railway line have an urbanising influence on the character of some of the paths at the fringes of the site.

Case for Interested Parties

National Highways

- 3.3.273. NH in its WRs [REP1-182] indicated that it does not object to the principle of development, but there were several concerns over the assessments. The following represents the final position of NH at the end of the Examination as set out in its Final Position Statement [REP8-041].
- 3.3.274. In relation to the assessment, it has been agreed that the PRTM and RRAM are the correct strategic assessment models, and that furnessing would be used at key locations. These key locations are finally considered to be:
- M69 J2
 - M69 J1
 - M1 J21/ M69 J3
 - A5/ A47 Longshoot and Dodwells junctions
 - A5/ A4303/ B4428 Cross in Hand
 - A5/ A426 Gibbet Hill
- 3.3.275. However, there are also concerns about the STS and the HGVRP and whether the furnessing had been correctly applied.

M69 J2 (Junction 20)

- 3.3.276. NH considers that the furness methodology has not been correctly applied. This means that traffic demands have not been agreed, and that there is an under-estimate of traffic flows at the junction and the effect on the SRN has not been correctly assessed.
- 3.3.277. The disagreement is set out in [REP7-088]. NH explains that the effect has been calculated by subtracting the WoD 2036 PRTM forecast from the WD data. For some of the turn movements, for example Hinckley Road

east and west (B4669), this has resulted in negative traffic growth. According to NH, the Applicant has then applied these development impacts, both positive and negative, to the 2023 observed flows. “[T]rips that the PRTM has removed from its 2036 WoD forecast year matrix for the 2036 with development (WD) case, cannot be subtracted from the 2023 Observed turn flows matrix if those trips were not observed to be using the roundabout in 2023”.

- 3.3.278. Notwithstanding this position, NH has reviewed the network layout with reference to the VISSIM model having noted at D7 that a number of changes had been made to the approved base model. NH states it was provided with the data on 6 March 2024, leaving insufficient time to allow it to run the four necessary modelling scenarios (AM and PM for WoD and WD).
- 3.3.279. NH also sets out its concerns relating to certain of the parameters such as lane lengths, desired speed decisions and lack of reduced speed areas before junctions.
- 3.3.280. In relation to the design of the slip roads NH has reviewed the geometric design strategy. However, without the traffic flows and operational assessment agreed it is unable to fully agree the design. Even then, there appears to be inconsistencies between the cross-section panels on the submitted drawings and DMRB CD 127 and its mandatory requirements. NH also notes that there would need to be departures from standard but again these have not been approved provisionally and no Stage 1 RSA has been undertaken again because of the unagreed traffic flows.

M1 J21/ M69 J3 (Junction 15)

- 3.3.281. NH notes that this is a complex junction “with multiple segregated left turn lanes and merge/diverge arrangements”. NH’s position is that the junction must be assessed in VISSIM, or, as a less good alternative, LCC’s Paramics model. NH has concerns about the use of LinSig by the Applicant due to what it considers the limitations of the LinSig model to deal with such a complex junction, exacerbated by the congestion issues.
- 3.3.282. The M1 northbound on-slip shows severe congestion, which affects the circulatory and M69 eastbound approach. NH considers that LinSig has the potential to overestimate exit-arm capacity for vehicles leaving the circulatory, and as three of the four left-turn movements involve ‘bypass’ slip road, these demands are “ignored” by LinSig and could exacerbate the issue.
- 3.3.283. NH notes the Applicant submitted a ‘M1 J21 Modelling Note’ [[REP5-051](#)] to demonstrate that the LinSig model had accounted for these issues. NH agrees with the approach but requires details to verify the model’s validation. NH states it asked the Applicant for this information, and while it was provided with some, this did not include the signal specification. In response to a further request NH advises it was directed to a third-party model in an historic planning application.

3.3.284. In light of this, NH is not able to conclude how the M1 J21/ M69 J3 is likely to be affected by the Proposed Development. Given the existing operational issues and the increases in demand arising from the Proposed Development, NH considers that it is likely to adversely affect the safe and efficient operation of the SRN.

M69 J1 (Junction 13)

3.3.285. As with M69 J2, NH's position is that there have been a number of changes to the approved base model including changes in priority rules, for example removals of 'Keep Clear' markings, speed distributions, and small changes to the AM demand.

3.3.286. Again, NH has reviewed the model performance and raised queries regarding the non-standard approach to traffic models. Information was also provided on 6 March 2024 leaving insufficient time to run the necessary modelling scenarios.

3.3.287. On a precautionary basis, it considers that there is insufficient information to ensure that the junction would operate safely.

A5/ A47 Longshoot and Dodwells junctions (Junctions 4 and 14)

3.3.288. At the end of the Examination, NH had agreed traffic flows with the Applicant, but had remaining concerns with the VISSIM modelling, particularly to deal with the 5-year difference in time between the survey data and the survey data for the model.

3.3.289. However, NH considers that the Proposed Development would have minimal effects on the A5, mainly as a result of the M69 J2 slip roads providing an alternative access to the M69. Consequently, it considers further mitigation is unlikely to be required.

A5 Cross in Hand (Junction 27)

3.3.290. NH is concerned at the use of the Junctions 10 assessment tool. This is partially due to what is said to be "*missing geometric design information*", and some of those submitted are incorrect and required amendment. While NH considers that these would be likely to have minimal effect on the junction performance the modelling fails to account for HGV demands, which, given the high HGV use, could significantly adversely affect junction operation. NH's position is that the modelling outputs cannot be relied upon, and should the necessary corrections be made, the operation arising from the Proposed Development would be worse affecting the operation of the SRN.

3.3.291. In light of this, NH considers that the proposed mitigation works may not be sufficient, and a more comprehensive scheme is likely to be required. It also notes that no Stage 1 RSA has been completed in line with the requirements of GG 119 of DMRB.

3.3.292. NH has considered the drafting of Req 5(3) which would provide for the delivery of an alternative, agreed design solution, and suggests

amendments to the final DCO (these are discussed in section 3.3.489). Notwithstanding this, NH remains of the view that unless the overall modelling is agreed, insufficient mitigation works would be carried out with a resulting adverse effect on the SRN.

A5 Gibbet Hill (Junction 26)

- 3.3.293. NH's final position is that the junction has been modelled correctly.
- 3.3.294. However, it has concerns about the software package used, Junctions 10, as the software does not account for constraints on the circulatory. At this junction there is an issue with whether HGVs can route side-by-side without potential conflicts. There are also concerns that Junctions 10 software misaligns vehicles on the Rugby Road (A426) approach thereby overestimating congestion on this arm, resulting in underestimations of the opposing flows on the circulatory. Furthermore, there is no analysis by the Applicant to show that the 2023 base year is representative of the 2023 observed conditions.
- 3.3.295. NH is of the view that the use of the Junctions 10 model was inappropriate because it did not take account of the highly imbalanced lane use at the Rugby Road approach to the junction. The vast majority of vehicles use the nearside lane only, as the offside lane has only been assigned to A5 north movements. As this effectively results in the link operating as a single lane it is likely to overestimate likely congestion on that arm. This, in turn, according to NH, underestimates the opposing flows interacting with vehicles entering the A5 northbound arm. This means, overall, the Junctions 10 model would underestimate the performance issues at this A5 approach.
- 3.3.296. Given the complexity of the existing operational issues which exist at this junction, and the number of development proposals which would affect this junction NH has reached a position with the affected local highway and planning authorities to secure contributions in lieu of schemes.
- 3.3.297. NH takes the view that the contribution given in the Planning Obligation [[EEAS-002](#)] of £344,704.83 is incorrect. The main concerns as to the cost estimate are:
- the source of the unit rates has not been identified, meaning that they may not be appropriate.
 - the cost estimate excludes drainage considerations. NH notes that there are drainage assets that would be affected and would need to be relocated.
 - the design would not allow for two HGVs to pass side-by-side, meaning that it would not help the issues identified.
 - the £65,000 costs of accommodation works, works for statutory undertakers, provisional sums and prime costs is underestimated given NH's experience of this location. It considers £65,000 (plus inflation) should be given for the statutory undertakers alone.

- the contingency value of 10% is underestimated. DfT TAG Unit A1.2 indicates this should be 46% at this stage, and even at construction preparation stage the advised figure is 20%.
- 3.3.298. NH notes that the Applicant used two different methods to calculate the contribution, with the higher one used to account for "*additional works to enhance/ repair kerbs and surface course in the area of the works*".
- 3.3.299. NH reports that the Applicant believes the contribution to be proportionate to the scale of development referencing the Lutterworth East and Magna Park contributions at around £1.24m and £2.53m respectively. NH points out that both of these figures were determined in 2022 with indexation factors meaning present day comparative figures would be higher.
- 3.3.300. NH points out that Lutterworth East is predominantly a residential development with lesser HGV effects than the Proposed Development, particularly on this junction as north/ south movements would be utilised on the M1 rather than the A5.
- 3.3.301. NH advises that the Magna Park development would result in approximately 140 vehicles (PCU) in the peak when compared with the 70 PCU from the Proposed Development.
- 3.3.302. In light of the above, NH considers that a proportionate contribution, taking account of all of the above would be in the region of £1,500,000 to £2,000,000.
- 3.3.303. NH also sets out concerns as to how the sum secured in the Planning Obligation would be delivered. It indicates that the contribution would be paid to LCC, but there is no provision for the sum to be forwarded or governing how it would be spent. It notes that the other contributions for this junction are held by WCC with provisions for the funds to be transferred to NH. This is its preferred approach.

Sustainable Travel Strategy

- 3.3.304. While NH agrees with the overarching principle and approach of the Travel Plan, the annual reviews and measures being provided at Day 1, the key issues of concern are the lack of pedestrian provision, what NH considers to be the lack of transparency over its management and the lack of security over the delivery of aspirational and corrective measures. NH considers that the travel strategy does not comply with DfT Circular 01/2022 paragraph 13.

HGV Route Management Strategy

- 3.3.305. NH's main concern relates to the high sided HGVs, and issues relating to the frequency of bridge strikes at the Watling Street Bridge on the A5. While NH notes that the Applicant has stated that route advisories for avoiding this bridge would be issued to operators on the site, existing signs and markings do not prevent bridge strikes.

3.3.306. NH acknowledges is there are "*limited opportunities for the Applicant to remedy the situation*" but notwithstanding this the risk of bridge strike and effect on the operation of the SRN are of significant concern until the Padge Hall Farm scheme is implemented.

Leicestershire County Council

3.3.307. LCC sets out its final position in [REP8-035]. Many of these points are set out in the LIR [REP1-154] and WRs [REP1-152], although matters have moved on during the course of the Examination.

3.3.308. LCC reiterates that it has no objection to the principle of a SRFI and accepts the need for one to be located in South Leicestershire.

Construction Traffic

3.3.309. LCC in its LIR [REP1-154], while accepting that some information would need to wait for the appointment of a Principal Contractor, is concerned about the proposed routing for construction traffic being required to undertake a circumnavigation of the M1 J21/ M69 J3 junction, particularly during peak hours. It is also concerned about how the A47 Link Road would be constructed and the effect on existing traffic flows.

3.3.310. LCC considers that the Construction Traffic Routing Scheme should be within the s106 Planning Obligation as it is not an enforcing authority under the PA2008.

Operational Traffic

3.3.311. Part of LCC's concerns is that the Applicant's approach has been to utilise, at least in part, access arrangements that would include the A47, and thus the LRN, rather than requiring access only via a new arm to M69 J2.

3.3.312. LCC sets out the following outstanding design issues, as it sees them:

- lack of Stage 1 RSAs;
- whether the link road can be constructed within the Application Site;
- the lack of continuous footway/ cycleway route on either side of the A47 Link Road;
- the VISSIM model for M69 J2 needs to be updated to reflect the Pegasus crossing and what effect this may have on M69 J2;
- the need for the first roundabout on the A47 Link Road being only to deal with development layout issues;
- lack of safe crossings of the M69 J2 slip roads by pedestrians/ cyclists.

3.3.313. LCC agrees that the PRTM is fit for purpose and the base year model review is agreed. LCC has concerns about trip generation (based on the discrepancies in employee numbers), site comparables and that it was not based on the latest version of the STS.

3.3.314. LCC considers that there has been a lack of phased testing of development as the Proposed Development is built out. It also notes that

while the uncertainty log was signed off in 2021 there have been several developments permitted since, including the Padge Hall Farm site.

- 3.3.315. LCC is of the view that there is a fundamental disagreement as to the interpretation of the strategic model outputs with the Applicant failing to acknowledge any impact at M1 J21/ M69 J3. The strategic model shows development traffic using this junction and displacing other traffic onto the LRN. LCC's view is that the Applicant should provide mitigation to attract back the displaced existing traffic. This would, potentially, reduce the need for mitigations on the LRN.
- 3.3.316. LCC has requested modelling based on an unconstrained scenario to seek to ascertain the actual impact at this junction. LCC believes that the Applicant is incorrectly relying on the Lutterworth East scheme (which cannot be guaranteed and only deals with the effects of that development) and a reduction of 10% to 13% of development traffic routing from the effects of the STS.
- 3.3.317. LCC considers the LinSig model is not appropriate as it would not capture all the complex movements and free flow links and thus the full effects of traffic movements. LCC's view is that LinSig would only be appropriate if the effects were negligible, as they are on the Applicant's assessment, but that prejudices results of the modelling.
- 3.3.318. LCC characterises the Applicant's strategy as being to displace traffic onto the LRN and not resolve the issues at M1 J21/ M69 J3 which is already over capacity.
- 3.3.319. LCC confirms (paragraph 24 of [[REP8-035](#)]), from its point of view, that the issues relating to furnishing at the Cross in Hands and Gibbet Hill junctions are resolved.
- 3.3.320. In relation to the Narborough level crossing LCC considers that the assessment is insufficient. The additional downtime would result in additional delay and inconvenience since there is only a stepped footbridge. LCC requested a VISSIM assessment, and while surveys were carried out, LCC considers that the impact on queue lengths has not been quantified and their effect on the LRN in the vicinity. This means that it is not possible to identify whether mitigation is required, let alone identify what it should be.
- 3.3.321. LCC considers that, notwithstanding that the focus should have been on mitigating effects on the SRN, the Applicant's focus has been on mitigating the effects on road infrastructure rather than providing sustainable access and transport, contrary to NPSNN paragraph 5.213 and paragraphs 104, 110 and 112 of the Framework.
- 3.3.322. LCC requested 45 junctions should have been assessed in detail, but the Applicant has only assessed 21; LCC considers this to be a material omission.
- 3.3.323. In relation to the B4114 Coventry Road/ Broughton Road LCC reiterated its WRs [[REP1-152](#)] (paragraph 2.93) that it fails to understand why an

alternative scheme of mitigation to that previously agreed has been proposed when this junction would attract traffic from the Proposed Development.

3.3.324. Turning to Sapcote, LCC considers that the mitigation proposed does not relate to the identified impact (the doubling of vehicular traffic). The mitigation proposed is "*limited*" and what is proposed has "*clear safety issues*" as identified in the interim RSAs [REP4-151]. In any event the mitigation proposed (surfacing, benches and planters) does not relate to the increase in traffic.

3.3.325. LCC considers that the HGVRP has a number of issues:

- the HGVRP is not accounted for in the traffic modelling;
- the £200,000 commitment for future mitigation only relates to Sapcote and potential mitigation ruled out in the interim RSA;
- detailed points about the positioning of the ANPR cameras remain outstanding; and
- there are issues with how the ANPR cameras would identify HGV breaches, particularly for vehicle routes through multiple villages, where an HGV would only pass by a single camera.

PRoWs

3.3.326. Turning to the PRoW network, LCC considers that the Applicant has failed to improve access to the Proposed Development on PRoWs. LCC has characterised the Applicant's approach as being "*coloured by its view that staff are unlikely to use the PROW network to reach the site, but that is a self fulfilling prophecy and not a proper approach to sustainable travel*".

3.3.327. LCC considers that there should be an obligation on the Applicant to carry out improvements to the PRoW relied on for access to the Application Site on the basis that this is not explicit in the Public Rights of Way Strategy.

3.3.328. LCC also notes that its:

- request to stop up V35/1 (running to the north of the Aston Firs Travellers site) has not been subject to evaluation;
- concern about the length of the diversion of U17 /2 (at the Thorney Fields Farm level crossing closure); and
- concerns about the safety of the proposed route for T89/1 (in Elmesthorpe) have not been addressed.

3.3.329. LCC takes the view that it is unclear how modal shift targets would be achieved given the limited commitments to sustainable travel provision and walking and cycling infrastructure. As set out in [REP5-076] paragraphs 51 to 56 there are a number of concerns about this.

Warwickshire County Council

3.3.330. WCC's WRs [REP1-232] and LIR [REP1-234] set out its initial position. Various comments were received during the Examination and its 'Comments on Documents to be Submitted by Deadline 8' [REP8-037]

provided an update at the end of the Examination. The following represents the main outstanding points relating to Traffic and Transport.

Construction Traffic

- 3.3.331. WCC would like details of monitoring and enforcement included in the CTMP [[REP3-040](#)] and consider that this should be assessed in any strategy submitted by the principal contractor.

Operational Traffic

- 3.3.332. As regards the HGVRP, WCC notes that as far as it is concerned the following matters are not agreed as regards daily breaches:
- WCC is unclear as to why the breach thresholds should be proportionately shared among occupiers based on floor area (paragraph 6.60). WCC considers that all breaches should be investigated;
 - this means that, say, should one occupier breach three times (that is at Stage 1) there should be a mechanism to go to Stage 2;
 - concerned at the reference to 'one way' in paragraph 6.57, on the basis the HGVs would affect amenity and highway safety irrespective of the direction of travel; and
 - it also notes a small number of typographic errors.
- 3.3.333. As regards the first of these bullets, WCC considers that the 'triggers' should be set proportionately to the amount of development constructed. Thus, rather than an absolute figure of 10 HGVs journeys one way per day, if, say, 50% of the development had been constructed, then the trigger should be 50% of 10 HGV journeys one way per day, that is 5.
- 3.3.334. In relation to the STS [[REP7-028](#)] WCC:
- wants to ensure that the extension, both the route and hours of operation, of the No. 8 bus service would dovetail with shift start and end times as is stated in paragraph 7.18;
 - would like to see further details as to how the shuttle bus within the site would operate to ensure it did not conflict with the commercial services;
 - would like the 6 month free bus pass extended for situations when occupiers had a phased recruitment strategy, and thus should be resolved as part of the Framework Travel Plan; and
 - would like the STS revised in relation to employees from Rugby to cater for alternatives to car share.
- 3.3.335. In relation to the Cross in Hands roundabout, WCC is content as regards the arms in its area but notes it has not been resolved as to whether amendments to the NH or LCC arms would be necessary.
- 3.3.336. In respect of the Gibbet Hill Roundabout, WCC requested that this junction be modelled in VISSIM as this would be validated and more closely represent the network and observed queuing. WCC takes the view

that PRTM, whilst validated, is strategic in nature and does not explicitly model junctions.

- 3.3.337. The ARCADY modelling provided by the Applicant was only supplied to WCC a week before the Examination closed and should have been submitted into the Examination at D8. The sum identified in the s106 (£344,967.07) was provided to NH before submission but not to WCC or LCC. WCC's Engineering Design Service recommends a contingency of between 50% and 60% for plans at this concept stage to reflect the level of risk. WCC would prefer the contribution to be made direct to NH.
- 3.3.338. WCC indicates that it has not been able to provide inputs into the effects of the Proposed Development through the A5 Longshoot and Dodwells junctions as it is reliant on NH models and the forecast models have not been agreed.

Blaby District Council

Construction Traffic

- 3.3.339. BDC in its WRs [[REP1-050](#)] considered that the Applicant should maximise the use of rail during the construction period.

Operational Traffic

- 3.3.340. BDC in its Summary and Signposting Document [[REP8-030](#)] reiterates the position in the LIR [[REP1-055](#)] that it had significant concerns on what it describes as "*the significant increase in traffic through the M1/M69 Junction*". It indicates it, like LCC, is concerned about the lack of detailed modelling at this junction leading to uncertainty as the effects of the Proposed Development on road networks and of the environmental effects.
- 3.3.341. BDC considers the Modelling Note [[REP5-052](#)] did not resolve its concerns, since this modelling did show a detrimental impact on the LRN. There are also concerns as to whether the STS would reduce the Proposed Development traffic flow by 10 to 13%. BDC agrees with LCC that the M1 J21/ M69 J3 junction should have been modelled in VISSIM rather than LinSig due to the complexity of the movements. BDC states that the Applicant's consultant agreed during ISH6 that the VISSIM model would be the most appropriate in that circumstance. BDC considers, overall, that the Applicant has not modelled the effects of the Proposed Development which is already at overcapacity.
- 3.3.342. BDC is concerned that the traffic modelling assumes that the railport would be used when there is nothing that would require this. Without the use of the railport confirmed there would be the prospect of additional road traffic on the network.
- 3.3.343. BDC is unconvinced that the HGVRP would be an effective means of ensuring local residents are not affected by the HGV movements. It is also concerned [[REP8-031](#)] about the legal enforcement mechanisms particularly as to what would represent a breach under Req 18 and thus

a breach of the PA2008. It also considers that the triggers in the HGVRP are too high, and that the fines should be set at £1,000 rather than "up to £1,000". It also considers that any revisions to the HGVRP should be subject to arbitration under Article 52 of the dDCO.

- 3.3.344. BDC's overall position is that the SoS does not have sufficient information to make a reasoned and informed decision and should adopt a precautionary approach. Without the modelling resolved, BDC considers that the true nature of the effects "*are far greater than those stated by the Applicant*", and great weight should be given to this harm.

Hinckley and Bosworth Borough Council

Construction Traffic

- 3.3.345. HBBC in its LIR [[REP1-138](#)] considered that the HGVRP should be implemented during the construction period so as to require construction vehicles to use the designated routes. HBBC also indicates that it has concerns over aspects of Construction Traffic Methodology, particularly how traffic impacts can be reduced and enforced.

Operational Traffic

- 3.3.346. HBBC sets out its final position in its 'Final Summary' document [[REP8-034](#)]. HBBC is of the view that as there remain significant gaps between the Applicant and the highway authorities, that we, as ExA, should not be able to recommend that the DCO is granted. These points are highlighted in the relevant SoCG [[REP7-073](#)].
- 3.3.347. HBBC does not reiterate the points of the highway authorities but would particularly draw attention of the existing congestion issues on the A5, particularly at the two A47 junctions (Longshoot and Dodwells) and at M1 J21.
- 3.3.348. In relation to the HGVRP, HBBC is concerned that HGV access would be permitted from the west via the A47, B4668 and the A47 Link Road. This would attract additional traffic through the Hinckley area and increase the likelihood, if hold ups were to occur, of the use of prohibited routes. HBBC notes that the originally submitted version of this document [[APP-362](#)] at paragraph 3.11c had this route marked as 'undesirable', meaning that the public and stakeholders would have assumed that HGVs would not use this route.
- 3.3.349. Turning to the STS, HBBC considers that the provisions associated with the Proposed Development fall short of what should be expected of a development of this size. Public transport should be available, as opposed to alternative, DRT, to and from the site. HBBC notes that no evidence, for example letters of comfort, have been submitted to show the operators of the existing public transport services were willing to amend their services to visit the site, particularly into the evenings and from early morning.

3.3.350. As regards DRT HBBC considers that the level of service should have been set out and is concerned that no free travel pass is available, when there would be for those using public transport.

3.3.351. HBBC therefore concludes that the STS is insufficiently robust, precise and certain to guarantee meaningful sustainable results.

Rugby Borough Council

3.3.352. RBC [[RR-1189](#)] considers that traffic effects need to be assessed in conjunction with WCC and NH.

Leicester City Council

3.3.353. LCiC indicates [[REP1-151](#)] that although the TA was subject to review at that time it would reserve its position. At D4 [[REP4-180](#)] LCiC stated that the "mitigation so far proposed appear to be proportionate to the expected impacts for the City of Leicester". It did, however, indicate that the STS, including the bus enhancement to the X6 service between Leicester and Coventry, should ensure that it was conducive to shift working patterns as well as office based staff. Further information was required on the types of public transport vehicles to ensure there is adequate capacity, and that this needed to be secured.

North Warwickshire Borough Council

3.3.354. North Warwickshire Borough Council [[RR-1019](#)] was concerned about effect on the A5.

Network Rail

3.3.355. NR [[RR-0988](#)], [[REP1-185](#)], [[REP3-133](#)], [[REP4-192](#)], [[REP4-193](#)], [[REP5-053](#)], [[REP5-087](#)], [[REP7-090](#)] states that its Licence Condition obligations are to balance support for the Proposed Development with ensuring that it does not compromise the wider network stewardship obligations and the contractual rights of other users of the network.

3.3.356. NR has entered into a Basic Services Agreement with the Applicant to support development of the rail works. The layout is considered to be acceptable and is standard for a freight terminal connection onto the network. NR notes that some earthworks would be necessary to provide a level platform and thus earthworks on the NR terminal boundary.

3.3.357. The Proposed Development would allow for future electrification should that occur on this line.

3.3.358. The Proposed Development would involve the demolition of the bridge over Burbage Common Lane which is a NR owned three span masonry arch bridge.

3.3.359. NR notes that there are several level crossings which would be directly impacted by the Proposed Development. These are either within the proposed Application Site or within 'blocking back' zones for a train waiting to enter the terminal. Five of these at Outwoods, Barwell, Earl

Shilton, Elmesthorpe and Thorney Fields Farm would need to be closed with the Outwoods crossing re-provided as a bridge. NR would own the structure upon completion.

- 3.3.360. Six other level crossings are identified in the SoCG between NR and the Applicant [[REP5-053](#)] as being potentially affected by the Proposed Development. A financial contribution towards the cost of any mitigation works has been agreed with Applicant secured through the Framework Agreement between the parties. This Agreement has not been submitted to the Examination.
- 3.3.361. NR points out that the timetabling of services to the Proposed Development must fit with the existing passenger and freight timetables as existing operators have contractual rights which are enshrined in their track access contracts.
- 3.3.362. NR is aware of the special circumstances at Narborough and the sensitivities of a town centre located crossing. Here there is a history of 'blocking back' over the crossing which relates to the existing road layout and what is described as poor driver discipline. The Proposed Development would increase the barrier down time by, NR, believes, only another 5 minutes in the hour which would be well within the limits of a 45 minute maximum for such a location. NR therefore is satisfied that the increase in barrier down time would not impact significantly on the risk profile at the crossing as regards rail traffic and would therefore not need any further works at this location.
- 3.3.363. The proposed carriageway lowering at Padge Hall Farm would have no impact on the Proposed Development from NR's point of view.
- 3.3.364. In response to ExQ1.11.28 [[PD-011](#)], ExQ2.11.11 [[PD-013](#)] and the Rule 17 letter of 20 February 2024 [[PD-016](#)] NR has considered the possibility of a new passenger station either at Elmesthorpe or potentially near the Proposed Development. NR takes the view [[REP5-087](#)] and [[REP7-090](#)] that providing a station opposite the Proposed Development site presents additional challenges that are both significant and undesirable. These are:
- a shallow gradient which may be less deep than existing necessitating increases of the gradient on the approaches to the station.
 - NR considers there is inadequate space for two platforms beside the existing lines which could only be addressed by slewing the main lines to the West onto a new formation which would involve significant additional earthworks which would be detrimental to the Applicant's proposed works west of the NR boundary.
 - an option to create a two track station loop off the main line would add further time to the station stop and require more track work and larger land take.
- 3.3.365. NR has consulted with Cross Country trains which has confirmed that in the inclusion of additional station call in their Birmingham to Leicester stopping services would add journey time and hence compromised the ability to platform these trains at both Birmingham New Street and

Leicester. It may also need additional rolling stock and train crew to operate any service. Therefore, Cross Country trains believes that the provision of a new station is unlikely to be viable.

- 3.3.366. In the Rail Report [[REP5-087](#)] NR states that the proposals by the Applicant to improve bus links to Hinckley and Nuneaton would better serve employees wishing to commute by public transport than a passenger rail station.

Town and Parish Councils and Parish Meetings

- 3.3.367. Aston Flamville Parish Meeting [[RR-0110](#)]
- Undefined local traffic mitigation with adverse effect on roads and rail services.
- 3.3.368. Barwell Parish Council [[RR-0124](#)]
- Traffic issues, particularly in B4668 Leicester Road to the A47.
- 3.3.369. Burbage Parish Council [[RR-0158](#)], [[REP1-067](#)], [[REP3-102](#)], [[REP5-056](#)]
- Traffic modelling not established and not addressed key concerns relating to closures of SRN.
 - Not convinced that the Proposed Development would result in less traffic in centre of Burbage as model indicates.
 - Lack of transparency on links set out in TA and ability to read the data.
 - Concerns that traffic modelling should have been discussed with local community who know constraints and what the effects of the A47 Link Road would be.
 - The Proposed Development should not come into operation until a revised M1 J21/ M69 J3 arrangement funded through RIS3 have been completed.
 - The Applicant should make a contribution towards works at junction of M1 and M69.
 - Incident response is inadequate.
 - If M69 is unavailable, the alternative route to Magna Park would be through Burbage. An ANPR camera should be installed on the B4669 to Burbage.
- 3.3.370. Carlton Parish Council [[RR-0166](#)]
- Effect on PRoW network particularly the closure the footpath (either side of Burbage Common Road bridge).
- 3.3.371. Earl Shilton Town Council [[RR-0345](#)]
- Concerned about accuracy of traffic models.
- 3.3.372. Elmesthorpe Parish Council [[RR-0379](#)], [[REP1-121](#)] to [[REP1-122](#)], [[REP3-112](#)], [[REP3-113](#)], [[REP7-079](#)]
- Site poorly served by public transport.

- Additional congestion at M69/ M1 Junction and effect on existing traffic.
- Congestion, traffic increases through Elmesthorpe including HGVs resulting in safety concerns given accident history and use of B581 by equestrian riders.
- B581 would be a 'rat run' due to nature of model used.
- Measures to prevent use of Burbage Common Road may be insufficient and thus parking in Elmesthorpe.
- Effect on PRoW network and on Burbage Common.
- Concerns that the STS has not been included within the junction capacity assessments, particularly the B4668/ A47 junction, and the introduction of a gateway feature allowing cyclists to rejoin the main carriageway.
- Regarding the HGVRP, the B581 through Elmesthorpe should be included within the list of 'Prohibited Routes'. Parish Councils should be involved in the Plan, with the ability to contact the Travel Plan Co-ordinator direct. There are concerns about the financial penalties, and what represents persistent or repeated breaches.

3.3.373. Groby Parish Council [[RR-0436](#)]

- Effect on highway network, including on National Forest.

3.3.374. Higham on the Hill Parish Council [[RR-0471](#)]

- General concern relating to traffic.

3.3.375. Huncote Parish Council [[RR-0478](#)], [[REP1-143](#)]

- Consider TA is insufficient with inadequate mitigation.
- Effect on existing rail and freight movements.
- Needs to address Narborough level crossing, HGV routing strategies, sustainable travel modes.

3.3.376. Leicester Forest West Parish Meeting [[RR-0730](#)]

- Concerns about effect of increased traffic.

3.3.377. Market Bosworth Parish Council [[RR-0840](#)]

- Road infrastructure changes inadequate to address negative effects.
- ANPR monitoring should be widened.

3.3.378. Narborough Parish Council – [[RR-0966](#)], [[REP1-175](#)] to [[REP1-178](#)] and [[REP4-183](#)]

- Primary concern relates to the impact of additional rail traffic on the closure of the level crossing.
- Concerns relating to safety from trains at station from turbulence and a voice warning system should be installed.
- Period of closure is 4 minutes, not 2 minutes 31 seconds.
- Over a whole day, the increase of closure time would be around 15% which is significant.

- Modelling should also take place in relation to other potential developments in the area and the increase in passenger trains to two per hour.
- The 45 minute closure time needs policy reassessment.
- Need to move Bostock Close crossing.

3.3.379. Ratby Parish Council [[RR-1102](#)]

- Traffic on single carriageways and congestion from level crossing closures

3.3.380. Sapcote Parish Council [[RR-1214](#)] [[REP1-201](#)] to [[REP1-206](#)], [[REP2-100](#)].

3.3.381. Please note that Sapcote PC made its case in conjunction with the CPRE Leicestershire and appeared at hearings as a single entity. Other than in documents specifically submitted by the Parish Council, set out here, it is not readily possible to distinguish between the two, and documents were submitted under the CPRE heading and are reported there.

- The traffic and transport points made specifically by Sapcote PC are that it considers that the Applicant has not demonstrated that the rail network could be used to the extent assumed.
- Increased traffic through Sapcote and Sharnford, particularly when closures occur.
- Limited public transport and other sustainable modes.
- Effect of additional slip-roads and re-routed traffic.
- Due to lack of off-street parking near centre there is parking on-street.
- Visibility in centre around corners and narrow footways as width at pinch point is 5.4m. This is less than the 5.5m sets out in Manual for Streets for two HGVs to pass, and footway would be used for a bus stop.
- The area is used as a cycle route which adds to the concerns.
- The area has had recent development and the location of the school should be taken into account.

3.3.382. Stoney Stanton Parish Council [[RR-1312](#)], [[REP1-220](#)], [[REP3-136](#)], [[REP4-184](#)]

- Transport modelling underestimates employees and thus traffic.
- Issues relating to furnishing.
- Need to resolve M1 J21/ M69 J3 issue.
- Consider the effects of traffic in Stoney Stanton to be harmful.
- The use of sustainable transport modes should be factored into the wider traffic model.
- Any increased accessibility to Eastern Villages should be seen as a detriment rather than a benefit.
- Junction 38 in Stoney Stanton (New Road/ Long Street/ Broughton Road/ Stanton Road junction) operates at over capacity with no mitigation proposed.

- 3.3.383. Thurlaston Parish Council [[RR-1365](#)]
- Lack of road and rail mitigations and through increased 'rat running'.
- 3.3.384. Whetstone Parish Council [[RR-1415](#)]
- Lack of highways mitigation to avoid effects on existing neighbourhoods.
- 3.3.385. Wigston Parva Parish Meeting [[RR-1416](#)]
- Railway access unsuitable due Narborough Level Crossing constraint.

Members of Parliament

- 3.3.386. Albert Costa MP [[RR-1021](#)], [[REP1-036](#)], [[REP2-103](#)], [[REP4-194](#)], [[REP8-043](#)]
- overburdening of infrastructure from the road elements of the Proposed Development;
 - effects at Narborough Railway Station;
 - traffic in Stoney Stanton generally and particularly in relation to school arrivals and departures; and
 - traffic in Sharnford when M69 is congested.
- 3.3.387. Dr Luke Evans MP [[RR-0339](#)], [[REP1-114](#)], [[REP1-114A](#)] and [[REP1-115](#)], [[REP1-036](#)], [[REP3-110](#)], [[REP8-043](#)]
- traffic generally;
 - issues with the A5 Watling Street bridge "*the most bashed bridge in Britain*";
 - the effect of traffic on the B4668 between the A47 Link Road and the A47; and
 - discrepancies in traffic generation figures and thus effects.

Amenity Groups

- 3.3.388. Burbage Heritage Group [[RR-0156](#)], [[REP1-064](#)]
- Increase in traffic generally with increases in delay.
- 3.3.389. Castlewood Residents Association [[RR-0186](#)]
- Traffic preventing access to site. Construction period should not be considered to be temporary.
- 3.3.390. CPRE Leicestershire [[RR-0253](#)], [[REP1-082](#)] to [[REP1-105](#)], [[REP2-104](#)], [[REP3-106](#)], [[REP5-085](#)], [[REP6-037](#)], [[REP7-091](#)], [[REP8-046](#)]. Note: See section 3.3.381 for relationship with Sapcote PC.
- Lack of rail paths available; this should be assessed back to Felixstowe.
 - The rail model does not address constraints beyond the modelled area (Wigston to Nuneaton), on both the MML and WCML.
 - Rail should be required from the outset.

- Traffic on roads, including M1 and M69 and their junction, and when these are closed.
- Lack of sustainable transport options.
- Given competing SRFIs in the vicinity does not consider the 70/ 30 off-site/ on-site HGV split to be realistic. These are based on previous proposals rather than on data from implemented and operational schemes. If the warehouses were used at a lower level for rail delivered freight this could increase HGVs direct to the railport.
- The new slip roads could have other implications for commuting which have not been modelled – the issue of ‘induced traffic’.
- Emergency plan needs to be robustly considered.
- Effect of diverted traffic for Sapcote and Stoney Stanton.
- IEMA Guidance is considered not meet the Framework test of whether a road is ‘safe and suitable’, particularly in a rural context.
- Disagree with the conclusion on pedestrian amenity in Sapcote and Stoney Stanton. This would be made worse if other proposals for development are brought forward.
- Consider STS to lack detail and would not work for bus transport.
- Cycling would not be used much due to quanta of HGVs on same roads.
- The site is poorly situation for walking.
- Supports LCC as regards lack of information submitted, such as RSAs.
- Considers some of the modelled outputs lack credibility, particularly in the Eastern Villages area. It accepts this may be a problem with the model. The HGVRP does not prohibit development HGVs, and also requires a certain level to be breached before enforcement action is taken. Local residents could not identify breaches to refer for enforcement action.
- The PRTM model is not fit for purpose on the local level as in Sapcote. This is on the basis that HGVs are likely to travel through the whole area, therefore the percentage should not change. As stated: “*The Model is appropriate and the calculation of AADT is normal practice and appropriate for a strategic model the size of the PRTM*”; it is thus a strategic model. Because there were no measuring points in the model in Sapcote the base figures are assumptions.
- The ‘breach’ figures for ‘fines’ have gone up significantly, meaning that the HGVRP would not be effectual in discouraging breaches and would only be utilised on an annual basis rather than quarterly. In any event there are no schemes to spend the money on.
- During incidents it is not clear how the site would operate.
- The RSA does not address the issue of the narrow pavements and location of the bus stop in Sapcote.
- Makes various detailed criticisms of the HGVRP, which changed during the Examination, particularly in relation to the thresholds for breaches, whether they are realistic and what period an ‘average’ would be taken.
- It considers that modelling of M1 J21 is designed to take account of the limited capacity of links and therefore the background traffic, or displaced traffic, is not accounted for within the PRTM.
- No schemes are shown for the sums identified in the HGVRP for post-scheme interventions, with some of the indicative suggestions having

been already rejected by the RSA. In any event, there has been no discussions with LCC or the local community.

- Parish Councils should be involved in any Transport Monitoring Group. In any event its terms are deficient in that it would cease operation after 10 years, which is only just when the Proposed Development would be built out.
- The analysis of pedestrian movements in Sapcote is based on a theoretical approach from other areas rather than the practicalities of Sapcote.
- Considers that insufficient attention has been paid to cyclist provision where there have been accidents (on the junction of the B4669 and B4114).

3.3.391. Elmesthorpe Stands Together [[RR-0380](#)], [[REP1-126](#)], [[REP3-114](#)], [[REP4-196](#)]

- Traffic routing through the village given accident record.
- Suitability of B581 and the crossing for Bostock Close.
- Potential for mis-directed HGVs trying to access via Burbage Common Road, getting stuck and reversing on to B581.
- The length of the 10-year construction period is such that it should not be considered to be 'temporary'.

3.3.392. Friends of Narborough Station (FONS) [[RR-0400](#)], [[REP1-128](#)], [[REP3-116](#)], [[REP8-052](#)]

- Consider closure of level crossing would increase to nearly 45 minutes with effect on traffic in vicinity.
- Lack of resilience on the Hinckley to Leicester line which is not a 'main line'.
- Concerns about 'run-away' and the need to ensure that locomotives are permanently attached during container handling and catch points and sand traps.
- Speed at entrance would be 10 mph, lower than that suggested. Need to get to line speed would affect passenger trains.
- Cripple Road sidings need to have ability to be covered to facilitate repairs.
- The Hinckley to Leicester line only has three aspect signalling, rather than four on a main line.
- Is the 'main line' suitable for the heavier trains, and if not, who would be responsible for any upgrades.
- Lack of passing loops or similar in the event that the Hinckley to Leicester railway line is blocked by a failed train or similar.
- Concerns over safety and suitability of Narborough Crossing.
- Safety concerns from freight train pass-bys – draughts, as the platforms are narrow.
- This proposal may prevent other utilisation of the MML which would be a better use of line resource.

3.3.393. Leicestershire Local Access Forum [[RR-0732](#)]

- Bridleway and footpath diversions inadequate.

- 3.3.394. Save Burbage Common [[RR-1228](#)], [[REP1-208](#)]
- Rail capacity issues outside the Hinckley to Leicester section.
 - Traffic issues on the wider and local networks with effect on the villages of Sapcote and Stoney Stanton.
 - Would increase downtime at Narborough level crossing.
 - Loss of pedestrian and equestrian access.
- 3.3.395. South Leicestershire Liberal Democrats [[RR-1265](#)]
- Traffic capacity generally.
- 3.3.396. Stoney Stanton Action Group [[RR-1311](#)], [[REP1-225](#)] and [[REP1-226](#)], [[REP3-145](#)], [[REP4-203](#)]
- Does not properly take account of employees going to the site via the Eastern Villages.
 - There is no guarantee that the rail paths would be available, without which permission should be withheld.
 - A bypass for Stoney Stanton and Sapcote is required.
 - The provision of traffic lights would harm the quality of life for residents, would not be effective, and would lead to conflicts with existing uses.
 - Speed for entry to the site would be less than identified, leading to congestion on the Hinckley to Leicester line.
 - Disagree with the sensitivity of the links as specified, identifying uses adjacent to the links meaning they should have been assessed.
 - Issues at Long Street/ New Road junction in Stoney Stanton not addressed, because they cannot be resolved.
 - Traffic associated with management roles should have been included rather than being 'out of scope'.

Other Interested Parties

- 3.3.397. Many of the RRs and WRs made generalised comments about the increases of traffic in the vicinity both in terms of safety and congestion. These re-iterate the comments set out above in relation to the traffic through the Eastern Villages, at the M69/ M1 Junction, the Narborough level crossing, Burbage and elsewhere.
- 3.3.398. In addition, specific representations were made by Barwood Development Securities Limited, Parker Strategic Land Limited and Ms Jennifer Taylor [[RR-1028](#)], [[REP1-217](#)], [[REP3-144](#)], [[REP4-200](#)], [[REP5-095](#)] on highway effects.
- Criticised the overall TA, which it noted was not, as initially submitted, complete, and considered that there was insufficient evidence to support the overall conclusions.
 - Considered that the traffic effects of Proposed Development should be assessed in three hour 'peaks' rather than concentrating on a single 'peak hour' and in 'interpeak'
 - The PRTM model used had been superseded with a later version and this effects the baseline. Details behind the model have not been shared meaning that the results cannot be interrogated.

- The studies are said to lack assessment for the 2026 opening year, concentrating rather on the 2036 scenario, meaning that necessary assessments for some junctions have not been undertaken.
- Concerns how growth within Blaby District has been taken into account; how much is growth and how much is general background flows.
- Other data recording has given different flows to the east of the M69.
- Effect of traffic through both Sapcote and Stoney Stanton with mitigation insufficient to resolve the effects. Within the context of the Framework, the cumulative effects are considered to be 'severe'.
- Consider the analysis of M1 J21/ M69 J3 is flawed as the effect should be considered 'significant'.
- The analysis at M69 J2 is partial and does not address queuing or delay.
- Lack of analysis of the M69 J2 slip roads and whether the designs are appropriate. This is particularly true of the (existing) northbound slip roads where traffic levels would rise significantly.
- The trigger levels for breaches in Sapcote and Stoney Stanton were such that would allow significant effects, with no appropriate assessment or mitigation.
- Concern that the auditors of the RSAs had all the necessary information to allow them to critically appraise the issues.

ExA's Considerations

Introduction

- 3.3.399. It is clear that traffic and transport is one of the most contentious elements of the consideration of this Application ranging from strategic matters relating to the traffic modelling, through to extremely detailed analysis of individual junctions and links. There were also issues relating to the effects on the rail and PRow networks.

Road

Construction Traffic

- 3.3.400. Given the increase of traffic on the M1 J21/ M69 J3 junction, which is discussed in more detail in section 3.3.464, it is understandable that concerns have been raised about the routing of construction traffic around that junction. However, in the event that consent is granted, we consider that it would not be reasonable to limit construction on the main site until the new south facing slip roads at M69 J2 had become operational as this would delay the Proposed Development.
- 3.3.401. Further details would need to be agreed for each phase under both the Construction Environmental Management Plan (CEMP) (Req 7) for and the CTMP (Req 23) and we are satisfied that these would allow detailed consideration of the issues raised in both the WRs and LIRs to result in their avoidance or mitigation. This is therefore a neutral consideration.

Operational Traffic

Overall Traffic Modelling and Generation

- 3.3.402. There was criticism, particularly by Sapcote PC and the CPRE, about the overall traffic model as they considered that later versions of the PRTM should have been utilised. However, the nature of any project like this is that fixes have to be made and, while updates can and should be considered where appropriate, once fixed, unless there has been a major change, then that decision should be adhered to.
- 3.3.403. Consequently, we are content with the use of PRTM v2.2 for the Leicestershire area, together with the review in 2023 reported above to take account of the effects of the Covid-19 pandemic and changes such as the approval of the Padge Hall Farm site. Likewise, we are content with the use of the RRAM model for the Warwickshire area. These models, like any, have their limitations, particularly the PRTM as it is used at a strategic level which means that analysis of individual junctions needs to be considered separately.
- 3.3.404. No party put forward a different overall model for the network and we are therefore content with these as utilised by the Applicant and agreed with the three highway authorities.
- 3.3.405. There was, understandable, criticism of the apparent dichotomy in the Application as to the number of jobs that might be created on the site and the traffic generation figures. However, in light of the Applicant's explanation (section 3.3.61 to 3.3.65) we are satisfied that there is no inherent contradiction between the range of employee figures and the traffic generation modelled.
- 3.3.406. LCC points out in section 3.3.313 that the traffic generation does not take into account the latest version of the proposed STS. There are a number of criticisms of the STS which are discussed below. While the original version of the STS [[APP-153](#)] did include targets for mode shift (Table 5) the final versions have higher targets the TA analysis was based on the original targets meaning the traffic forecasts would be 'worst case' and thus in our view robust.

Sustainable Travel Strategy [[REP7-028](#)] and appendices [[REP7-030](#)]

- 3.3.407. The final version of the STS [[REP7-028](#)] and its appendices [[REP7-030](#)] is summarised in section 3.3.66. NH, in particular, criticised the lack of emphasis on walking as a sustainable travel model. However, we are satisfied that due to the distances of the site from centres of population (apart from Elmesthorpe) that it would be extremely unlikely that employees would walk to the site.
- 3.3.408. The Applicant's approach has been, principally, to seek to encourage car sharing, supplemented by other measures of bus public transport and cycling, aiming to reduce single car occupation from 75% to 60% over 10 years. BDC felt that the targets proposed were insufficiently challenging and we agree with BDC that the messaging from the Applicant could have been stronger.

- 3.3.409. For example, the base modal split for traffic is derived from that of the MSOAs (see Figure 6-2 of the TA [[REP3-157](#)]) for the Application Site. However, the locations of the Employee Trip Generation are different (see Figures 6-3 and 6-4). We raised this in our Rule 17 letter of 22 September 2023 [[PD-007](#)]. The point being that the STS aims to improve non-single car use from that currently utilised in the vicinity of the Application Site rather than that of where employees may reside (see Figure 6-3 of the TA) which may have less single car use. This would make the target less challenging to achieve. The Applicant's response to that letter [[REP2-001](#)] did not address this point.
- 3.3.410. Furthermore, it is clear that minimising employee car parking on site can encourage use of alternative modes. However, the Applicant indicates that while parking numbers are less than LCC's recommended maxima for B8 development [[REP3-049](#)] the Design Code would permit decked parking "*to address occupier specific needs*" (second bullet, paragraph 9.2 [[REP7-051](#)]). This gives a message that should an occupier seek more parking, then that should be permitted, particularly as paragraph 112 of the Framework indicates that maximum parking standards should only be set where there is a clear and compelling justification.
- 3.3.411. We are satisfied that the proposals for commercial bus provision are acceptable, if unambitious. Beyond extending the hours of operation to meet standard shift change times they represent the reinforcement of existing bus services rather than seeking to make significant enhancements.
- 3.3.412. The Applicant responds to this through the introduction of the DRT for more local towns and villages. This would be beneficial (see Figure 12 of the STS [[REP7-051](#)]). However, unlike the commercial services where a six month free bus pass would be provided, no subsidy for employees would be provided. To an employee it would matter not whether the service is provided commercially or through a contract emanating from the site. We consider that this is a significant deficiency in this element of the STS.
- 3.3.413. In relation to cycle infrastructure, LCC criticises the lack of cycleway provision on both sides of the A47 Link Road; it would only be provided [[REP7-006](#)] on the southern side. While a cycleway on both sides of the carriageway would be ideal, given the links to the existing cycleway adjacent to the B4668 and the environmental effect of widening the urban corridor of the link road, we consider that adequate provision is made.
- 3.3.414. Continuing to the north-west, we consider that the two cycle route enhancements would provide a suitable route to and from Barwell and Earl Shilton. To the south the provision of a new cycle lane between Smithy Lane (effectively the Application Site due to the realignment of the V29/8 bridleway near M69 J2) and Winchester Drive in Burbage would enhance cycle access to that village and Hinckley.

- 3.3.415. The remaining proposed cycle infrastructure, such as cycle parking and showers, is considered to be appropriate for a development of this scale but does not go beyond what should reasonably be expected as a minimum.
- 3.3.416. One area where we consider that the Applicant did not investigate sustainable modes related to the provision of a rail passenger station. We note that the Policy 5 of the HBCS [[REP4-178](#)] supports the re-opening of the Elmeſthorpe passenger railway station, and this does not appear to have been acknowledged by the Applicant.
- 3.3.417. We asked a series of questions of the Applicant and NR on the practicalities of providing a passenger station, either re-opening that at Elmeſthorpe or a new station close by or at the main part of the Application Site, to assess whether such a mode of transport would be possible. The Applicant effectively demurred to NR (see response to ExQ2.11.11 [[REP5-036](#)]). NR’s initial Rail Report [[REP5-086](#)] paragraph 9.3.3 indicated that the ruling gradient was too steep without major works to re-profile the gradients either side, and that there was inadequate space for two platforms beside the existing lines. NR also asserted that platforms could only be provided by either moving the main line to the west or creating a station loop.
- 3.3.418. NR also went on to indicate that it was not aware of any work to establish a needs case, but then only assessed need based on current demand and did not factor in demand from employees of the Proposed Development. It also indicated that providing an additional stopping station would add time to the existing Birmingham – Leicester stopping services *"and adversely impact both network capacity and performance of non stopping freight and passenger services on this key cross country route"*.
- 3.3.419. When challenged as to the gradient issue, on the basis that gradient for the freight use of the Application Site would need to be similar (or less) than for a passenger service, NR responded [[REP7-090](#)] *"it is desirable for the gradient to be as shallow as possible. In this respect the ruling gradient at the proposed site is 1 in 168. Although this gradient is not without precedent at other existing stations on the network, as a new station facility it would be preferable for the gradient to be eased if practicable"*.
- 3.3.420. In a later version of the NR’s Rail Report [[REP5-087](#)] NR acknowledged that this was a practical solution, but then went on to indicate that consultation with Cross Country Trains *"has confirmed that inclusion of an additional station call in their Birmingham to Leicester stopping services would add journey time and hence compromise the ability to platform these trains at both Birmingham New Street and Leicester. The increased journey time would also mean that additional rolling stock and traincrew would be needed to operate the service. For these reasons Cross Country Trains believes that provision of a new station is unlikely to be viable in business case terms"*. It also deleted the quote set out in section 3.3.418. This change in position, to our minds, reduces the weight we can give to NR’s evidence as it should have identified these

issues initially. The lack of a need analysis including employees from the Proposed Development using a station reinforces our conclusions as to the weight that should be given to NR's evidence.

- 3.3.421. The answer to us seems that NR had predetermined that it does not wish for there to be a passenger service to Elmesthorpe/ the Application Site rather than looking objectively at the evidence of need and different options for delivery. The comment attributed to Cross Country Trains is assertion rather than evidence, since it is not supported by documentation, and we give it little weight.
- 3.3.422. We were unable to orally question NR due to the personal circumstances of the Applicant's prime contact at NR and we were disappointed that NR were unable to provide a deputy (see similar comments from Alberto Costa MP and Luke Evans MP [[REP8-043](#)]). While we fully appreciate the NSIP examination process is predominantly written, this did hinder our examination of this part of the Proposed Development.
- 3.3.423. The answers given that the main line would need to be 'slewed' to the west seemed to lack rigour, as the option of moving the railport sufficiently to the east to allow a platform to be provided between the main line and the railport was not addressed. While as an acknowledged expert in the area which should have been given significant weight, NR's responses do not, to our minds, show an objective analysis. We therefore only give its evidence little weight.
- 3.3.424. Overall, we can consider that in this aspect the Applicant has failed to give due consideration to Policy 5 of the HBCS and the lack of a passenger railway station at or near the site means that, and given the site is railway based, a sustainable travel option was not explored.
- 3.3.425. In relation to the STS our conclusions are:
- the mode-change targets are insufficiently challenging;
 - the subsidy for employees using the DRT should be as for existing service buses (a six month bus pass); and
 - the Applicant did not investigate sustainable travel modes related to the provision of a rail passenger station sufficiently.
- 3.3.426. Together with the deficiencies to the STS identified above we consider that the Proposed Development would be contrary to paragraph 5.211 of the NPSNN and paragraph 5.277 of the dNPSNN. Consequently, the Applicant has not maximised opportunities to allow journeys associated with the development to be undertaken by sustainable modes (paragraph 5.278 of the dNPSNN). It also, therefore, has not been demonstrated in the Proposed Development that this is in a location that can be made sustainable (see paragraph 12 of Circular 01/2022). This should be given substantial weight against the Proposed Development.
- 3.3.427. In section 7.4.105 we consider how the STS could be mitigated to deal with the first two of the bullet points in section 3.3.425. However, as the failure to investigate the provision of a rail passenger station cannot be mitigated within this Application, we consider that even if this were to

happen that little harmful weight should still be applied in the final planning balance.

HGV Route Management Plan and Strategy [[REP7-055](#)] and appendices [[REP7-057](#)]

- 3.3.428. Since the effect on the network of the traffic associated with the Proposed Development would be contingent on where traffic travels it makes sense to next look at whether the HGVRP would be effective. The STS would not affect HGV traffic as it relates to employees attending the Application Site.
- 3.3.429. In general terms, IPs were content with the overall strategy for HGVs travelling to and from the Application Site, that is via M69 J2, and then via the SRN. This is shown in Figure 8: Proposed Locations of ANPR cameras. However, HBBC is concerned that HGVs would be permitted to travel along the A47 Link Road, a short distance north on the B4668 and on to the A47. The annotation of Figure 6: Prohibited and Key Advisory HGV Routes does not emphasise that this would be a permitted route, but it is clear that this would be allowed.
- 3.3.430. Until the carriageway under the Watling Street Bridge is lowered, using the A47 Link Road to the A47 to the north and west of Hinckley to the A5 would be the only appropriate route for 'overheight' HGVs to travel to the north-west. There was some discussion at ISH6 as to whether this lowering would take place, with NH noting that detailed discussions on this had not commenced. However, the hybrid planning permission includes details of one phase and therefore within the terms of the Framework should be considered 'deliverable'. We also note that NH has concerns about 'bridge strike' in relation to the current situation and therefore it is likely to want to facilitate the carriageway lowering. NR has no objections to this.
- 3.3.431. In ExQ1.11.13 we queried whether occupations on the Application Site should be prevented until the carriageway had been lowered. The Applicant strongly resisted this [[REP4-141](#)] on the basis that the PRTM does not distinguish between HGVs and high-sided HGVs and is based on observed data. The Applicant also pointed out in the HGVRP (paragraph 2.20 and Figure 5.1) that the A47 is a major road and a 'primary road' for lorries in Leicestershire. Overall, we consider that the use of the A47 Link Road to be a reasonable route for HGVs, provided that their routings follow the HGVRP thereafter.
- 3.3.432. The most contentious parts of the HGVRP related to the enforcement mechanisms. As set out above this would be through a network of ANPR cameras which would then be monitored by the on-site Travel Co-ordinator who, should there be breaches, could take management interventions and impose private financial penalties.
- 3.3.433. While there was some discussion as to whether there would be sufficient ANPR cameras, by the end of the Examination a network of 11 camera locations were identified (Figure 8) which we consider would provide a

comprehensive network to ensure that HGVs travelling to and from the site would be identified should they follow the 'prohibited' routes.

- 3.3.434. However, there remains a number of matters where we are not satisfied that the HGVRP would be sufficiently robust to meet its objectives. We will discuss whether it would be legally enforceable in section 7.4.125 of this Report when we discuss requirements.
- 3.3.435. Firstly, the trigger of 10 HGVs one way per day on any of the prohibited routes for daily breaches are set across the whole floorspace proposed. As is clear, the floorspace would be delivered in phases with an estimated 10-year construction period (paragraph 3.126 of the Planning Statement [[REP4-086](#)]). Paragraph 6.60 of the HGVRP states that the triggers would be divided proportionately between individual occupiers based on net plot area. Because the first phase would be 105,000m², only 11% of the total floorspace would be constructed at that point. However, the trigger would be 10 HGVs one way per day on any of the prohibited routes, not 11% of this trigger. This means that it is much less likely that the triggers would be reached and thus intervention would not occur. This could lead to undesirable travel patterns being established for the occupiers of the initial phases. It is also not clear how HGVs traveling to the railport only would be considered within the relevant net plot proportion. Given these would be approximately 21.6%³ of the total HGV movements identified for the site this would be significant.
- 3.3.436. Secondly, the financial penalties, when applied would "*be set to a maximum of £1,000 per breach*" (see paragraph 6.55 of the HGVRP). This could result in financial penalties at the lowest end of the scale which would not act as a disincentive. BDC makes the point [[REP8-031](#)] that they should be set at a fixed amount (subject to indexation), it says £1,000, to ensure that the HGVRP is seen as robust. Our view is that this should be the case.
- 3.3.437. Thirdly, the mitigation. Paragraph 6.29 of the HGVRP notes that the Applicant would manage a fund of £200,000 to pay for additional measures "*to further discourage HGVs routing via any of the prohibited routes*". It suggests strategic signage, Traffic Regulation Orders or route specific interventions. Examples of specific interventions are given in Table 3 for Sapcote.
- 3.3.438. While this sum is not secured via a Planning Obligation, it is our view that assessing its acceptability should follow the same policy presumptions. In this regard, it is not clear how the £200,000 was derived and thus whether it would be reasonably related in scale and kind to the effects of the Proposed Development. It should therefore not be taken into account.
- 3.3.439. However, should the SoS consider that this would be a practical way forward, for the reasons explored in relation to Sapcote in section

³ Daily HGV Movements (weekday) associated with Rail terminal (Table 6-2) against the total HGV movements from site (Table 6-8).

3.3.536 to 3.3.538 of this Report, we believe that the introduction of Traffic Regulation Orders post-consent to mitigate the effects of the Proposed Development would be inappropriate as such an Order may not be able to be imposed and, in any event, any effects would not have been assessed as part of this Application.

- 3.3.440. We are also concerned about the measures set out in Table 3. While appreciating that they are examples, a number of these, such as gateways features, were assessed in the Interim RSA [[REP4-151](#)] and were considered not to be effective or problematic. In our view, there should be a reasonable prospect of effective mitigations being delivered if necessary and this has not been demonstrated.
- 3.3.441. These three matters all lead us to conclude that the HGVRP as submitted is not fit for purpose, principally because it does not appropriately consider enforcement or deal with mitigation. We remind ourselves that the HGVRP as currently drafted would be a certified document under the DCO. This means that the Proposed Development may have greater effects from traffic than identified which would not have been assessed, and this weighs substantially against the DCO being granted.
- 3.3.442. Were the HGVRP to be amended as recommended in section 7.4.124 then we consider that would reduce the adverse effects so that it would then be neutral in the final planning balance.

Effect on network

- 3.3.443. One fundamental point that needs to be explicitly set out is that the Proposed Development as set out in the Application can only control those travelling to and from the Application Site. This means that it cannot seek to control the existing 'background' traffic on the network. Principally the proposed slip roads at M69 J2 would result in traffic re-routing from the existing network to use these new slip roads.
- 3.3.444. Within the RRs, for example Alan Davies [[RR-0020](#)] and Elaine Phillips [[RR-0357](#)], there was assertion that southward slip roads were not provided at this junction when the M69 was designed because they would have resulted in additional traffic through the Eastern Villages. At ISH2 we asked whether the original Inspector's report could be provided. Unfortunately, this did not happen.
- 3.3.445. However, LCC provided information [[REP3-127](#)] that following discussions with the original Project Manager for the construction of the M69, the "*reason south facing slips were not constructed was that there was simply no business case for their provision on the basis that traffic travelling south could find an alternative route to the A5 via Hinckley*". No IP challenged this view, and we therefore accept this.
- 3.3.446. The effect of the new slip roads and the A47 Link Road would be to reduce traffic at both M1 J21/ M69 J3 and M69 J1 and along the A47. However, it would increase traffic through the Eastern Villages. We will discuss the effect on the individual links and junctions below.

3.3.447. Overall, the Applicant sees that there would be both reductions and increases on to the overall network. These are shown in Figures 5-10 and 5-11 of the TA [[REP3-157](#)]. In simple terms the main reductions in traffic would be seen in 2036 on the B4114 (particularly in the PM peak), the B581 through Elmesthorpe, and within Burbage. These would all be benefits of the development. Conversely, the main increases in traffic would be on the M69 south of J2, along the A47 Link Road and on the B4469 through Sapcote, through Aston Flamville and north through Stoney Stanton towards Narborough. While there would be benefits in a small number of locations from the effects of re-routing traffic on the overall network, these would be far outweighed by the increases of traffic more widely. Excepting the effects on individual links and junctions which is assessed elsewhere in this Report, we give this little weight against the Proposed Development in the final planning balance.

Furnessing

3.3.448. By the end of the Examination, with the exception of at M69 J2 furnessing had been agreed. However, due to the lateness of this agreement there was insufficient time before the Examination closed to agree or otherwise the effects on various junctions and the network in the vicinity of the Proposed Development. We have looked at the evidence in front of us at the end of the Examination in each case.

Junctions and Links

3.3.449. This next section will look at each of the junctions and links which remained in dispute at the end of the Examination. While this predominantly deals with concerns raised by the three highway authorities, many RRs made comment about the effect of the Proposed Development on the Eastern Villages and at Narborough.

M69 J2 (Junction 20)

3.3.450. As set out NH and LCC consider that the furnessing has been incorrectly applied at this junction. NH states this is because it effectively results in 'double discounting' of trips in the 2036 WD model. This is traffic in the PRTM base flow which was not observed in the 2023 surveys but then was discounted from the 2036 WD model, that is taken off both the 2023 and 2036 data.

3.3.451. Due to the additional arm to the roundabout, this junction was not subject to the same furnessing approach as the other junctions and was modelled in VISSIM. The Applicant's overall position, as set out in the Transport 2023 Update [[REP4-131](#)] is that the junction would operate "well with minimal queues observed on the approach arms of the junction".

3.3.452. The Applicant asserts, in [[REP8-027](#)] that there had been a change at NH and the "new technical team [had] not being briefed on previously agreed positions between the Applicant and NH and [had] a lack of understanding of the background PRTM impacts of the infrastructure changes". We are unable to comment on this.

- 3.3.453. We have not been provided with the traffic data for the 2023 update so as to be able to compare it with the original model. The main concern relates to traffic to and from the A47 Link Road, which itself is in some dispute principally due to the effect of the Pegasus crossing and the provision of the first roundabout.
- 3.3.454. In relation to the first roundabout LCC considers that this is not necessary and only provided to facilitate a sharp deviation of the A47 Link Road in this location. The Applicant indicates it is *"to enable the internal development road to be constructed from this roundabout in the event that the masterplan requires. The limits of deviation to Work No. 4 and the parameters plan allow for this eventuality"* (see [[REP7-063](#)]).
- 3.3.455. The Applicant has confirmed in point 2.9.8 of [[REP7-063](#)] that there would be sufficient visibility to the crossing in accordance with paragraph 3.59 of CD 116 of DMRB. The Stage 1 RSA and Response Report [[REP8-027](#)] identified that *"as part of the detailed design it should be ensured that the crossing timings and on-crossing detection account for slow moving equestrians, especially as the central splitter island is not of sufficient width for equestrian or cyclists to safely wait"*. The Applicant responded by indicating that *"crossing timings will be specified at detailed design with due regard for all potential users of the crossing"*.
- 3.3.456. DMRB CD 116 in paragraph 2.1.2 states that a roundabout should have 3 or more arms but continues, a roundabout can also *"bring a route through a sharp or sudden change of direction"*. In our view, notwithstanding that this roundabout may have a third arm in the final layout, under the illustrative masterplan it would facilitate a sharp change in direction. LCC's concerns about added maintenance and additional commuted sums could be resolved through the Protective Provisions (PP).
- 3.3.457. It is, however, not clear that the modelling of the overall junction takes account of extended crossing times for equestrians, which may result in queues back from the Pegasus crossing to the main circulatory of the junction. The Pegasus crossing when called would affect traffic flows both on and off the circulatory and consequently we are of the view that there is insufficient information in front of the Examination to show that the modelling of the junction has been robustly considered.
- 3.3.458. We also consider that this should not be left to the detailed design stage post-consent due to the uncertainties over both the crossing times and the geometries of the road system.
- 3.3.459. This means that the Applicant has not demonstrated that the Proposed Development would minimise the risk of road casualties and contribute to an overall improvement in the safety of the SRN (see paragraph 4.66 of the NPSNN and paragraph 4.57 of the dNPSNN).
- 3.3.460. The next element for consideration relates to the slip roads. The Applicant submitted a 'Geometric Design Strategy Record (GDSR) – M69 Slip Roads and Comment Log' as [[REP7-010](#)]. Because of the lack of

agreement on the traffic modelling NH did not agree to this but undertook a review. This notes a number of discrepancies over the drawings submitted and the cross-section "*appear to be non consistent with mandatory requirements*" of DMRB.

- 3.3.461. The Applicant accepts that there would be the need for departures from standard due to the location of the electricity pylon in proximity to the on-slip.
- 3.3.462. Given that we are not satisfied that the traffic modelling is robust it follows that the design of the slip roads cannot be agreed. If the SoS disagrees with us as to the robustness of the traffic model at the junction, then, we believe that, with appropriate discussion between NH and the Applicant as to departures being agreed, the slip roads would be satisfactory. The departures identified in the Part 1 RSA [[REP8-025](#)] related to the need to permit a section of discontinuous hard shoulder on each the two slip roads. The RSA did not comment on them as drawings were required of amendments to the existing vehicle restraint system that would be necessary. However, NH has not identified this as a constraint to delivery, which we would have expected given its other criticisms of the Proposed Development.
- 3.3.463. Because of the failure to properly assess this junction we consider that this should be give very substantial weight against the making of the DCO in the final planning balance.

M1 J21/ M69 J3 (Junction 15)

- 3.3.464. Currently, the junction operates at overcapacity. The Applicant in its Technical Note [[REP5-051](#)] identifies three main constraints. These include the limited width on the southbound circulatory (at its maximum of 4 lanes) which restricts traffic from the A5460 to the east, and queuing back on to the M1 northbound which has the effect of blocking access from the M69 leading to queues along the M69.
- 3.3.465. In our USI3 at approximately 16:00 hours on 2 November [[EV1-003](#)] we noted considerable queues along the M69 northbound; over a mile in length. At Ex1.11.12 we asked whether there were any abnormal traffic events that could have affected the queue length or whether the network was operating under 'normal' traffic conditions. Both NH [[REP4-190](#)] and LCC [[REP4-181](#)] advised that there were no abnormal events with LCC providing an extract from Google's typical traffic conditions showing queuing. While part of this is caused by the reduction of the number of lanes on the M69 from three to two it is clear that there are significant traffic issues.
- 3.3.466. The fundamental dispute between the parties was over the modelling software that had been chosen to model this junction. The Applicant had used LinSig while NH and LCC considered that the VISSIM model should have been used.
- 3.3.467. There is no up to date VISSIM model which the Applicant could have utilised which means it would have had to build one from scratch. As the

Applicant considers that, as the traffic effects on this junction would be negligible, that LinSig would be suitable, noting that it was used as part of the consideration of the Lutterworth Urban Extension.

- 3.3.468. Table 4 of the Technical Note sets out the AM and PM peak observed and LinSig Modelled DoS for this junction. These show lanes with a greater than 85% DoS (and thus above capacity) on both of the M1 Northbound on-slip lanes, and on two of the four A5460 lanes.
- 3.3.469. It should be noted that the M69 entry to the roundabout is not signal controlled; in other words it is priority controlled. With the entry capacity issues of the M1 northbound on-slip this causes the blocking back of this entry (see photograph in Figure 2 of [[REP5-051](#)]). The vast majority of the traffic exiting the M69 at the roundabout would go on the A5460 or the M1 south, as that travelling on the M1 north would use the separate slip road.
- 3.3.470. While LinSig may have been used for the Lutterworth Urban Extension, it is our view that for this Proposed Development the junction needed to be more comprehensively modelled. This is because the traffic to and from Lutterworth would be travelling predominantly on the M1 rather than the M69 and thus through signal-controlled elements on the junction. For the Proposed Development, vehicles travelling from the Application Site this would not be the case. The LinSig analysis would deal with the priority junction in a different way and is not designed to accommodate the three free-flow slip roads. Thus, in our view, VISSIM (or similar validated model) should have been utilised.
- 3.3.471. This means that the Applicant has not demonstrated that the Proposed Development would minimise the risk of road casualties and an overall improved in the safety of the SRN (see paragraph 4.66 of the NPSNN and paragraph 4.57 of the dNPSNN).
- 3.3.472. The Applicant relied on the mitigation proposed as part of the Lutterworth Urban Extension. LCC indicated that there was no guarantee that this would take place. While the site would not, on the information in front of us, fall within the definition of 'deliverable' as set out in the Framework (on the basis that it is an outline planning permission) in our view a development of this size, once an outline planning permission has been granted, is unlikely not to be implemented, thus securing the works.
- 3.3.473. It is next appropriate to look what the effects of the Proposed Development whatever the model. The agreed PRTM model shows that there would be a reduction of 10 PCUs in the AM peak and an addition of 114 PCUs in the PM peak in the overall flows around the junction.
- 3.3.474. With a reduction in traffic the Proposed Development would, marginally, improve the operation of the junction, but in the evening would adversely affect the operation of the junction in a minor way. This is shown in Table 57 of the 2023 Transport Update [[REP4-131](#)]. While the LUE would be an

improvement on the current situation the Proposed Development still results in detriment.

- 3.3.475. Paragraph 5.213 of the NPSNN, reiterated in paragraph 5.280 of the dNPSNN, indicates that where a development negatively affects surrounding transport infrastructure the applicant should mitigate these impacts. There is nothing to say indicate that effects should only be mitigated if they are above a certain level. No mitigation is, of course, proposed.
- 3.3.476. Currently, there are no schemes for mitigation of this junction which are in the public domain or which form part of a published road programme, such as a RIS. That means it is not possible for the Applicant to make a contribution towards those works reasonably related in scale and kind to the effects of the Proposed Development and thus comply with the tests for contributions set out in paragraph 4.10 of the NPSNN or paragraph 4.9 of the dNPSNN.
- 3.3.477. The effect of the Proposed Development would increase delay and congestion at this junction, which in our view weighs against the Proposed Development.
- 3.3.478. Because of the failure to properly assess this junction we consider that this should be give very substantial weight against the making of the DCO in the final planning balance.

M69 J1 (Junction 13)

- 3.3.479. The new slip roads at M69 J2 would result in traffic reconfiguring on the network and would remove traffic from the M69 J1 circulatory and would have the effect of improving, generally, traffic flows around the junction. This can be seen in the Applicant's 'Junction 1 Sensitivity Padge Hall Farm' [[REP5-031](#)]. The greatest improvement relates to the A5 southbound in the AM peak (see Table 5) where queues are reduced by over 90%. However, these enhanced flows would result in increased junction time exiting the B4109 southbound on to the junction, particularly in the 07:30 to 08:30 hour period.
- 3.3.480. NH's comment (see section 3.3.286) is that it was unable to verify the Applicant's position. Neither LCC nor WCC had comments in their Final Summaries [[REP8-035](#)] and [[REP8-037](#)].
- 3.3.481. While lacking the agreement of NH, our view is that removing some of the traffic wishing to join the M69 southbound would improve flows at this junction, particularly from the A5 southbound. However, the benefits at the junction would be reduced by the adverse effect on the B4109 so that, overall, the Proposed Development would only have a little beneficial effect at this junction.

A5/ A47 Longshoot and Dodwalls (Junctions 4 and 14)

- 3.3.482. These junctions provide the route between the Application Site and M42 J10. Before the carriageway under Watling Street Bridge is lowered

traffic would use the A47 to the north, and even afterwards this would provide a convenient route. The approval of the Padge Hall Farm development during the Examination meant that the Proposed Development needed to be re-assessed to ensure that it did not result in increased congestion in this area.

- 3.3.483. Following the lowering of the carriageway, the alternative route would still be through these junctions, although only on the A5.
- 3.3.484. While NH had not agreed to the VISSIM modelling it agreed that the Proposed Development could be delivered without additional mitigation. LCC made no comment in its final submission while WCC indicated it was unable to provide comments as NH had not agreed the modelling.
- 3.3.485. Overall, we are of the view that with or without the lowering of the carriageway, traffic associated with the Proposed Development could be accommodated without any additional mitigation at this junction. Therefore, the effects on this junction would be neutral.

A5 Cross in Hand (Junction 27)

- 3.3.486. This junction is a five-way roundabout with an elongated shape along the A5. It would provide access via the A4303 to both Magna Park and M1 J20 for traffic associated with the Proposed Development to and from the south.
- 3.3.487. The two western arms are maintained by WCC, the north and south arms by NH and the A4303 by LCC. WCC indicates it is content, but this agreement is dependent on NH and LCC.
- 3.3.488. NH is of the view that insufficient modelling has been completed and, due to the interactions between the Application Site and Magna Park, considers that the proposals set out as part of the Proposed Development may be insufficient. LCC however, by the end of the Examination, agreed to the results of the furnishing.
- 3.3.489. The Applicant's final proposal was to commit to the work as shown (Work 16), but also to include a provision in the dDCO [[REP7-011](#)] at Req 5(3) to the effect that would allow it and the relevant highway authority/ies to agree a different scheme should this be considered more appropriate.
- 3.3.490. As a matter of general principle, we consider that the SoS should be able to have confidence that, to comply with paragraph 5.213 of the NPSNN and paragraph 5.280 of the dNPSNN, the Proposed Development would mitigate its effects when the decision is made.
- 3.3.491. In our view, we cannot be certain that Work 16 would necessarily mitigate the effects of the Proposed Development for the reasons set out by NH. While Req 5(3) would provide a practical way forward, this does require agreement of the parties.
- 3.3.492. Our conclusion, therefore, is that due to the uncertainty involved, the Proposed Development would not mitigate its effects and thus, in line

with paragraph 5.214 of the NPSNN and paragraph 5.281 of the dNPSNN, limited (little) weight against the development should be applied.

A5 Gibbet Hill (Junction 26)

- 3.3.493. The Applicant, NH, WCC and LCC have all agreed that due to the complexities of the issues at this junction and as contributions towards improvements have already been taken from other developers that the most appropriate solution would be for a contribution to be taken in lieu of works. No works are included as part of the Proposed Development. Contributions are currently held by WCC but is likely the works would be undertaken by NH.
- 3.3.494. The final s106 [EEAS-002] by unilateral undertaking prevents the Proposed Development from operating until the contribution identified, £344,967.07, has been paid to either WCC or NH.
- 3.3.495. Paragraph 4.10 of the NPSNN and paragraph 4.9 of the dNPSNN set out the tests for contributions. There is no dispute a contribution is necessary to make the development acceptable in planning terms and it would directly relate to the Proposed Development; we agree. The dispute is whether the sum would be reasonably related in scale and kind to the development.
- 3.3.496. The Applicant has set out in its 'Gibbet Hill Cost Plan' [REP8-026] how it derived the contribution secured. This sets out two alternative costings using the larger of the two which included "*an allowance for additional works discussed with Tritax*". This scheme is to mitigate the effects of the Proposed Development alone. Consequently, in our view the question of equivalence with other contributions secured is not material.
- 3.3.497. NH's criticisms are set out in section 3.3.297 and we consider them to be mostly well founded. We will put to one side the issue as to whether the design would allow two HGVs to pass on the circulatory.
- 3.3.498. We note that the cost estimate excludes drainage, although the Cost Plan does *indicate "Estimated costs currently exclude any highway drainage works. A provisional sum is included for dealing with what we believe to be a drainage system in the verge area adjacent to the garage that may need to be adjusted to accommodate the proposed highway improvement scheme. Further information and design is required from BWB [the Applicant's transport consultant] in order to accurately cost the cost of the works"*. Either this should have been resolved or a sufficient sum included as a contingency.
- 3.3.499. As regards accommodation works, statutory undertakers, provisional sum and prime costs, the Cost Plan states "*The above costs exclude any allowance for dealing with below ground utilities, including but not limited to; the protection of existing services, any form of diversions, any new utilities works, accommodation of third parties works and delays as a result of working around live utilities. Please note there is an allowance included for dealing with the BT chamber next to the garage access and the lit bollard on the A426 approach.*" However, the Cost plan also

indicates that it makes no allowance for forming a construction compound and/ or leasing land for these purposes. Given this lack of an allowance, we conclude that the £65,000 is too low.

3.3.500. The Applicant has utilised a contingency of 10% with NH indicating at this stage DfT Tag Unit A1.2 (Table 7) recommends 46%. Even at later stages in design Unit A1.2 recommends contingencies of 23% and 20%. WCC recommends between 50% and 60%. Notwithstanding the 10% identified, the Cost Plan indicates *"We would recommend a significant contingency be included within the budget for these works given the very limited design and site information available."*

3.3.501. Our reading of this is that the author of the Cost Plan considers the contingency sum to be too low and is warning that this may be the case.

3.3.502. We consider the 10% applied is materially deficient and it should have included a 46% contingency.

3.3.503. Consequently, from all of the above, we consider that the sum secured in the Planning Obligation would not mitigate the effects of the Proposed Development resulting in residual harmful effects as the mitigation would not be fully funded. In line with paragraph 5.214 of the NPSNN and paragraph 5.218 of the dNPSNN this should result in limited (little) weight being given against the Proposed Development.

Junction of A47 Link Road and B4668 and Junction of A47, B4668 and The Common, south-east of Barwell (Junction 24)

3.3.504. In [REP6-033] LCC made a series of detailed comments about the Geometric Design Strategy Record submitted at D5 [REP5-004] for the whole extent of the A47 Link Road including its junctions. The Applicant responded to them in [REP7-063]. In its Final Submissions [REP8-036] LCC noted these responses, generally being content for them to be resolved at the detailed design stage.

3.3.505. It did, however, leave two outstanding matters. Firstly, whether the A47 Link Road/ B4668 junction could be constructed within the Application Site, and secondly whether, if the Stage 1 RSAs to be submitted at D8 raised issues, in relation to either junction how they would be addressed.

3.3.506. The RSAs submitted at D8 [REP8-025] did not raise any issues with either this junction or the B4668/ A47 junction, although at the latter it was noted that overgrown verge vegetation within the western verge currently limits forward visibility. This would be resolved by cutting back.

3.3.507. We are satisfied on the basis of the information in front of us that, subject to further iterations as part of any detailed design, that a satisfactory design solution could be achieved for this part of the Proposed Development within the Application Site, although this would not resolve the issue relating to the Pegasus crossing identified in section 3.3.459. Overall, we consider that this would be neutral in the final planning balance.

Junction of A47, A447 and B4667, Hinckley (Junction 1)

- 3.3.508. As the Applicant acknowledges (see section 3.3.170) with the proposed pedestrian phasing included within Work 13 the effects of the Proposed Development would not be fully mitigated. However, the 2023 Update [REP4-131] does indicate that if the pedestrian phase is not called the junction would operate within capacity.
- 3.3.509. We agree with the Applicant, on balance, that retaining the pedestrian phase would be appropriate to ensure that the Proposed Development would facilitate non-car borne modes. Given the balancing exercise required, we consider that the identified effects on this junction would be neutral in the overall balance.

Eastern Villages

- 3.3.510. As shown in Table 2: Changes in Traffic Flow in Eastern Villages (2036) there would be significant increases in traffic as a result of the Proposed Development in the Eastern Villages. The vast majority of this would be re-routing traffic, likely attracted by the new south facing slip roads at M69 J2, although, assuming the HGVRP was effective, a proportion of the non-HGVs would be associated with the Proposed Development.
- 3.3.511. The Applicant notes that the PRTM shows that the Eastern Villages already represent a destination for some HGVs and this is reflected in the WoD development figures in Table 2.
- 3.3.512. For the purposes of this analysis, notwithstanding the criticisms we have made of it in section 3.3.435 to 3.3.438, we will assume that the HGVRP would be effective in ensuring that only HGVs from the Application Site with a legitimate reason to travel into the Eastern Villages would do so.
- 3.3.513. This analysis will firstly look at the B4669 from M69 J2 towards and through Sapcote, and then consider the effects in Stoney Stanton.

B4669/ Stanton Lane, Sapcote junction (Junction 39)

- 3.3.514. This junction is located approximately 1km to the east of M69 J2. Due to increases in traffic, without mitigation the junction would operate significantly overcapacity (see Table 8-41 in the TA [REP3-157]). Consequently, the proposal is to introduce signal controls including a pedestrian phase across the Stanton Lane arm only.
- 3.3.515. Due to the width of Stanton Lane, there would not be room for a central island meaning that the pedestrian crossing would need to be undertaken in a single phase of the signals. With this arrangement the junction would operate within capacity.
- 3.3.516. The Stage 1 RSA [REP8-025] notes poor visibility from the western pedestrian waiting point due to the geometry of the junction and an existing hedgerow. In its response the Applicant indicates that at detailed design unobstructed visibility splays would be provided within the highway boundary, and we have no reason to disagree with this.

3.3.517. Overall, we are satisfied that the junction would operate satisfactorily and would mitigate the effects of the Proposed Development and thus be neutral in the planning balance.

Sapcote village centre

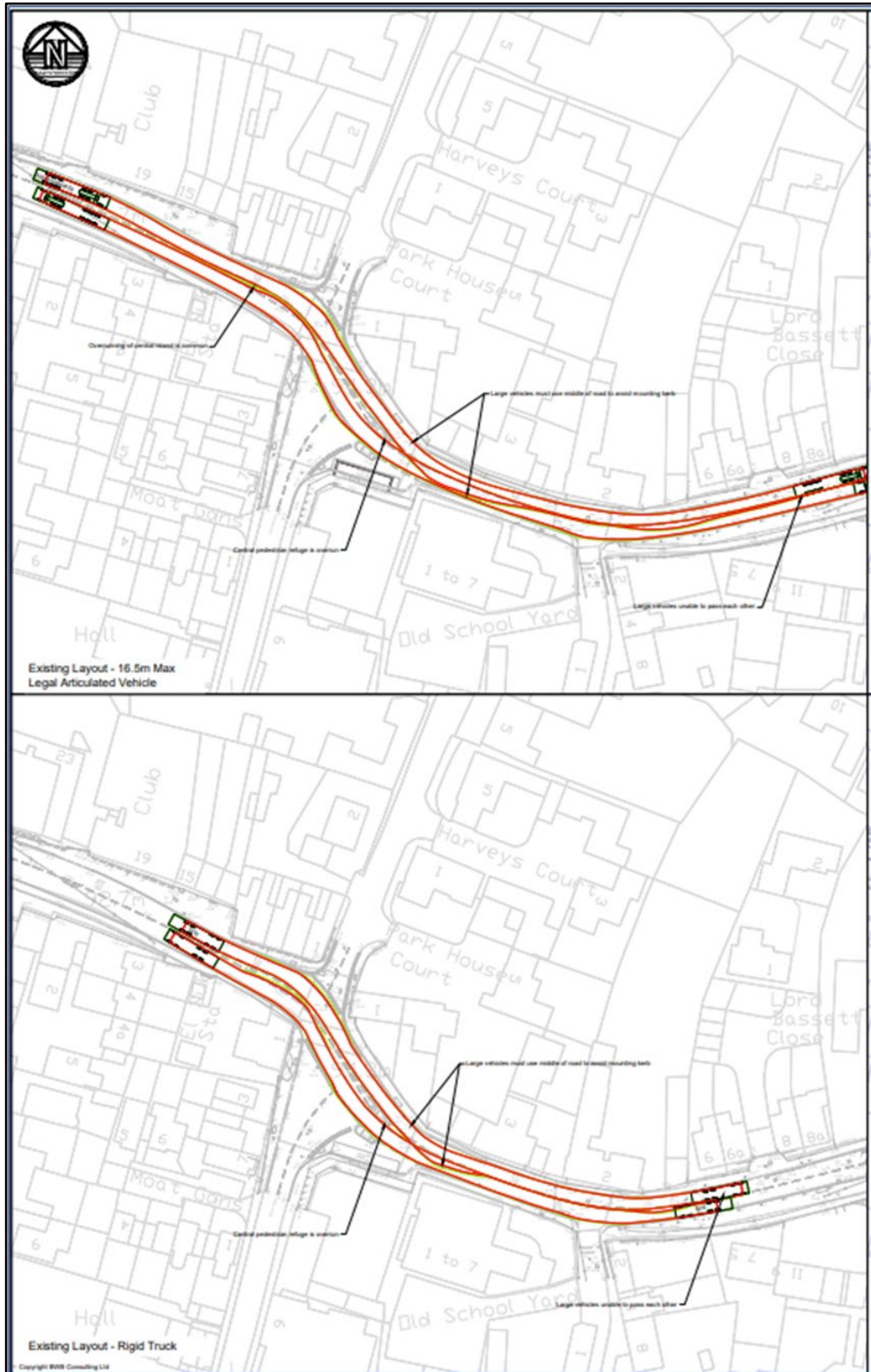
3.3.518. As set out in section 3.3.193 the geometry of the B4669 through Sapcote is constrained. There are a number of issues relating to the safety of highway users through this area leading us to the conclusion that the Proposed Development would be very substantially harmful to highway safety.

3.3.519. We note that LCC as highway authority in paragraph 33 of [\[REP8-035\]](#) also considers the Proposed Development has obvious and clear safety issues and the mitigation proposed would not address the effects.

3.3.520. Although the Interim [\[REP4-151\]](#) and Stage 1 [\[REP8-025\]](#) RSAs considered this area, it did not address all the issues set out in the Geometric Design Strategy Record [\[REP5-004\]](#). In addition, we are not satisfied with the Applicant's response to the Stage 1 RSA for the area outside the Co-op stores.

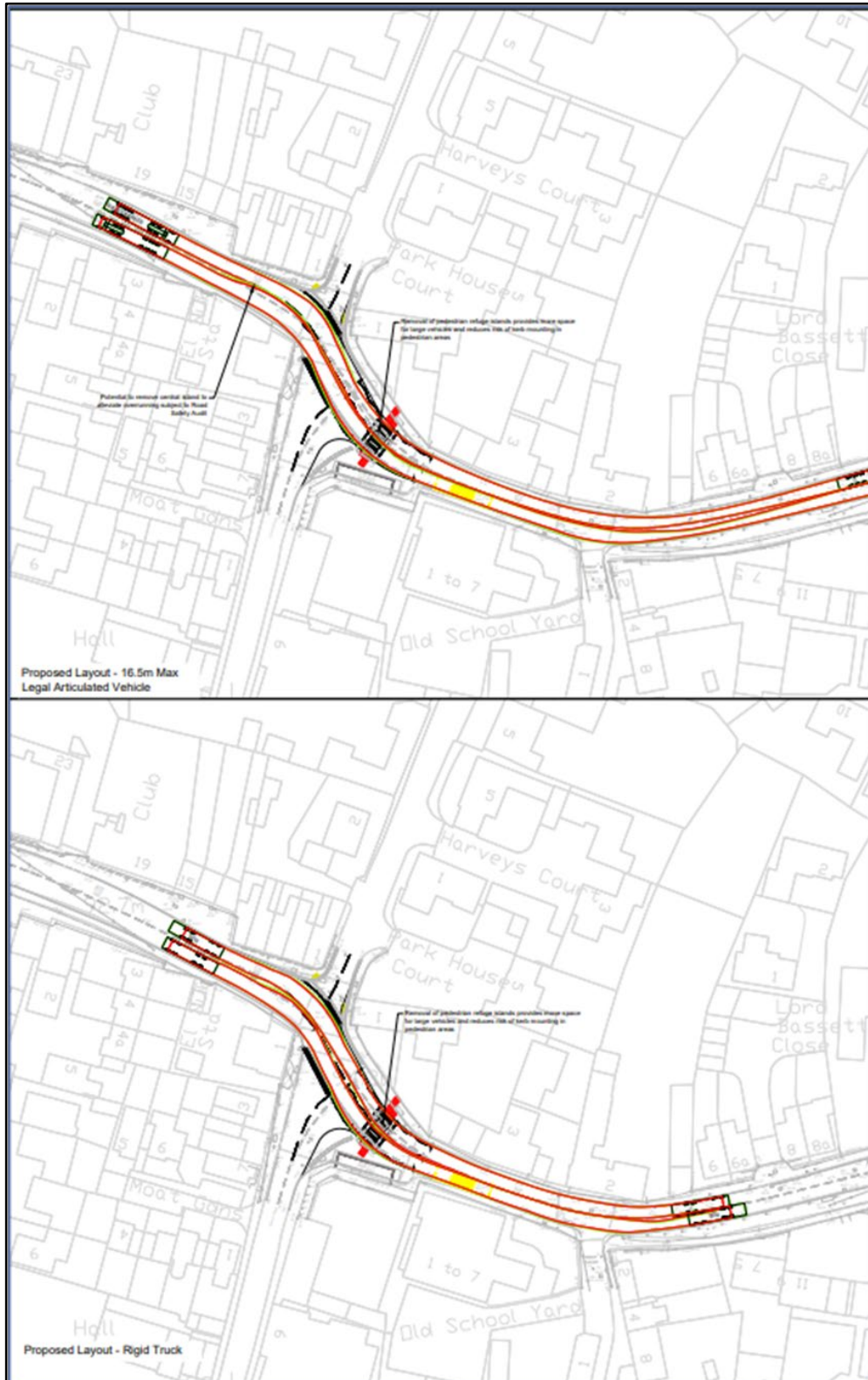
3.3.521. Figure 9 shows an extract from [\[REP5-004\]](#) and shows the existing situation for large articulated vehicles and rigid trucks. As can be seen both drawings have marked upon them "*Large vehicles unable to pass each other*".

Figure 9: Large Articulated Vehicle swept path through Sapcote (existing)



3.3.522. Figure 10 shows the equivalent two manoeuvres following the Proposed Development. As can be seen there has been no realignment to allow HGVs to pass.

Figure 10: Large Articulated Vehicle swept path through Sapcote (proposed)



3.3.523. In the Stage 1 RSA the auditor [REP8-025] identifies two issues to address. Firstly, relating to where the pedestrian visibility is measured from at the pedestrian crossing and secondly, in relation to the 'layby'

outside the Co-op store. It also noted as an 'Additional consideration' relating to a central island which is shown would be overrun.

- 3.3.524. As shown in Table 2: Changes in Traffic Flow in Eastern Villages (2036), there are three links assessed. Figure 11 shows them, extracted from [REP3-031]. Thus, the main two links for this analysis are links 41 and 43.

Figure 11: Assessed links through Sapcote



- 3.3.525. While the increase in general traffic is of concern, our main highway safety issue relates to HGVs. For Link 41 the AADT HGV figure would rise from 197 to 472, an increase of 140%, and for Link 43 from 142 to 404, an increase of 185%. The 'total vehicles' would increase by 61.7% (from 8,017 to 12,961) on Link 41 and by 42.1% (from 9,017 to 12,817) on Link 43.
- 3.3.526. With the increase in HGV traffic there is a much higher likelihood that two HGVs travelling in opposite directions would coincide in travelling on a specific section of road. As can be seen in Figure 9 and Figure 10 there is insufficient room for them to pass. This means that they would have to either wait or overrun the footway. The risk, with a high likelihood in our view, is that they would overrun the footway.
- 3.3.527. The footway on the north side of the B4669 to the east of the proposed pedestrian crossing is less than 1m in wide and that on the south side is around 1.8m. These can be seen in the photographs in the Interim RSA [REP4-151]. This means that any overrunning is likely to result in the risk of collision with pedestrians.
- 3.3.528. This area is already a busy area for pedestrians with the facilities in the centre of the village and this would continue with those waiting for the buses at both the proposed bus stop and in the school bus stop/ waiting bay outside the Co-op.
- 3.3.529. In the Stage 1 RSA [REP8-025] the auditor comments that *"the changes to the layout here [outside the Co-op] mean that the current lay-by will effectively become (and resemble) footway. This change is likely to result in pedestrians, specifically school children, waiting over a wider area as opposed to being concentrated within the footway when waiting for and alighting from the school bus. There is a concern that this will increase*

the risk of vehicle to pedestrian collisions, particularly given the complex manoeuvre required to fully enter the bay.” The Auditor therefore recommends alternative provision for the bus stop/ loading bay.

- 3.3.530. The Applicant only partially agrees with the auditor’s view and concludes *“that the careful use of tactile paving, small kerb upstands and contrasting paving in this location can enable the area to be utilised successfully as a shared surface and to allow buses and school children to wait safely without coming into conflict with each other”*.
- 3.3.531. The bus stops would result in the congregation of school children both at the stops and walking along the narrow footways to and from, as well as other pedestrians using the village centre facilities. The limited width would mean that there would be insufficient room for those waiting for the buses and those travelling along the footway to pass on the footway, particularly if wheelchairs or buggies were involved.
- 3.3.532. We have looked at the Personal Injury Collision data provided in the TA [[REP3-157](#)]. Table 4-12 indicates the baseline (2019) and future (2036) Collision and Safety levels. The links are not specifically designated for which section of road, but Links 16 and 17 relate to Sapcote. In both cases the COBALT analysis indicates that typical accident levels would rise from 0.3 to 0.4 per year and from 0.5 to 0.7 respectively.
- 3.3.533. Given the lack of width of the footways, which could not be widened within the Proposed Development, the numbers of pedestrians in the area and the increase likelihood of HGVs coinciding, our firm view is that this would result in an unacceptable highway safety risk.
- 3.3.534. The Stage 1 RSA also noted overrunning of the central island on the B4669 a short distance to the west of its junction with Stanton Road. This is not a formal pedestrian island, but our observations at USI1 [[EV1-001](#)] and USI4 [[EV1-004](#)] indicated that it is used as such, with the cross-hatching on the carriageway giving the impression that this is appropriate. This is because the footway on the south side of the B4669 is effectively discontinuous opposite the junction of Stanton Road. Thus, to travel safely along the B4669 from the shop in the village centre to the west, the most appropriate route would be to cross to the north, travel along the northern side footway and then cross back via the island. The removal of the island would therefore increase the risk of potential conflicts, again giving rise to an unacceptable highway safety risk.
- 3.3.535. As the issue in Sapcote is predominantly created by re-routing traffic, we have considered whether it might be possible to resolve this issue through an additional requirement. There was a discussion at ISH2 as to the possibility of imposing a 7.5 tonne weight restriction (apart from access) on this area, but we were advised that this could not be done because this is a ‘B’ class road.
- 3.3.536. A requirement could prevent development until a re-classification had occurred and a weight limit imposed. However, we do consider that this would not be appropriate for two reasons.

- 3.3.537. Firstly, there has been no consultation on such proposals and there may be entirely justified reasons why they would not be appropriate. In our view, to impose a weight limit now would be against the rules of natural justice. A consultation exercise should take place, which may give rise to representations from those who have not responded as part of the current Application, and the results evaluated. Should it be concluded that a weight limit restriction was to be inappropriate, this would negate any development consent since the requirement would then prevent implementation of the consent.
- 3.3.538. Secondly, and as importantly, the Applicant's traffic modelling is based on the assumption that traffic would re-route to use M69 J2 thereby creating extra capacity on the remaining network. The results of this can be readily seen by the modelled reduction in traffic in the AM Peak at M1 J21/ M69 J3. If HGVs were unable to travel through the Eastern Villages, including Sapcote, then they would have to utilise the remaining network. This has not been modelled and there would be, in our view, unassessed effects that are likely to need to be mitigated in line with the policies in the NPSNN and the dNPSNN throughout the wider network.
- 3.3.539. In our view the Proposed Development would lead to an unacceptable highway safety risk in the village of Sapcote, which could not be mitigated within the terms of the Application.

Stoney Stanton

- 3.3.540. There are two junctions which would be affected by the Proposed Development with the Applicant concentrating on the western one at the junction of the B581 Station Road and New Road, and Hinckley Road (Junction 37). The second is at the junction of the B581, New Road and Broughton Road, with Sapcote Road and Long Street (Junction 38).
- 3.3.541. For the western junction we are satisfied that this would operate satisfactorily. We note that the Stage 1 RSA [[REP8-025](#)] is concerned about the poor alignment towards the eastbound signal head/ stop line. The Applicant considers that the proposed signalisation of the junction would improve matters when compared to the existing situation and, in any event, this is a secondary access to the car park with the main access to the south on Hinckley Road.
- 3.3.542. On balance we consider that even with the increased volume of traffic through this junction that the Proposed Development would not result in an unacceptable highway risk.
- 3.3.543. However, turning to the eastern junction we note, as set out in section 3.3.218 to 3.3.220, that the junction would operate overcapacity, and in our view significantly so, in the WD scenario. In our view the Applicant's view that the existing form of the junction as being the best available does not address the policy expectation set out in paragraph 5.213 of the NPSNN and paragraph 5.280 of the dNPSNN that the applicant should have taken reasonable steps to mitigate impacts.

- 3.3.544. The Applicant's option of introducing traffic signals would have a negative impact. The Applicant also sets out in paragraph 8.132 of the TA [REP3-137] various other issues with this proposal and the reasons for rejecting it. However, given the hard surfaced open area to the south-west of the junction and a wide footway to the north-west which could be used for realigning the junction we are not persuaded that the Applicant has satisfactorily considered all reasonable alternatives.
- 3.3.545. Having said that, as proposed the operation of the junction post-development should weigh against the Development consent being granted with limited (little) weight in line with paragraph 5.214 of the NPSNN and 5.281 of the dNPSNN.

B4114 Coventry Road/ B581 Broughton Road, south of Croft (Junction 3)

- 3.3.546. As set out in section 3.3.211 this junction is proposed to have works under a separate s278 Agreement under the Highways Act 1980, which all parties agree would mitigate the effects of the Proposed Development as well as the development concerned.
- 3.3.547. However, in the scenario that this is not forthcoming the Applicant is proposing a reduced scheme (Work 17) to mitigate the effects of the Proposed Development alone with the dDCO [REP7-011] making provision for this (Req 5(2)).
- 3.3.548. LCC paragraph 32 of [REP8-035] "*simply does not understand*" why that reduced scheme would be only proposed.
- 3.3.549. In our view, the expectation in the NPSNN is that a proposal should mitigate its own effects, which the reduced scheme would do. While we acknowledge that paragraph 5.280 of the dNPSNN does indicate that applicants could include increasing the scope of a project to provide resilience on the wider network this is not in the NPSNN against which this Application should principally be determined. We consider that, on balance, the proposed scheme would be satisfactory, and this would therefore be a neutral matter.

B4114 Coventry Road/ Croft Road, south-west of Narborough (Junction 6)

- 3.3.550. Under the Proposed Development (Work 15) there would be lane widening on the approaches. The Applicant acknowledges that the mitigation proposed would not fully mitigate the effects of the Proposed Development nor ensure that it would operate within capacity in the PM peak, but considers that the worsening of the DoS would not be significant.
- 3.3.551. In our view, this failure to mitigate the effects of the Proposed Development means that, in line with paragraph 5.213 of the NPSNN and 5.280 of the dNPSNN, the Applicant should be expected to accept requirements and/ or obligations for funding adverse impacts. This would not be delivered, and consequently, this weighs against the Proposed

Development, although this would have limited (little) weight in line with paragraph 5.214 of the NPSNN and 5.281 of the dNPSNN.

Narborough

- 3.3.552. Considerable time was spent in the Examination considering the effects of the Proposed Development on highway users at the Narborough level crossing.
- 3.3.553. The Applicant's approach was that as long as the level crossing was not closed for more than 45 minutes in any hour then there were no issues. We tried to discover from where this standard was derived.
- 3.3.554. NR's response [[REP7-090](#)] was that there is no standard definition in either NR's Company Standards or Railway Group Standards and that the rail industry generally, including HM Railway Inspectorate at the Office of Road and Rail (ORR), only considers it necessary to undertake a site assessment where the 45 minute criterion is breached.
- 3.3.555. It seems to us that while this may be an industry standard it appears to be very railway based rather than assessing whether other users of the crossing would be adversely affected. It is more, justifiably, concerned that other users may not comply with restrictions rather than ascertaining the effects on, say, the highway and whether those highway effects would lead to congestion, highway safety through junction blocking, or other severe residual cumulative effects.
- 3.3.556. In the Narborough situation, it is clear that when the level crossing is closed there is congestion with backing up of the highway beyond the next junctions both north and south.
- 3.3.557. While the FONS indicated [[REP8-052](#)] that it considered that each train journey would result in a 4 minute closure, we are in agreement with the Applicant that each train path would result in closure of around 2 minutes 30 seconds assuming it did not coincide with the closure associated with another train path. The 4 minute time would include necessary time to slow to stop at the station.
- 3.3.558. What is of importance for the effect on highway users is the length of time in any hour that the crossing would be closed. Here the worst case would be for 25 minutes and 22 seconds between 15:00 hours and 16:00 hours. It is also the case as closure times increase, so does the likelihood of overlap between train paths, extending individual closures. This increases the likelihood that a traffic queue would not dissipate prior to the next closure of the crossing.
- 3.3.559. That the longest closure time in any hour is between 15:00 hours and 16:00 hours is also relevant in relation to school closure times. BDC provided information as to school opening hours and their locations in Narborough [[REP3-089](#)] which showed that the two primary schools, both north of the railway line, close at 15:10 and 15:15 hours.

- 3.3.560. Our observations at USI3 [[EV1-003](#)] and the evidence of queue length set out above indicate that queues would worsen and would result in congestion back to the junctions north and south.
- 3.3.561. Pedestrians could continue to utilise the stepped bridge over the railway, but the additional closure time would result in delay for those who are not willing or those with ambulatory issues, including those pushing buggies, or cyclists, (except for those who are prepared to carry their bicycles over the bridge, which would then conflict with pedestrians).
- 3.3.562. Given the existing queues and that the longest additional closure in any hour would be 5 minutes, we consider that highway delays at Narborough should weigh moderately against the development.

Elmesthorpe

- 3.3.563. Concern was expressed by residents of Elmesthorpe, for example Catherine Bass [[RR-0943](#)], Elmesthorpe Stands Together [[RR-380](#)] and Elmesthorpe PC [[RR-0379](#)], that, in their view, insufficient consideration had been to traffic effects in the village and noted that no link analysis of traffic on the B581 had been undertaken (see [[REP2-023](#)]).
- 3.3.564. Concerns were also expressed about the position of the pedestrian crossing of the B581 in the vicinity of Bostock Close, for example Elmesthorpe Stands Together [[RR-0380](#)] and Michelle Auger [[RR-0899](#)]. However, when this was moved following the Interim RSA, representations were made that indicated that the revised location was acceptable.
- 3.3.565. Finally, concern was expressed about employees parking in the Elmesthorpe area and then walking along Burbage Common Road to the site.
- 3.3.566. While it clearly would have been beneficial to the Examination for the Applicant to set out the link analysis for the B581 through Elmesthorpe we can understand why this was not done. With the provision of the A47 Link Road we consider that it would provide a shorter and more convenient access from the villages of Barwell and Earl Shilton to the north-west of the Application Site. In our view it is unlikely that employees would travel from the A47 along the B581 to Stoney Stanton, travelling south on Hinckley Road and accessing the site from the east when there would be a better route from the west.
- 3.3.567. Although we do not have evidence, for example from the PRTM, to show that there would be reductions in traffic levels, it is our view that this is likely.
- 3.3.568. With the pedestrian crossing moved to the western side of the Bostock Close junction we are satisfied that this would be safe, as confirmed in the Stage 1 RSA [[REP8-025](#)]. We discuss the convenience of the revised route in section 3.3.612 to 3.3.615.

3.3.569. In relation to parking, we are of the view that it is unlikely that those travelling to the Application Site by car would park in Elmesthorpe to walk to their employment; the Applicant has committed to providing free parking on site. Notwithstanding our criticisms of the STS and HGVRP, should it be necessary the £200,000 plus financial penalties fund in the latter document could be used to implement parking restrictions in the area.

Desford Crossroads (A47/ B582) (Junction 9)

3.3.570. One of the reasons that LCC was not willing to complete a s106 Planning Obligation by agreement was that the Applicant was not prepared to make a contribution towards works at the Desford Crossroads to the west of Leicester (see table in [REP7-083]). The Applicant's position [REP5-037] is that a contribution "*is not necessary or related to the Project ... the impact of the development at Desford Crossroads does not warrant any mitigation*".

3.3.571. The Desford Crossroads is examined as Junction 9 in the TA [REP3-157] with a LinSIG capacity assessment set out in Table 8-24. This shows that the Desford Crossroads would operate overcapacity in 2036 in both the WoD and WD scenarios. The analysis shows that the WD would reduce the already non-existent Practical Reserve Capacity (see paragraph 8.6 of the TA for definition) by 0.6% in the AM peak and 2.1% in the PM peak. The Applicant therefore concludes "*no further works are required at this junction*", effectively because the Applicant considers these are not significant.

3.3.572. The Proposed Development would result in capacity conditions at this junction deteriorating and, in line with paragraphs 5.213 of the NPSNN and 5.280 of the dNPSNN, the Applicant should make a contribution towards mitigation. Without such mitigation, therefore, this weighs against the Proposed Development, although for this junction due to the degree of effect this would only be with little weight.

SRN Closures

3.3.573. In response to concerns raised about re-routing traffic in the event that the SRN was closed, we asked NH in ExQ1.11.8 and ExQ1.11.10 [PD-011] as to how frequently both the M69 between junctions 1 and 3 and the A5 between the junctions with the A4303 at Magna Park and M42 J10 had been closed in the last three years, whether there was any indication that this was atypical and what diversionary routes were in place.

3.3.574. NH's response [REP8-042] sets out this information. For the M69 in this three-year period there had been 21 planned and 19 unplanned closures, and for the A5 47 planned and 28 unplanned closures. It considered both to be typical patterns. The diversionary route plan for the M69 can be found in [REP3-138], but for the A5 as a trunk road with multiple at grade junctions such a plan does not exist, and issues are considered on an individual basis.

- 3.3.575. The Applicant submitted a M69 Closure Emergency Plan [[REP3-043](#)] which indicates it considers that *"the occasional closure of the M69 would inevitably have an impact upon the operation of the Local Road Network, it is submitted that the inconvenience caused and potential amenity impacts arising from unusually high vehicular flows, would not be made material [sic] worse by the operation of HNRFI"*.
- 3.3.576. Given that closures, both planned and unplanned, are relatively infrequent events, we agree with the Applicant that the operation of the Proposed Development would not, of itself, materially add to congestion which would otherwise inevitably occur.

Rail

- 3.3.577. This Report discusses the Need for the Proposed Development and consideration of Alternatives in section 3.2 and is not repeated here. This section will deal with operational aspects and the effect on local railway infrastructure.
- 3.3.578. There was agreement between the Applicant and NR that the Application Site could be served by rail.
- 3.3.579. When fully operational at 16 two-way train paths a day, it was agreed that the 'split' of rail traffic would be 10 paths from the east (from Leicester) and 6 paths from the west (from Nuneaton) and the modelling was undertaken on that basis. The routes are gauged cleared to W12, and thus would comply with paragraphs 4.85 of the NPSNN and 4.80 of the dNPSNN which only require a gauge capability of W8.
- 3.3.580. One of the main points of contention in rail terms related to the potential effects of the rail paths on other operators, including passenger services, and whether the, overall, limited rail capacity should be better utilised, and whether it would result in off-site issues.
- 3.3.581. In our view this aspect relates to Government Policy. Government Policy, as we understand it, works on a 'first come, first served' basis, with existing operators' rail paths reserved, and NR allocating additional paths as requested (see paragraph 9.1.13 of [[REP5-087](#)]). Therefore, whether the use of the train paths would prevent the increase of passenger services on the line, or whether it would prevent other utilisations of the MML or have other effects on the operation of the railway network as a whole would fall within the realms of Government Policy.
- 3.3.582. NR indicates [[REP5-087](#)] that it is *"satisfied that sufficient network capacity exists in the [Working Timetable] to support the forecast level of traffic to/from HNRFI in both east and west bound directions. No allowance had been taken in this assessment for any capacity increase as a result of HS2. Accordingly the recent announcement of the cancellation of HS2 Phase 2 does not change this conclusion"*.
- 3.3.583. It is not the responsibility of the planning system to regulate rail use within this country. This is for NR and the Rail Operators operating within

the framework set by the ORR. We consider that this regulatory system should balance the competing needs for the use of track space.

- 3.3.584. This also applies to when, if ever since alternative net zero technologies may be utilised, the railway line past the Application Site would be electrified. For the purposes of consideration of the current Application our view is that the SoS should ensure that the design is 'future proofed' to facilitate electrification only. This is considered in section 3.3.593.
- 3.3.585. FONS believes that the Leicester to Nuneaton line should not be considered to be a 'main line' as it only has three way signals, rather than four way, and only allows for single directional running. In our view this is a matter for NR as operator of the network. As is clear, NR is content for this line to be connected to a SRFI. For simplicity, we will refer to the line passing the Application Site as 'the main line'.
- 3.3.586. FONS is also concerned about safety at the railport [[REP3-116](#)] ensuring that the gradient ensures that trains did not 'run away'. In [[REP4-125](#)] the Applicant indicated that the platform would be "*virtually flat*", less than 1:500. We are satisfied with the Applicant's response on this point, which would be subject to detailed design approval under Req 4 of the dDCO.
- 3.3.587. FONS also suggest that line speed at the entrance to the site would be 10 mph rather than the 25 mph suggested by the Applicant. A slower speed could have effects on other services, passenger and freight, on the network and have knock-on effects outside the Wigston North to Nuneaton South line. Paragraphs 7.2.2 and following of NR's Rail Report [[REP5-087](#)] confirms that the design would allow a 25 mph turnout and that the geometry used is suitable for both the proposed turnout speed and level of usage, including axle weight, envisaged. This also answers FONS's concern about the suitability of the track to take the weight of the proposed 775m long trains.
- 3.3.588. While the line is only signalled for single directional working, the Illustrative Railport Line Diagram [[APP-067](#)] indicates that points would facilitate bi-directional working on the main line should that come forward. Work No 1, as defined in the dDCO [[REP7-011](#)], specifically indicates the general arrangement of railway infrastructure should be in accordance with the railway plans which, via Schedule 15, includes the Illustrative Railport Line Diagram.
- 3.3.589. The Illustrative Railport Line General Arrangements Sheet 2 [[APP-073](#)] shows a Cripple Siding which would be delivered as part of the initial phases (that is pre-operation) of the rail infrastructure. In our view, the precise design of this and, for example, whether it should be provided with an inspection pit or partially covered, are matters that should be included within the detailed design secured under Req 4 of the dDCO.
- 3.3.590. FONS pointed [[REP3-116](#)] to an occasion in 2023 when a freight train broke down between Nuneaton and Hinckley blocking the line for approximately 5 hours. It was therefore concerned about the resilience of

the line with additional services running upon it, noting that the Wigston North to Nuneaton South section of line does not have passing sidings or similar facilities. While this is clearly predominantly a matter for NR, we did ask in ExQ2.11.10 [PD-013] the Applicant and NR whether the facilities on the Application Site could be used to relocate disabled trains off the main line.

- 3.3.591. NR [REP7-090] indicated that the failure of freight trains is rare, and that normally assistance is provided to take failed trains to their destinations. NR also notes that recessing facilities are available east of Leicester and in the Nuneaton area. There is also a long term aspiration (2033 to 2040) to provide additional recessing loops on the Wigston North to Nuneaton South line which would be capable of accommodating the 775m long intermodal trains. NR therefore considers that there would be no need to recess a failed train at the Application Site. We concur with NR for the reasons it has given.
- 3.3.592. The platforms at Narborough Station are not particularly wide and FONS is concerned about draughts from freight train pass-bys. Freight trains already utilise this section of track and, in our view, this is a NR and ORR matter as the Proposed Development would not materially affect the situation.
- 3.3.593. The proposed layout would facilitate the electrification of the railport through the use of overhead lines where appropriate, for example the clearance of the bridge carrying the A47 Link Road. Clearly overhead lines would not be safe for those parts of the site where containers would be manoeuvred. Here alternative means of propulsion would be required. Given that decisions as to the net zero approach for this section of line have yet to be taken, we are satisfied that appropriate provision has been made within the Proposed Development.
- 3.3.594. We are satisfied that in order to ensure a safe railway a number PRoWs would need to be either closed or diverted. We will discuss this in the next section of this Report.
- 3.3.595. To conclude on railway matters, we are satisfied that the Proposed Development could be satisfactorily integrated into the railway network both locally and more widely. Given the importance of this in delivering an SRFI we give this moderate weight in favour of the Proposed Development.

Public Rights of Way

- 3.3.596. This section will look at the effects of this on those using the PRoW network in terms of distances to be travelled. The amenity effects of the Proposed Development on those using the network are considered in section 3.4 of this Report.
- 3.3.597. It is clear that the Proposed Development would be incompatible with the current layout of the PRoW network through the main part of the Application Site, which would need to be reconsidered. While there are already pedestrian level crossings in proximity to the Application Site, the

use of the Application Site by slow moving trains would add to the risks and these should be closed. There was little dispute as to those near to the Application Site, with more of a debate for those further away.

- 3.3.598. Under the s106 Planning Obligation [[EEAS-001](#)] the Applicant would make contributions towards the upgrading of an existing bridleway and the provision by HBBC of a permissive path close to the Application Site, and, as shown in the Access and Rights of Way plans [[APP-019](#)] and [[REP4-005](#)], would provide for a new bridleway through the proposed informal open space to the north of Burbage Wood.
- 3.3.599. As set out in Table 4: Changes in travel distance Elmesthorpe to Burbage Common, the Proposed Development would materially increase the distance for those using the PRow network to get north/ south across the Application Site. The increase in distance would depend on the mode of transport and would involve travelling through the Application Site to minimise these increased distances.
- 3.3.600. The routes through the site are stated to be permissive routes meaning that they may be closed by the Applicant at its discretion and are not shown on the Parameters Plan [[REP4-016](#)] or the Access and Rights of Way plans [[APP-016](#)], [[REP7-005](#)], [[APP-018](#)], [[APP-019](#)] and [[REP4-005](#)].
- 3.3.601. We note that the Public Rights of Way Appraisal and Strategy [[REP7-032](#)], which would be a certified document under Schedule 15 of the dDCO, does indicate that new permissive routes are recommended across the main site and would be subject to later agreement. These would be secured through Req 25.
- 3.3.602. In our view a permissive route should have less weight than one forming part of the Definitive Map and Statement.
- 3.3.603. In light of the policy presumption in paragraph 5.216 of the NPSNN that there is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated, we have looked at the effects of the Proposed Development on these users. We do, however, note that in paragraph 5.273 of the dNPSNN that there is only a *“strong expectation that such impacts will be mitigated and, where this cannot be done, the applicant is required to provide reasoning for this”*.
- 3.3.604. For pedestrians, the greatest diversion would be for those wishing to travel between Elmesthorpe and Burbage Common Woods. If they used the proposed permissive route this would add 0.8km, or 33%, to the distance of the existing route, but if they kept to definitive routes this would add 2.0km, which would be 125% further. For equestrians, the increase would be 3.3km or 306% increase in distance. Cyclists would have the option of following either route.
- 3.3.605. In our view the alternatives provided by the Proposed Development would not mitigate the longer distances so as to result in severance for pedestrians and equestrians between the two locations.

- 3.3.606. In relation to the tests in the dNPSNN on balance, we consider that in the context of this Application it would be unsafe to re-provide direct routes due to the conflicts with road and rail traffic. However, we do consider it should be possible to dedicate a least a footpath through the site once the detailed design has been finalised and this could have been taken forward in either the dDCO or a s106 Planning Obligation.
- 3.3.607. To the north of the railway line, a new footpath would intercept the two footpaths (U50 and V23) which would be truncated by the Proposed Development and in particular the railport. For users this would result in a similar distance to the current situation, and we consider that in distance terms this would be neutral.
- 3.3.608. The Applicant would provide an area of some 22ha as informal open space with managed public access to the north of Burbage Wood. This would also have a bridleway within it connecting Burbage Common and Woods with the bridleway around the southern part of the Application Site.
- 3.3.609. The enhancements secured under the s106 Planning Obligation would provide benefits for those using that area for recreation and therefore should be given positive weight. They are required as they mitigate to some extent the diversions considered above.
- 3.3.610. It is proposed to also close three other pedestrian level crossings across the railway line as shown on [\[REP2-008\]](#) and [\[REP2-009\]](#).
- 3.3.611. From the south, the first would be at the Outwoods crossing between the U52/1 and U8/1. This would be replaced by a bridge, with ramped access which would thus be accessible to all users. An illustrative design is provided at [\[REP5-006\]](#). Although the route across the railway line would be made longer and involve a climb, in our view these disadvantages are offset by the improvements to safety. Overall, this aspect is therefore neutral.
- 3.3.612. The next northerly footpath to be closed would be between the B581 and Bostock Close. This would be necessary due to the proximity of the turn out to the railport to minimise the risk of conflicts on the railway line at this point. The alternative route would be to continue along the B581 to a new crossing on the north side of the junction with Bostock Close and then through Bostock Close itself to join the PRow network at the northern end.
- 3.3.613. As originally proposed the crossing would have been at the south side of the junction, but was proposed to be relocated as a result of the Interim RSA [\[REP4-151\]](#).
- 3.3.614. Currently, traversing the footpath from the southside of the B581 where there is a footway, involves crossing the road, climbing a stile, crossing a small open section of field, crossing the railway line and then following the footpath to join with a tarmacked path to the east of the properties in Bostock Close. The Proposed Development would involve continuing

along the footway, which is narrow, and then remaining on a tarmacked footway to rejoin the footpath.

- 3.3.615. In our view, the distances between the terminal points of the diversion would be similar. Due to the narrow width of the footway alongside the B581 using the field is safer, but this would be balanced by the safety enhancement of not crossing the railway line. Overall, we consider this aspect to be neutral.
- 3.3.616. The final crossing to be closed would be the Thorney Fields Farm No 2 Level Crossing which is located approximately 150m to the west of an existing farm accommodation bridge. Under the Proposed Development this crossing would be closed with a new footpath created both sides of the railway cutting and using the accommodation bridge.
- 3.3.617. The diversion proposed would add approximately 300m to the existing route as shown between points 19 and 20 on Sheet 2 of the Access and Rights of Way Plans [[APP-018](#)]. However, it would improve safety as it would negate the need to cross the railway line. There is the possibility that PRoW users would coincide with farm traffic using the accommodation bridge, but we consider that this would not be a frequent occurrence, and thus in the overall balance this change would be a neutral factor.
- 3.3.618. Under the terms of Req 25 before works commence in any phase a detailed public rights of way strategy for that phase in accordance with the principles of the Public Rights of Way appraisal and strategy [[REP7-032](#)] must be submitted and approved and then implemented. LCC is concerned that because the appraisal and strategy only has 'recommendations' (paragraph 1.101) these cannot be relied upon. While the Public Rights of Way appraisal and strategy would be a certified document under Schedule 15 of the dDCO, unlike some other certified documents, further details need to be approved. We are therefore satisfied that appropriate arrangements could be made at the detailed design stage.
- 3.3.619. Overall, the closure and diversions of PRoWs on the main body of the Application Site would not be mitigated by the Proposed Development so as to result in severance for pedestrians and equestrians between Elmesthorpe and Burbage Common Road. This has moderate weight against the Proposed Development.

ExA's Conclusions

- 3.3.620. Taking all the relevant documentation and policies into account, in relation to Traffic and Transport we conclude as follows:
- construction traffic would not have a material effect and is a neutral consideration;
 - the STS has a lack of ambition and consequently has not maximised opportunities to allow journeys associated with the development to be undertaken by sustainable modes. As such it should be given substantial weight against the Proposed Development. If this were to

be amended in line with the recommended DCO (rDCO) (Annex C) then we consider that this should be given little adverse weight;

- the HGVRP is not fit for purpose as it does not appropriately consider triggers and enforcement or deal with mitigation. As such it should be given substantial weight against the Proposed Development. If this were to be amended in line with the rDCO (Annex C) then we consider that this would be a neutral consideration;
- the Proposed Development would lead to an unacceptable highway safety risk in the village of Sapcote, which could not be mitigated within the terms of the Application. In our view, this weighs very substantially against granting development consent;
- there is insufficient information to show that the effects of the Proposed Development at both M69 J2 and M1 J21/ M69 J3 have been appropriately modelled, which would be particularly important at M1 J21/ M69 J3 as this junction is already operating at overcapacity meaning that the Applicant has not demonstrated that the Proposed Development would minimise the risk of road casualties and an overall improvement in the safety of the SRN. In line with paragraph 4.66 of the NPSNN and paragraph 4.59 of the dNPSNN we consider the SoS should, therefore, not grant development consent, and, in our view, this weighs very substantially against granting development consent;
- the Proposed Development would not mitigate its effects at:
 - the A5 Cross in Hand junction,
 - the A5 Gibbet Hill junction,
 - the B581, New Road and Broughton Road, with Sapcote Road and Long Street junction in Stoney Stanton,
 - B4114 Coventry Road/ Croft Road junction, south-west of Narborough,
 - Narborough generally, in relation to the effects of the railway level crossing, and
 - Desford Crossroads,

with little weight applied against the Proposed Development in each case;

- there would be beneficial effects at:
 - M69 J1,
 - Elmeshorpe,
 - B4114 (PM peak),
 - within Burbage

with little weight applied in favour of the Proposed Development in each case.

- the Proposed Development would have a neutral effect on:
 - the A5/ A47 Longshoot and Dodwells junctions,
 - the B4668 and the B4668/ A47 junction,
 - the A47 and A447 junction,
 - B4669/ Stanton Lane, Sapcote junction,
 - B4114 Coventry Road/ B581 Broughton Road, junction south of Croft.

- while there would be benefits in a small number of locations from the effects of re-routing traffic on the overall network, these would be far outweighed by the increases of traffic more widely;
- the Proposed Development could be satisfactorily integrated into the railway network both locally and more widely with moderate weight in favour of the Proposed Development;
- the closure and diversions of PRowS on the main part of the Application Site would not be mitigated by the Proposed Development so as to result in severance for pedestrians and equestrians between Elmesthorpe and Burbage Common Road. This has moderate weight against the Proposed Development.
- the closure and diversions of the other PRowS and pedestrian level crossings would be acceptable and are a neutral consideration.

3.3.621. Paragraph 4.66 of the NPSNN indicates that the SoS should not grant consent unless satisfied that all reasonable steps have been taken and will be taken to minimise the risk of road casualties arising from the scheme. In our view, this has not been satisfied in respect of Sapcote. A similar requirement can be found in paragraph 4.57 of the dNPSNN which also includes a test of minimising death and injury from a development.

3.3.622. In addition, there is insufficient information to show that the Applicant has fully modelled the effects of the Proposed Development at M69 J2 and M1 J21/ M69 J3. It would thus be contrary to paragraph 5.207 of the NPSNN and paragraph 5.268 of the dNPSNN since these require a Transport Assessment. This must imply that the Transport Assessment is of a sufficient standard to assess the effects of the Proposed Development and the Applicant has not taken all reasonable steps to minimise the risk of road casualties.

3.3.623. For those junctions where the Proposed Development would not mitigate its effects this would be contrary to paragraph 5.214 of the NPSNN and paragraph 5.218 of the dNPSNN with limited (little) weight being given against the Proposed Development.

3.3.624. The Proposed Development would be contrary to paragraph 5.216 of the NPSNN as it would not mitigate the impacts on accessibility for non-motorised users. Paragraph 5.265 of the dNPSNN gives a different test that Applicant's should address new severance issues for non-motorised users unless it is unsafe or unviable to do so. On balance, we consider that in the context of this Application it would be unsafe to do so due to the conflicts with road and rail traffic, but alternative provision could have been made within the overall terms of the Application once detailed design had been completed.

3.3.625. In relation to the dNPSNN, the Proposed Development has not fully considered opportunities to support sustainable transport modes (paragraph 5.264) and overall, it has not been demonstrated that the development improves the operation of the transport network and it does not assist with capacity issues (paragraph 5.274). This also applies in relation to paragraph 12 of DfT Circular 01/2022.

3.4. LANDSCAPE AND VISUAL

Introduction

- 3.4.1. This section deals with the landscape and visual effects of the Proposed Development.

Policy

NPSNN and dNPSNN

- 3.4.2. NPSNN paragraph 5.149 notes that landscape effects depend on the nature of the existing landscape and the nature of the effect likely to occur. Both factors need to be considered in judging the impact of a project. It further requires projects to be carefully designed and, having regard to siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.
- 3.4.3. Echoing the sentiments of paragraph 5.144 of the NPSNN, paragraph 5.153 to the dNPSNN states that the Applicant should carry out a landscape and visual impact assessment. A number of guides have been produced to assist in addressing landscape issues, including the Guidelines for Landscape and Visual Impact Assessment (Third edition) (GLVIA3) published by the Landscape Institute. The Applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England.
- 3.4.4. Amongst other things, paragraph 5.161 to the dNPSNN illustrates that projects need to have regard to siting, orientation, height, operational and other relevant constraints. The aim should be to avoid or minimise harm to the landscape, where adverse impacts are unavoidable providing reasonable mitigation and deliver landscape enhancement measures where possible and appropriate.
- 3.4.5. Paragraphs 4.33 and 4.34 to the NPSNN and paragraphs 5.158 and 5.169 of the dNPSNN require projects to be designed carefully. Amongst other things, they state that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design (including choice of materials), and topographical interventions (for example, creation of bunds or lowering of ground level).
- 3.4.6. Paragraph 5.170 to the dNPSNN echoes the sentiments of paragraph 5.158 to the NPSNN. It confirms that the SoS will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development.

National Planning Policy Framework

- 3.4.7. The Framework at paragraph 180 notes that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other matters, protecting and enhancing

valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan.

Local Policies

- 3.4.8. Policies CS2, CS14 and CS18 of the BCS [[REP4-165](#)], Policy DM2 of the Blaby District Local Plan (Delivery) Development Plan Document (the BDDPD) [[REP4-165](#)], Policies 6 and 20 of the HBCS [[REP4-178](#)] and Policies DM4 and DM9 of the HBDPD [[REP4-177](#)] deal with effects upon the countryside, green character, green infrastructure, Green Wedges and the design of new development.
- 3.4.9. Specifically in relation to Policy 6 of the HBCS [[REP4-178](#)] with Policies Map at [[REP4-175](#)], this promotes the Hinckley/ Barwell/ Earl Shilton/ Burbage Green Wedge. This falls to the east of the Hinckley/ Burbage settlement to the Borough boundary and includes parts of the Application Site. The explanatory text to this policy explains that it protects the separation of the three settlements, helping to protect their individual identities and provides easy access from the urban areas into green spaces.
- 3.4.10. This policy encourages uses that provide appropriate recreational facilities. It sets out a list of uses that will be acceptable; the Proposed Development does not fall within this list. For those developments which fall within those acceptable uses the policy sets out four criteria: retaining the function of the Green Wedge, retaining and creating green networks, retaining and enhancing public access and retaining the visual appearance of the area.

Case for the Applicant

Context

- 3.4.11. The broad context of the Application Site and surrounding area is set out in section 1.3.4 to 1.3.17 of this Report. The character and context of the Application Site is also shown at [[APP-288](#)]. No part of it falls within any national landscape designation, nor are there any in close proximity. The closest designated National Landscape is the area formerly known as Cannock Chase Area of Outstanding Natural Beauty, 43km to the north-west. The closest designated National Park is the Peak District, 60km to the north-north-west. Contrary to the contents of some RRs, including from Graham Friston [[RR-0430](#)] and the Loughborough East Community Association [[RR-0768](#)], the site does not fall within the Green Belt and policy in relation to this designation is not applicable.
- 3.4.12. At a national level, the Application Site falls within National Character Area (NCA) 94 (Leicestershire Vales). Key characteristics of this NCA include frequent small towns and large villages set in an open landscape of gentle clay ridges, valleys and patches of woodland.
- 3.4.13. Within the BDC area, the Application Site straddles three Landscape Character Areas (LCAs) as defined within BDC's Landscape and Settlement Character Assessment. The main part of the Application Site

and most of the site proposed for the A47 Link Road fall within LCA 6 'Elmesthorpe Floodplain'. The southern portions and M69 J2 fall within LCA 1 'Aston Flamville Wooded Farmland'. The majority of the off-site highway modifications east of the Application Site and M69 are within LCA 15 'Stoney Stanton Rolling Farmland'. The sensitivity of these LCAs to various development scenarios, including transport infrastructure and large-scale commercial warehousing, as seen by the Applicant is shown at Table 11.11 to ES Chapter 11 [[REP4-041](#)].

- 3.4.14. In Chapter 11 to the ES [[REP4-041](#)] the Applicant also considers relevant LCAs in nearby local authority areas. This includes a summary of the elements of the Proposed Development that fall within LCAs in HBBC's administrative area (Table 11.12 to ES Chapter 11). On the whole, identified LCAs comprise features that are broadly consistent with those within the NCA.
- 3.4.15. The extent of the LCA's in the vicinity of the main part of the Application Site can be found in [[APP-289](#)].
- 3.4.16. Details of the trees, groups of trees, woodland and hedgerows across the Application Site are described within the Arboricultural Impact Assessment at [[APP-194](#)]. There are no Tree Preservation Orders (TPOs) or areas of Ancient Woodland within the Application Site. However, there are several blocks of Ancient Woodland to the south-west of the site at Burbage Wood, Aston Firs, Freeholt Wood and Sheepy Wood. Additionally, Aston Firs and Freeholt Wood on the southern boundary of the Application Site are the subject of TPOs and these are considered by the Applicant to be of high amenity value. There are also three veteran trees located within the Application Site, two of which are within the area of the A47 Link Road and the remaining tree is within the main part of the Application Site. These can be found marked with a star on Sheets 13 and 28 of the Tree Constraints plan contained within Appendix 11.4 Arboricultural Impact Assessment to the ES [[APP-194](#)].
- 3.4.17. Several PRoWs that pass through the site are illustrated at [[APP-287](#)]. These generally provide links between local settlements and scattered farms across the area, the majority of which align with existing field boundaries and tracks, exiting the main part of the Application Site over the railway line or east over the M69. Open views are available over the Application Site from the majority of PRoWs that run through it. Additionally, one promoted route, the Leicestershire Round, passes around 30m west of the Application Site as it runs through Burbage Common and Woods.

Landscape Effects

- 3.4.18. An Illustrative Masterplan is provided at [[REP7-040](#)] and Figure 2 of this report, and a Parameters Plan is shown at [[REP4-016](#)]. Additionally, in ES Chapter 11 [[REP4-041](#)] the Applicant considers landscape and visual impacts. It describes and summarises the results of a Landscape and Visual Impact Assessment (LVIA), which was based on current best practice including GLVIA3. The LVIA was used to identify and assess the likely significance of effects of change resulting from development both

on the landscape as an environmental resource in its own right, and on people's views and visual amenity. The revised landscape and visual baseline for the LVIA is set out at [[REP4-058](#)].

- 3.4.19. The sensitivity of both landscape and receptors and the assessed magnitude of landscape and visual effects have been combined to arrive at an overall significance of effect during construction at year 1 of Operation of the Proposed Development and at year 15 of Operation. Schedules of visual construction effects and visual operational effects are shown at [[REP4-061](#)] and [[REP4-063](#)] respectively. Locations of significant visual effects during construction and residual effects at year 15 are depicted at [[APP-305](#)].
- 3.4.20. The Applicant accepts there would be significant adverse landscape effects during construction, at year 1 and at year 15 across the host LCAs, LCA 1: Aston Flamville Wooded Farmland and LCA 6: Elmeshorpe Floodplain as well as the main part of the Application Site and the A47 Link Road corridor. These effects are unavoidable given the nature of the scheme.
- 3.4.21. The Applicant also accepts there would be significant adverse visual effects during construction and at year 1 at 31 of the 54 representative viewpoint locations which represent various receptor groups, principally users of the PRowS throughout the local area. That said, it contends there would only be significant adverse residual effects at year 15 from 27 of these representative viewpoint locations, showing, to the Applicant, the effectiveness of landscape mitigation for some locations. Indeed, with mitigation, the Applicant considers there would be no residual significant visual effects on the most sensitive receptors in Burbage Common and Woods Country Park.
- 3.4.22. Where significant residual visual effects have been identified in longer range views, these are in the main, in isolated locations where there is an opportunity for a view from an elevated vantage point (such as at Croft Hill or on Shilton Road in Barwell). For the most part, the Applicant considers that the Proposed Development would not be visible within the wider landscape with significant effects largely contained within 1km of the main part of the Application Site. The exception to this is in views from the east, where the more open landscape would allow views across the fields along PRowS from Stoney Stanton to the M69 (such as footpath U17/1).
- 3.4.23. There would also be significant adverse visual effects at construction, year 1 and year 15 across the 20 residential receptors identified. This includes residents at the Gypsy and Traveller settlement off Smithy Lane and properties on Burbage Common Road.
- 3.4.24. Cumulative landscape and visual effects have been considered by the Applicant in-combination with development sites within the vicinity of the Proposed Development (shown at [[APP-345](#)]). Those sites which have the potential to result in cumulative landscape and visual effects are as detailed at [[APP-129](#)]. Significant cumulative effects with 'other

developments' have been identified at a number of LCAs, including LCA 15 'Stoney Stanton Roiling Farmland, LCA 6 Elmesthorpe Floodplain LCA and Earl Shilton Urban Character Area.

- 3.4.25. To reduce identified proposed effects, including those associated with the creation of two level plateaux shown at [\[REP4-085\]](#), the Applicant proposes a strong landscape framework would be established. Amongst other things, this would provide, according to the Applicant, considerable screening, containment and softening of the Proposed Development, particularly at the main part of the Application Site with planting well-established at year 1 of operation. Such planting includes an 11ha area of new trees, areas of scrub and meadow grassland to the south of the A47 Link Road.
- 3.4.26. To illustrate the mitigating effects of the landscape framework, the Applicant has set out in ES Chapter 11 a series of cross-sections, photographs and photomontages showing the likely visual appearance at various stages of the Proposed Development [\[REP4-076\]](#) and [\[APP-300\]](#). These take into account the effect of both conserved and proposed landscaping, together with the ability of the bunding to perform its mitigation function.
- 3.4.27. Notwithstanding that the built development would be screened by dense woodland close to the site, together with new planting and bunding, the Applicant sets out through the Design and Access Statement (DAS) [\[REP7-044\]](#) that buildings would be provided that offer architectural character, quality and enhancement to the immediate vicinity. This is advanced in the context of the understanding that warehousing buildings cannot be fully concealed.
- 3.4.28. A key objective of the scheme parameters for the Application Site is to establish principles which control the visual effects of the buildings and freight terminal operations. This is determined by fixed parameters for finished floor levels (FFL), the height of built form (to a maximum of around 28m) and the height of landscape screen bunds.
- 3.4.29. The various relevant requirements within the dDCO [\[REP7-011\]](#) would also serve to ensure that the appropriate mitigation for the Proposed Development would be put in place and implemented. These include Req 4 (Detailed design approval), Req 7 (CEMP), Req 11 (Container stack height), Req 19 (Landscape and Ecological Management Plan (LEMP)), Req 21 (Landscape Scheme) and Req 30 (Lighting).

Tranquillity

- 3.4.30. Effects on tranquillity, together with noise on new and re-routed PRowS, have been considered in ES Chapter 10 [\[REP4-039\]](#).
- 3.4.31. For Aston Firs during a weekday and weekend, the Applicant considers that the effect on tranquillity would be permanent negligible adverse. The resultant effect at Freeholt Woods on a weekday and weekend, and Burbage Common Woods on a weekday as a result of operational noise

would be permanent, minor adverse. A moderate adverse effect is predicted at Burbage Common Woods on a weekend.

- 3.4.32. The resultant noise levels at Aston Firs indicates that the levels would be below the upper guideline value for external areas in accordance with World Health Organisation (WHO) guidelines and BS 8233 'Guidance on sound insulation and noise reduction for buildings'. It also considered that the noise levels across the majority of the nature reserves would also be below 55 (decibel) dB $L_{Aeq,T}$. Therefore, the Applicant considers that the amenity of visitors to these areas would be protected.
- 3.4.33. In terms of the re-routed footpath adjacent to the M69, noise levels here from the Proposed Development would be below that associated with road traffic on the M69. Turning to the new footpath adjacent to the A47 Link Road, receptors along parts of this route would experience noise up to 72dB $L_{Aeq,16h}$. This is above the upper guideline value of 55dB $L_{Aeq,16h}$ for external areas in accordance with WHO guidelines and BS 8233. However, the existing footpath which passes through Freeholt Woods provides an alternative route, away from the footpath adjacent to the A47 Link Road. On this basis, the Applicant considers that noise experienced along the PRow network as a whole would not diminish the enjoyment of the countryside.
- 3.4.34. Furthermore, to mitigate noise, the Applicant has provided an illustrative landscape strategy [REP7-043] which indicates a number of measures to provide visual separation between the areas of interest and the Application Site. This, it is contended, should soften any impacts on perceived tranquillity. For wooded areas, the Applicant considers there would be limited visibility due to self-screening and therefore any perceived effect would be likely to be limited to a change in noise. Noise effects associated with fixed plant, equipment, break-out noise, construction traffic and noise and vibration from off-site rail movements would be at a low level at worst, so as not to warrant mitigation measures.

Case for Interested Parties

- 3.4.35. Concern has been expressed in respect of the transformative impact of the development of the Application Site. This is as a consequence of the introduction of the urban form of buildings, road and rail infrastructure into a predominantly rural landscape. Indeed, both BDC and HBBC consider that the scale and nature of the proposal would have a significant adverse impact on the existing landscape character. Such concerns are set out in representations including the LIRs [REP1-055] and [REP1-138], together with a third-party Landscape Design Review provided at [REP1-052] commissioned by the Councils as an appendix to their WRs [REP1-050].
- 3.4.36. Amongst other things, BDC and HBBC consider that harm in this regard would arise from the Proposed Development's overall size, intrusive appearance and alien character, as well as its disproportionate and fragmented green spaces that would inadequately 'buffer' the

development. Moreover, they consider that the experience of receptors in sensitive areas (including Burbage Common) would be diminished. This would also be true, they indicate, for the enjoyment of users on the local PRoW network, which would be severed from nearby settlements and influenced by urban features. Additionally, BDC and HBBC, particularly at [\[REP1-052\]](#), assert that the Proposed Development itself fails to demonstrate good design.

- 3.4.37. The above sentiments are echoed in other representations, including those from local residents such as Amy Smith [\[REP1-042\]](#) and Anthony Richard Green [\[REP1-044\]](#), Barbara Lees [\[REP1-046\]](#) and Burbage Parish Council [\[REP1-067\]](#), CPRE Leicestershire [\[REP1-084\]](#), The Woodland Trust [\[REP1-242\]](#), Elmesthorpe Stands Together [\[REP1-126\]](#), Stoney Stanton Action Group [\[REP1-224\]](#) and various parish councils. Such representations also raise concern in relation to the loss of part of the 'Green Wedge' of countryside providing visual separation between settlements such as Barwell, Earl Shilton, Burbage and Hinckley, the loss of a veteran tree, light pollution and the methodology for the day time and night-time visual assessments.
- 3.4.38. In response to concerns, including at [\[REP1-028\]](#), [\[REP2-072\]](#), [\[REP2-066\]](#), [\[REP4-125\]](#) and [\[REP4-133\]](#), the Applicant highlights the nature of the Proposed Development is such that functionality takes precedence in the design decision making process. Such a design would be different to the typically domestic scale and nature of buildings in this rural area. Overall, the Applicant considers that by necessity, the form and scale of Proposed Development, which is comparable in size to other SRFI developments and driven by a need to make efficient use of available land, would inevitably have some residual visual impact beyond the Application Site. This has been minimised as best as practicable.
- 3.4.39. Additionally, the Applicant highlights that this is a parameter led Application as the final detailed design is unknown. Accordingly, although it portrays the long-term evolution of the Proposed Development's design (described at [\[APP-113\]](#)), masterplans are simply illustrative. Consequently, the approach that has been taken with regard to landscape and visual impacts would continue through detailed design and management plans which are secured by Req 4 Detailed design approval, Req 7 CEMP, Req 19 LEMP, Req 21 Landscape Scheme and Req 30 Lighting.
- 3.4.40. Furthermore, to provide design clarity and enable swift delivery of the Proposed Development through the detailed planning process, a Design Code [\[REP7-051\]](#) has also been prepared. This is to be read in conjunction with the DAS [\[REP7-044\]](#). The Applicant therefore asserts that the current masterplans, together with the continuation of detailed design matters guided by the Design Code, demonstrate that the Proposed Development would be acceptable in terms of 'wayfinding', 'sense of place', materials and architectural design.

ExA's Considerations

- 3.4.41. Overall, we consider character the Application Site of is generally consistent with published assessments associated with relevant national and local character areas. Its retained historic field pattern, woodland setting and divorced positioning away from settlements provides a distinctly rural character.
- 3.4.42. That said, while pleasant, the countryside is generally unremarkable, and the landscape quality diminishes at the boundaries of the Application Site with the motorway and the railway line. Here, the influence of passing traffic and trains, together with road and rail infrastructure, is apparent. Such infrastructure, together with existing light sources in the vicinity of the site (in particular lighting at M69 J2, light spill from the urban area of Hinckley and the lights of moving vehicles on the M69 and trains on the railway), reduces the sense of tranquillity and rurality at these locations.
- 3.4.43. In line with the advice of the NPSNN (including paragraphs 5.144, 5.145 and 4.146), together with paragraph 5.161 of the dNPSNN, we are satisfied that the conclusions reached in ES Chapter 11 [[REP4-041](#)] have been guided by appropriate methodologies and documents, including those published by the Landscape Institute. We have carefully considered these visual assessments and our deliberations have also been informed by what we have seen on our various inspections of the Application Site.
- 3.4.44. With a development of the scale proposed it is inevitable that there is likely to be some degree of adverse landscape and visual harm. Indeed, paragraph 5.158 of the NPSNN and paragraph 5.169 of the dNPSNN recognise that the aim should be to avoid or minimise harm to the landscape and, where adverse impacts are unavoidable, provide reasonable mitigation and deliver landscape enhancement measures where possible and appropriate.
- 3.4.45. The construction phase would involve large scale civil engineering operations. The level of disturbance, including intrusive lighting, would be minimised through the provision of the requirements, including Req 7 CEMP ([\[REP6-011\]](#)) and Req 16 (Construction Hours). Mitigation at this stage would also include protective fencing for wooded areas within Aston Firs and Burbage Common. Moreover, as landscaping takes effect and buildings are completed, the Proposed Development would become more assimilated into the local area.
- 3.4.46. Nevertheless, there would be considerable adverse landscape and visual effects during the entirety of the construction phase. This would be as a consequence of the size of the construction activity itself, associated machinery and lighting and the gradual transformation of predominantly open, arable, land to a large commercial/ industrial landscape. Notably, there would be significant visual night-time effects at nearby properties such as Bridge Farm and the Gypsy and Travellers site off Smithy Lane. Additionally, while 'temporary' in nature, the construction period would occur for over 10 years. This is not an insignificant period of time, reinforcing visual harm.

- 3.4.47. At the operational stage, the fundamentally transformative nature of the Proposed Development would inevitably reduce the openness of this part of the NCA and harm a number of locally designated, more rural, landscapes such as the Elmesthorpe Settlement Character Area. Impacts would reduce to a degree beyond the boundaries of the Application Site due to structural landscaping. [[APP-112](#)] and [[APP-231](#)] show the parameters of the design of the landscaped mounds.
- 3.4.48. A significant amount of new and retained trees at the main part of the Application Site would soften the Proposed Development as they mature, with additional tree planting details provided as part of Req 22. Any vegetation removed to accommodate acoustic barriers would not be of significant visual amenity value.
- 3.4.49. The Lighting Strategy is shown at [[REP7-026](#)], incorporating a Technical Note for Obtrusive Light, and an additional note concerning the M69 lighting was prepared at [[REP3-062](#)]. Together with the CEMP, these demonstrate that obtrusive lighting could be minimised by securing maximum values of light parameters set for the Application Site, targeted lighting, cowls and planting. Lighting would also be managed via Req 30, which is agreed in both SoCGs with BDC and HBBC (documents [[REP8-020](#)] and [[REP8-021](#)]).
- 3.4.50. Moreover, the phasing and sequencing of the Proposed Development as a whole would lessen landscape impacts. As an example, stack heights within the container storage area would be permitted at different temporal stages of the Proposed Development by Req 11. Higher stack heights would only be permitted after the first five years of operation, when maturing landscape mitigation would provide additional visual screening. We consider that the phasing set out by the Applicant would be appropriate.
- 3.4.51. Taking the above into account, the phasing of elements of the Proposed Development, together with landscape and lighting mitigation, would be effective in reducing impacts from certain locations. On the evidence before us, there has therefore been steps taken to minimise landscape harm in accordance with paragraph 5.177 of the dNPSNN.
- 3.4.52. Nonetheless, the Proposed Development would be highly visually prominent, particularly from elevated locations such as Shilton Road in Barwell. It would wholly transform the landscape at the Application Site and lighting associated with the Proposed Development would draw the eye, introducing large scale visual disturbance into what is currently a sparsely inhabited rural area. All of this would be substantially harmful and would significantly alter the rural setting of nearby villages including Stoney Stanton and Elmesthorpe. It is also self-evidently inevitable that the magnitude of the cumulative and combined landscape and visual impact with other developments would be greater than for the Proposed Development alone. In our view, the Applicant has therefore underplayed residual visual and landscape effects. We give this substantial weight against the making of the DCO.

- 3.4.53. It is also clear that the Proposed Development would be contrary to the terms of Policy 6 of the HBCS, both in principle and when considered against the individual criteria. However, while the Local Plan is an important and relevant matter to be taken into account, it is not the principal decision making criterion, since this Application should be first considered against the NPSNN. That said, the harm to this area from the Proposed Development, which is otherwise protected by the local plan, reinforces our conclusions set out above. We therefore give this moderate weight against the making of the DCO.
- 3.4.54. Turning to tranquillity, we acknowledge that noise levels at sensitive areas such as Burbage Common and along PRowS would not be to the degree that would cause unacceptable disturbance to receptors. In reaching this finding, we are mindful of the Applicant's clarifications provided at [\[REP3-061\]](#) in relation to Acorns Café on Burbage Common. These show that worst case internal and external noise levels here would be below recommended WHO guideline limits and those prescribed within BS 8233.
- 3.4.55. However, sizeable buildings at the Application Site would be within relatively close proximity of external recreational areas, including elements of Burbage Common and nearby Smenell Field, together with various PRowS. Regardless of proposed screening, the scale of development would be perceptible from these locations. As a consequence, the experience of tranquillity and rurality for recreational users of nearby external areas, footpaths and bridleways would be diminished. This would make them significantly less pleasant spaces and routes in which to spend time. This harm would be reinforced given that certain PRowS would be drawn closer to highway infrastructure, where the urbanising presence of vehicle movements and lighting would markedly decrease the enjoyment of users along such routes.
- 3.4.56. We therefore find that the Applicant has underestimated the effect that the Proposed Development would have on tranquillity. This is so even though Natural England (NE) have confirmed in [\[REP4-139\]](#) that the Woodland Management Plan ([\[REP1-015\]](#)) would secure adequate access and maintenance to wooded recreation areas and although the Design Code [\[REP7-051\]](#) would foster tree-lined walking and cycling routes.
- 3.4.57. Lastly, in relation to the design of the Proposed Development itself, the Applicant clarified at ISH3 ([\[EV7-004\]](#)) that there are a number of operational, functional and safety factors contributing to the form of the illustrative layout. This includes the very specific gradients that a rail line can be set at which, in our view and in combination with other factors, satisfactorily justify the removal of the veteran oak tree.
- 3.4.58. It is acknowledged that the detailed design and layout of the Proposed Development would be considered at a later date by virtue of Req 4 (Detailed design). Nevertheless, the illustrative layout shows that sizeable areas of hardstanding would occupy a large proportion of the Application Site. Although there would be elements of on-plot landscaping, this would provide an unduly harsh commercial appearance.

- 3.4.59. Buildings would differ in terms of scale, mass and orientation. However, we are not persuaded that this would foster active frontages. On the contrary, details for buildings provided at this stage show that they would follow a similar aesthetic scheme, providing a repetitive streetscape with limited legible hierarchy. While the overall design approach is simple and guided by factors including user safety, we therefore find that reoccurring streetscapes would fail to foster clear directional choices by users.
- 3.4.60. It follows that, as well as being dominated by the physical presence of hardstanding, the illustrative design would not facilitate appropriate 'wayfinding' and would not enable a suitable 'sense of place'. This is so even though there would be some differences between the character of the A47 Link Road and internal estate roads. This is indicative of poor quality design. Such a finding is reinforced given that the proposed materials palette would also be generic and unimaginative. Rather than providing an 'identity' for the Proposed Development, this would emphasise its harsh commercial/ industrial appearance, to the further detriment of the visual integration with the surroundings.
- 3.4.61. As such, although the detailed design of the Proposed Development would be considered at a later date, we find that the Applicant has not demonstrated, at this stage, that the adverse landscape and visual effects of the Proposed Development have been minimised through appropriate design. In this respect, there is conflict with the objectives of paragraphs 5.157 and 5.158 of the NPSNN and paragraphs 5.169 and 5.170 of the dNPSNN.

ExA's Conclusions

- 3.4.62. Taking all matters raised into account, we conclude that:
- the removal of a single veteran oak tree has been justified, noting operational, functional and safety factors contributing to the form of the illustrative layout of the Proposed Development. This therefore has little weight against the making of the DCO;
 - there would be considerable adverse impacts from the Proposed Development in both landscape and visual terms during construction and operation, reinforced by cumulative effects with other developments. This harm would be inevitable given the scale of the Proposed Development and the transformation of the landscape from broadly rural to commercial/ industrial in nature. Such effects would be mitigated to a degree, for example by measures within the CEMP and by integrated structural landscaping, in line with paragraph 5.157 and 5.158 of the NPSNN and paragraphs 5.169 and 5.170 of the dNPSNN. Nevertheless, we find that substantial residual visual and landscape harm would remain. This weighs substantially against the making of the DCO;
 - while noise alone would not cause significant harm to tranquillity, in combination with the visual presence of buildings, there would be a marked change to the experience of tranquillity and rurality for recreational users of nearby external areas, footpaths and bridleways.

This includes Burbage Common and along PRow through and around the Application Site. The Applicant has underestimated harm in this regard, which adds to the overall degree of landscape and visual harm identified above; and

- there would be harm to both the nature and function of the Green Wedge between Hinckley, Barwell and Burbage, however, in the context of the consideration of an NPS this has only moderate weight.

3.4.63. Overall, insufficient regard has been paid to satisfying the criteria of good design, such that the Proposed Development would not be compliant with paragraphs 4.33 and 4.34 of the NPSNN and paragraphs 4.24 to 4.26 of the dNPSNN in this regard. However, this would be addressed at the requirements stage.

3.5. NOISE AND VIBRATION

Introduction

3.5.1. This section deals with the noise and vibration effects of the Proposed Development both during construction and operation.

Policy

NPSNN and dNPSNN

3.5.2. Amongst other things, the NPSNN, at paragraph 5.195, seeks to avoid significant adverse impacts on health and quality of life from noise and mitigate and minimise other adverse impacts on health and quality of life from noise from new development.

3.5.3. Requirements to secure noise performance (NPSNN, paragraph 5.196) and mitigation (NPSNN, paragraph 5.197) should be considered, but measures should be proportionate. Appropriate measures can include containment, noise reducing materials, layout changes and administrative measures including noise and working hours limits. Projects should also demonstrate good design through optimisation of scheme layouts to minimise noise emissions and, where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission (NPSNN paragraph 5.194).

3.5.4. The policies in the dNPSNN, including those at paragraphs 5.231 and 5.232 in relation to noise, echo those set out in the NPSNN. Relevant statutory requirements and the relevant sections of the Noise Policy Statement for England, the Framework and PPG on noise should be met in both construction and operational stages.

Local Policies

- 3.5.5. Amongst other local planning policies, Policy DM13 of the BDDPD [[REP4-165](#)] and Policies DM7 and DM10 of the HBDPD [[REP4-177](#)] seek to ensure that there are no adverse impacts in terms of noise on tranquil environments and sensitive receptors.

Case for the Applicant

Introduction

- 3.5.6. ES Chapter 10 [[REP4-039](#)] considers noise and vibration. This identifies and then assesses a number of noise and vibration sources associated with the Proposed Development. This includes sources associated with construction, operation, off-site road traffic and off-site rail movements. Effects on tranquillity are also assessed.
- 3.5.7. In general, the assessment methodology used for each type of source is different in terms of how the potential noise or vibration impact is predicted and how the effect is assessed. The degree of the impact and the significance of the effect is dependent upon several factors, including the noise level from the particular activity, the existing sound environment, and the duration, timing and character of the different noise sources.
- 3.5.8. Prevailing noise conditions at locations representative of Noise Sensitive Receptors (NSR) associated with or in proximity to the Proposed Development have been determined. The nearest NSRs to the Application Site are located in all directions from it and are detailed in Table 10.14 to ES Chapter 10 and shown in [[REP4-039](#)].
- 3.5.9. Long term noise monitoring was undertaken to cover both a weekday and weekend period at four Noise Monitoring Positions (NMP) considered representative of the NSRs. Short-term monitoring was undertaken at two NMPs in accordance with the shortened procedure detailed within the guidance of the DfT/ Welsh Office 'Calculation of Road Traffic Noise'. The monitoring locations are identified at [[APP-271](#)]. At each location the ambient (L_{Aeq}), background (L_{A90}) and maximum (L_{AFmax}) sound pressure levels were measured continuously throughout the survey. Noise monitoring details for each NMP are described at paragraphs 10.92 to 10.99 of ES Chapter 10. Equipment used at each position, together with vibration monitoring equipment, is shown at Tables 10.17 and 10.18 respectively of this Chapter.
- 3.5.10. A summary of measured noise levels at each position is presented in Tables 10.20, 10.21, 10.22 and 10.23 to ES Chapter 10 [[REP4-039](#)]. Full results for all four monitoring locations are provided at [[APP-189](#)] 'Summary Results'.
- 3.5.11. It is stated that the noise levels across the main part of the Application Site are dominated by noise from traffic on the surrounding road network. For the noise levels to increase by 3dB, which is widely accepted to be perceptible under most normal conditions, there would

need to be a doubling of the existing traffic flows. A review has been undertaken of recent traffic data, which indicates that, compared to the future baseline, there would be up to a 4dB increase on the B4669 and slip roads associated with the M69, and up to a 6dB increase at the roundabout associated with M69 J2.

Construction Noise and Vibration

- 3.5.12. In terms of construction activity, specific details of activities and associated plant are not available at this stage. Table 10.27 to ES Chapter 10 [[REP4-039](#)] therefore sets out the key construction activities which have been assumed including the plant type, number and assumed utilisation (percentage 'on-time') used in the prediction of noise levels. The overall construction period is also split into four stages.
- 3.5.13. The likely noise effects were predicted at the NSRs located closest to the site boundaries, as it is assumed that the impact would be less for those receptors located further away. These predictions were undertaken by the Applicant based upon assumed construction methodologies, including the types and numbers of proposed plant. For the purpose of these predictions, the intervening ground between the construction noise sources and the receivers is considered to be 50% acoustically absorbent. Where screening exists due to existing buildings, a screening correction of 10dB has been included.
- 3.5.14. The assessment considered both an 'average' case scenario (construction plant operating in the approximate centre point of the closest area of construction to each NSR), and a 'worst-case' scenario (construction plant operating at the closest point to a given NSR). For the 'worst-case' scenario, it has been assumed that stages 1 (site preparation), 2 (foundation works) and 4 (road surfacing) could take place within 5m of the main part of the Application Site. For stage 3 (building erection works), the distance has been measured to the closest area of hard standing associated with the proposed units. For the 'average case' scenario, it has been assumed by the Applicant that the site preparation and foundation works could be associated with the proposed roads, where these elements are closest to the NSRs. For NSRs that cover a large area, such as NSRs 15 to 19 (Aston Firs Caravan Park, Castlewood Park, Rosevale Park, Aston Firs Site of Special Scientific Interest (SSSI) and Burbage Common and Woods), the area closest to each phase of the construction area has been considered.
- 3.5.15. Table 10.28 to ES Chapter 10 sets out the Applicant's predicted unmitigated construction noise levels at a selection of the nearest NSRs, for the 'average' and 'worst-case' situations.
- 3.5.16. The Applicant considers that the unmitigated effect of construction noise is likely to be a temporary, major adverse, at worst for NSRs, based on construction taking place close to NSRs. NSRs 1 (Bridge Farm), 9 (Woodfield Stables), 14 (Averley House), 15 (Aston Firs Caravan Park), 17 (Rosevale Park), 18 (Aston Firs SSSI), 19 (Burbage Common and Woods), 20 (Bassett Cottage), 21 (Hissar House Farm), 24 (Billington Rough dwelling) and 26 (Billington Road East) would experience

predicted noise levels above 65dB level during the worst-case scenario. However, for most receptors, for 'average case' scenarios, the noise levels are predicted by the Applicant to be below 65dB, resulting in temporary minor adverse effects. Indeed, there are only two occasions where noise is considered likely to be above this level (at NSR 1 during stages 1 and 2 of construction works).

- 3.5.17. That said, the Applicant's assessment does not take into account any screening afforded by the on-site buildings once they are built or any mitigation. It is therefore possible that noise effects would be lower than predicted and any major adverse effect would be short-term. Construction over the overall phase of 10 years is also unlikely to take place close to receptors over a prolonged period. For example, exceedances of the 65dB level during the average case scenario are only for stages 1 and 2, which relate to ground preparation. This would not take place over a significant period of time without some screening being afforded by other phases of the Proposed Development as it is built out.
- 3.5.18. Predicted ground-borne vibration levels applicable to typical vibration generating site preparation/ construction activities are shown at Table 10.29 to ES Chapter 10 [[REP4-039](#)].
- 3.5.19. Based on a 'worst-case' receptor distance of 25m from any proposed works, the Applicant considers that the impact magnitude of potential vibration effects can be predicted. The above activities would be likely to result in a temporary minor, adverse effect at the majority of NSRs, which would result in vibration levels between 0.3 millimetres per second (mm/s) and 1.0mm/s. For NSRs 1, 9, 10, 15 through 19 and 24, there would be the potential for a temporary, moderate adverse effect to be experienced should proposed works be undertaken at distances closer than 25m.
- 3.5.20. Overall, the Applicant contends, it is likely that any effect would be limited to a temporary, negligible adverse effect for the majority of the NSRs, which would result in vibration levels less than 0.3mm/s.
- 3.5.21. In terms of construction traffic, for all road links assessed in the peak year of 2026, the Applicant's predicted noise increase is up to +0.6dB. In accordance with DMRB, this is likely to result in a temporary, negligible, adverse effect. The results of the assessment are shown at [[APP-190](#)].

Operational effects

- 3.5.22. Noise from the completed development, including from HGV movements, loading/ unloading operations, lorry park and service yard areas, SRFI operations, noise and vibration from off-site rail movements and the effects upon re-routed PRowS and local tranquillity, has been considered by the Applicant.
- 3.5.23. The predicted daytime and night-time noise levels have been calculated by the Applicant at the NSRs, as identified in Table 10.14 to ES Chapter 10, without any mitigation in place. It considers the tonality associated with the gantry cranes is likely to be just perceptible at NSRs 1 to 8, 19,

20, 25 and 26. However, it considers noise would be clearly perceptible at NSR 24. Impulsivity (noise that carries a sudden sharp sound or sudden bang of short duration) associated with the Proposed Development is considered likely to be just perceptible at NSRs 2 to 8, 15 to 20, 25 and 26. The Applicant also considers it would be clearly perceptible at NSRs 9 (Woodfield Stables), 10 (Langton Farm) and 24 (Billington Rough dwelling).

- 3.5.24. Given the intervening distance between the Proposed Development and NSRs 12 to 14 (Highgate Lodge, Red Hill Farm and Averley House), and the presence of the M69, the Applicant considers that any noise character change associated with HGV deliveries is unlikely to be noticeable against the existing noise climate at these NSRs.
- 3.5.25. The unmitigated effect of operational noise associated with the Proposed Development in the weekday daytime, weekday night-time, weekend daytime and weekend night-time are shown at Tables 10.39, 10.40, 10.41 and 10.42 to ES Chapter 10 [[REP4-039](#)] respectively. The results of the assessment indicate that adverse impacts may be experienced at NSRs during the periods under consideration. However, in line with guidance within BS 4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound' (BS 4142+A1:2019), the Applicant has considered the context for those receptors that may experience adverse impacts as a result of operational noise associated with the Proposed Development.
- 3.5.26. The Applicant has compared the sound rating levels (a standard way to measure and specify noise in buildings and occupied spaces) with the existing noise climate at each receptor where an adverse impact is predicted, for the daytime and night-time for both the weekday and weekend periods (see Tables 10.43 and 10.44 to ES Chapter 10). Permanent, major adverse effects at worst are shown at NSRs 9 and 24 for weekday periods, at NSRs 1 to 8 (Bridge Farm, receptors at Bridle Path Road, Billington Farm and receptors at Billington Road East) and NSRs 24 to 26 (receptors at Billington Rough and Billington Road East) during the night-time weekend period and at NSRs 9 (Woodfield Stables) and 19 (Burbage Common and Woods) during the daytime. However, for the majority of NSRs, the existing ambient noise levels are predicted to marginally increase. Increases in 2.9dB and 3.9dB are shown, considered to be permanent, minor adverse effects.
- 3.5.27. Furthermore, as requested by HBBC during consultation, the resultant operational noise levels associated with the Proposed Development have also been predicted at NSRs 21, 22 and 23. Due to the distance between the Proposed Development and these receptors, the Applicant considers noise from the Proposed Development is unlikely to result in adverse impacts.
- 3.5.28. An assessment has been undertaken by the Applicant to determine the impact of transient event noise at nearby NSRs during the night-time. As shown at Table 10.47 to ES Chapter 10, noise levels associated with impulsive noise are between -29dB and +10dB above the adopted

criteria (free-field external level of 60db $L_{AF,max}$) during the night-time, dependent on the NSR and noise source. The unmitigated effect of impulsive noise associated with the spreader impact (such as the lifting of containers) and that associated with gantry cranes is likely to be permanent, major adverse for NSR 24 (Billington Rough dwelling) during the night-time. For NSR 1 (Bridge Farm), the Applicant considers the unmitigated effect is likely to be permanent, moderate adverse. For remaining NSRs, the unmitigated effect is considered to be likely to be permanent, minor adverse at worst.

- 3.5.29. The Applicant considers that the unmitigated effect of impulsive noise associated with container placement is likely to be a permanent, major adverse at worst for NSR 24 during the night-time. For NSRs 1, 2, 4, 6, 7, 8, 25 and 26, the effect is considered to be likely to be permanent, moderate adverse. For the remaining NSRs, it is considered that the effect is likely to be permanent, minor adverse and permanent, negligible adverse.
- 3.5.30. Turning to fixed plant, equipment and break-out noise, including noise from the energy centre, should the noise levels set out in Table 10.48 to ES Chapter 10 not be exceeded, the Applicant considers it is likely that any effect would be limited to a permanent, minor adverse effect at worst.
- 3.5.31. In terms of off-site rail movements, the Applicant anticipates that there would be a maximum of 16 intermodal train movements per day, which would result in an additional 32 one-way movements. In the absence of detailed information, it is assumed that the movements would be spread evenly throughout the day. This results in 21 movements during the daytime (07:00 to 23:00 hours) and 11 movements during the night-time (23:00 to 07:00 hours). The highest change is predicted to be +1.8dB during the night-time period. Therefore, the Applicant considers that the effect is likely to be permanent, negligible adverse.
- 3.5.32. The baseline vibration monitoring which has been undertaken of the existing rail line indicates that the Applicant considers there would be a maximum Vibration Dose Value (VDV) of $0.05\text{m/s}^{1.75}$ (z -axis) during the daytime period, and a maximum VDV of $0.04\text{m/s}^{1.75}$ (z-axis) during the night-time period. The effect of vibration as a result of train movements on the sidings is likely to remain as permanent, negligible adverse at all receptors.

Off-site Road Traffic Noise

- 3.5.33. The Applicant has used a digital acoustic model to assess road traffic noise. The assessment considers the permanent operational road traffic noise effects of the Proposed Development on existing NSRs. The assessment has been based on the change in road traffic noise level arising from the operation of the Proposed Development for the following scenarios:

- Comparison 1: opening year without the Proposed Development vs. opening year with the Proposed Development (short-term change); and
- Comparison 2: future year without the Proposed Development vs. future year with the Proposed Development (long-term change).

3.5.34. Noise contour maps have also been produced for with and without the Proposed Development and are shown at [APP-274] and [APP-275] for the short-term and [APP-277] and [APP-278] for the long-term.

3.5.35. The short-term change in noise level (Comparison 1) at residential and other sensitive receptors within the study area as predicted by the Applicant is presented in Table 10.52 to ES Chapter 10. Of the 123 residential properties located within the study area, 116 are predicted to experience a minor adverse, or negligible noise effect, or no effect in the short-term. The four residential receptors predicted to experience a major adverse effect are located in the following areas:

- one receptor within the Traveller's site, along Smithy Lane;
- one receptor at Bridge Farm, to the east of the proposed A47 Link Road; and
- two receptors at the Traveller's site along Leicester Road (B4668) on the opposite side of the highway to Hinckley Town Tennis Club.

3.5.36. The predicted long-term change in noise level (Comparison 2) at residential and other sensitive receptors within the study area is presented in Table 10.53 to ES Chapter 10 [REP4-039]. The effects of the change in road traffic noise level at all receptors within the study area range from, no change to permanent, major adverse in the long-term. Of the 123 residential properties located within the study area, 120 are predicted by the Applicant to experience a minor adverse, or negligible noise effect, or no effect in the long-term.

3.5.37. Only one residential receptor is predicted to experience a major adverse effect. This receptor is located in the Traveller's site along Leicester Road (B4668) on the opposite side of the highway to Hinckley Town Tennis Club.

Cumulative Impact

3.5.38. With the exception of the proposed crematorium (Local Authority reference: 18/00751/DEEM) at land east of Leicestershire Road, Hinckley, and Rear of Gamekeepers Lodge (19/01303/FUL) at Burbage Common Road, Hinckley, due to the distance between the Proposed Development and the other committed developments, the Applicant considers it unlikely that the cumulative effects of construction noise would be significant.

3.5.39. Although the above identified developments are located within 160m of the Application Site's boundary, given the potential temporary, moderate adverse noise effects of construction predicted at NSRs, the Applicant anticipates that these committed developments would be subject to the same best practice measures (such as those detailed in the CEMP for this

Proposed Development). Therefore, the Applicant considers that the cumulative effect of construction noise is likely to remain as temporary, moderate adverse at worst.

3.5.40. Cumulative effects of road traffic at NSRs have been considered by the Applicant. There would not be a significant effect at the majority of receptors. A major, cumulative adverse effect is, however, likely at NSR 1 (Bridge Farm) due to noise from the A47 Link Road.

3.5.41. Part of the Proposed Development could be operational while the remainder of the Application Site is being built out. Nevertheless, given the distances between NSRs and the main part of the Application Site, and that as the site is built out it would provide some screening from construction and/ or operational noise, the Applicant considers that the cumulative effects would be minor, adverse.

Mitigation

3.5.42. Considerable mitigation measures would be utilised to reduce noise effects, particularly where they have been identified as having the potential to cause greater than 'minor adverse' effects to receptors.

3.5.43. Paragraphs 10.274 to 10.281 of ES Chapter 10 [[REP4-039](#)] consider mitigation associated with construction noise and vibration. This would include:

- the selection of inherently quiet plant where possible;
- use of hoardings to screen noise generation from low-level sources;
- hydraulic techniques for breaking to be used in preference to percussive techniques where practical; and
- management of construction traffic by the contractor under the CTMP.

3.5.44. Consultation and communication with the local community would also occur throughout the construction period and a CEMP would be prepared and put in place to ensure best practicable measures are adopted with regards to each phase of the proposals.

3.5.45. In terms of the completed development, the Applicant maintains significant forms of mitigation have been embedded within the design of the Proposed Development, based on iterative design development and recommendations made by an acoustic consultant. The embedded mitigation incorporates earth bunds (secured by Req 4) up to 5m in height on either side of the proposed A47 Link Road, where feasible.

3.5.46. Additionally, the Applicant has explored several options to mitigate noise from HGV movements, loading/ unloading operations and noise at service yard areas. These include the location, height and extent of acoustic barriers, the positions of which are shown at [[APP-279](#)]. Amongst other barriers, a stepped acoustic barrier of between 2m and 3m in height would be formed along part of the northern boundary, a 6m high acoustic barrier would be erected adjacent to NSR 9 (Woodfield Stables), a 4m and 6m high acoustic barrier would be erected on most of the north-eastern boundary and a 4m and 6m barrier would be erected close to the

Gypsy and Traveller settlement off Smithy Lane. Barriers would be secured by Req 27.

- 3.5.47. With suitable mitigation including acoustic enclosures around engines and silencers on exhausts, the Applicant understands that noise levels for gantry cranes can be up to 10dB quieter than has been assumed in the assessment. This reduction has also been further clarified at page 5 to [\[REP3-061\]](#). Moreover, 'soft-dock' technology would be implemented on reach stackers and gantry cranes. This would allow containers to be positioned accurately using cameras and gentle positioning onto stacks and trailers, thereby significantly reducing noise from impacts. Indeed, the Operational Phase Noise Assessment – Maximum Noise Levels from 'soft-dock' technology is agreed with BDC [\[REP8-020\]](#).
- 3.5.48. Tables 10.58 and 10.59 of ES Chapter 10 show that, for all NSRs, the existing ambient noise levels are predicted to increase by up to +1.7dB during the weekday and weekend daytime and night-time as a result of the operation of the Proposed Development with mitigation in place. An increase of 1.7dB is considered low, which is likely to result in a permanent, minor adverse effect. When context is taken into consideration, the Applicant considers this is not a significant effect.
- 3.5.49. The mitigated effect of impulsive noise associated with spreader impact and container placement is shown at Table 10.61 to ES Chapter 10. At NSRs 1 and 24, effects are likely to be permanent, moderate adverse. The mitigated effect of impulsive noise associated with container placement is likely to remain as permanent, major adverse at worst for NSR 24 (a dwelling at Billington Rough) during the night-time. For NSRs 1, 7, 8, 25 and 26, the Applicant considers the likely effect remains permanent, moderate adverse. For the remaining NSRs, the Applicant considers the likely effect has been reduced to permanent, minor adverse.
- 3.5.50. However, exceedances above the adopted criterion of 60db $L_{AF,max}$ are only predicted when the source is operating near the receptor, and the models do not account for any screening provided by container stacks or other sources or soft-dock technology. It is therefore considered by the Applicant that the $L_{AF,max}$ levels present a worst-case scenario and noise would likely be lower than that predicted.
- 3.5.51. For off-site road traffic noise impacts, effects in the short-term following inclusion of mitigation measures are shown at Table 10.62 to ES Chapter 10 [\[REP4-039\]](#). Only one property is predicted by the Applicant to experience a major adverse effect. This is at Bridge Farm (NSR 1), to the east of the proposed A47 Link Road. There are no properties predicted by the Applicant to experience a moderate adverse effect in the short-term. Rather, of the 123 properties located within the study area, 122 are predicted to experience a low, or negligible to minor adverse noise impact, or no change in the short-term.
- 3.5.52. In the long-term for off-site traffic, effects following inclusion of mitigation measures are shown at Table 10.63 to ES Chapter 10. The

Applicant considers there would be no properties which would be predicted to experience a major adverse effect. One property would experience a moderate adverse effect (at Bridge Farm). However, at this stage there would already be embedded mitigation in the form of a 5m earth bund located between this property and the A47 Link Road. With this mitigation, the Applicant considers that noise experienced at this property, would not exceed the level above which significant adverse effects on health occur (Significant Observed Adverse Effect Level (SOAEL)) but rather falls between the lowest level where the effects observed imply an adverse effect to the subject (Lowest Observed Adverse Effect Level (LOAEL)) and SOAEL, would be minimised as far as practicable.

Examination Issues and Applicant's Responses

- 3.5.53. There was a significant degree of agreement between the Applicant and BDC and HBBC in relation to noise methodologies and anticipated effects. However, various criticisms have been made of the Applicant's noise assessment, with key concerns found within WRs and later submissions received from Dr David Moore and William David Moore including [\[REP1-109\]](#), [\[REP1-113\]](#), [\[REP1-239\]](#), [\[REP5-099\]](#), [\[REP6-042\]](#) and [\[REP6-043\]](#). They also attended and gave evidence to ISH4 and ISH6. Matters considered to be important and relevant to the recommendation are reported, including the Applicant's response to these.

Noise Climates

Concerns

- 3.5.54. Both Dr Moore and William David Moore consider that noise collected at NMPs has not been attenuated for both distance and topography in order to decipher current ambient noise levels at NSRs. Accordingly, it is stated that the Applicant has utilised inflated ambient noise levels, dominated by rail pass-bys, at the NSRs (including Burbage Common and Woods) for a comparison with noise associated with the Proposed Development. This, consequently, has "*inappropriately*" reduced the magnitude of effects. A comparison against quieter background noise levels would have been more appropriate.
- 3.5.55. To reinforce such concerns, it is asserted that the Realtime Trains data (a website that records train movements) used by the Applicant to provide the baseline for the existing rail movements has inflated movements for noisier freight trains. Notably, it is claimed that NSRs along the rail line typically enjoy undisturbed Saturday nights. Moreover, in reality, there is an absence of train movements for 96% of the time for the noise environments at such NSRs.
- 3.5.56. In responding to ExQ1.8.18, Dr Moore [\[REP4-195\]](#) provided a series of tables using an amended methodology for noise assessments, making various 'corrections' in relation to the aforementioned concerns. Amongst other things, these tables show that, by using unattenuated ambient noise levels, the Applicant's assessments are in error by around 20.2dB.

This, Dr Moore asserts, is increased to around 30dB should appropriate rating penalties be applied.

- 3.5.57. Table 4 of Dr Moore's response [[REP4-195](#)] shows unmitigated and the mitigated 'Completed Development Noise' at NSRs. This is logarithmically added to the attenuated and unattenuated train noise. It shows that the effects of mitigation are reduced and, when compared to the Applicant's 'Completed Development Noise' levels, the Applicant's additional train noise has notably increased the ambient noise levels at the NSRs.

Applicant's Response

- 3.5.58. The Applicant notes that in essence, receptors are located in the vicinity of the existing rail line, M69, B4669 and surrounding road network. As distance increases from one noise source, another source will become more dominant. Consequently, with increased distance from NMPs, receptors experience increased noise from other sources that is comparable to noise collected at them. It is on this basis that unattenuated noise collected at NMPs has been used for ambient noise levels at NSRs.
- 3.5.59. To illustrate this, the Applicant has submitted a Noise Assessment Update Note [[REP3-061](#)] ('the Noise Update Note'). Pages 6 to 11 of this concern NMP 4 and associated receptors north of the rail line off Billington Road East. The Noise Update Note presents the latest available Department for the Environment, Food and Rural Affairs (DEFRA) noise mapping data for the rail line, together with the noise modelling contour outputs from the baseline traffic data for the year 2019 in the vicinity of NMP 4. When this data was logarithmically summed together (see Table 4 to the Noise Update Note), the Applicant found that, with increased distance from the rail line moving north, NSRs experience increased road traffic noise comparable with noise levels measured at NMP 4.
- 3.5.60. Additionally, the Applicant has clarified at [[REP8-019](#)] that the road noise contours produced, which are shown within Figures 3 and 4 to the Noise Update Note, indicate that noise levels at NSRs outside of the 50dB rail noise contour are within the 54 to 55.9dB road noise contour. Therefore, road noise would dominate over rail pass-bys at these receptors.
- 3.5.61. Turning to the frequency of train pass-by noise, at ISH6 the Applicant stated that the absence of train pass-by noise at NSRs for large periods of time would have been picked up by the baseline noise survey taken over a seven day period. Rather, the measured noise levels show a good correlation with the DEFRA strategic noise mapping for the railway line. This is annualised data allowing for a long term 'average' to be considered for strategic planning purposes.
- 3.5.62. Furthermore, the Applicant's reasoning for replacing the noise levels measured on the Saturday night-time with data measured on a Sunday night (which includes freight train movements) is provided in paragraphs 10.106 and 10.108 of ES Chapter 10 [[REP4-039](#)]. This states that a review has been undertaken of the noise levels measured at the same

location as NMP 4 in 2018. This indicates that the ambient noise level measured on a Saturday night is similar to that measured for the remainder of the week. Therefore, the replacement of data was considered appropriate, with Sunday night-time data being more typical of overall rail movements that occur throughout the night (six out of seven nights).

- 3.5.63. In relation to NSR 19 (Burbage Common and Woods), sound propagation from the site with mitigation, as depicted in Figure 10.15 'Indicative Noise Contour Operational Noise dB $L_{Aeq\ 1hr}$ and A47 Link Road dB $L_{Aeq\ 16hr}$ with Mitigation' [[APP-284](#)], allows the future noise levels here to be considered. In essence, in accordance with IEMA 'Guidelines for Environmental Noise Impact Assessment', the Applicant has considered both the absolute noise levels and the change in noise levels here. This is also in line with the advice of BS 4142+A1:2019 insofar as it encourages the practitioner to consider the character and level of the residual sound compared to the character and level of specific sound in circumstances where the initial estimate of noise impacts need to be modified due to context.

Overstated road noise environment

- 3.5.64. Notwithstanding concerns over the use of road noise environments in lieu of attenuated noise collected at NMPs, Mr William Moore has raised concerns that such road noise environments are overstated. Eight points are made to this effect within [[REP4-204](#)].
- 3.5.65. Following our request at ISH6, the Applicant has directly responded to each point at [[REP5-050](#)]. Amongst other things, it notes that the long-term noise levels measured at NMP 1 and NMP 2, where road noise is prevalent, are within 3dB of the noise levels predicted by the 2019 baseline road traffic noise model. The Applicant therefore contends that there is a good correlation between the measured and predicted noise levels.

Construction noise modelling

- 3.5.66. Concern has been raised by Dr Moore regarding the construction noise modelling in terms of the omission of NSRs located in excess of 300m away from the Application Site and, for the 'average case' scenario, how the approximate centre point of the closest area of construction was established and its distance from site boundaries. Moreover, Dr Moore [[REP7-092](#)] considers that the Applicant should have had greater regard to ISO 9613-2-1996 'Acoustics - Attenuation of sound during propagation outdoors - Part 2: General method of calculation' insofar as it relates to calculations for the collective noise impact of dispersed noise sources.
- 3.5.67. In terms of the study area, relevant guidance (including BS 5228-1:2009+A1:2014 'Code of practice for noise and vibration control on construction and open sites - Part 1: Noise' (BS 5228) and paragraph 3.5 Note 1 (page 13) of DMRB LA 111) has been considered by the Applicant. Amongst other things, this advises that meteorological effects impact on

the reliability of assessments at distances over 300m and that 300m from the closest construction activity is normally sufficient to encompass noise sensitive receptors. Notwithstanding this, at distances of 200m and greater the noise levels as a result of construction would be lower than the adopted criteria of 65dB detailed in BS 5228.

3.5.68. Turning to the 'average case' and 'worst case' modelling, we explored this through ExQ1.8.4 [PD-011]. Responding to this at [REP4-141], the Applicant has explained that, where there is a large area of construction, the 'worst case' impacts from the closest noise emitters would remain the same as if it were a smaller area. Conversely, if there is a large area where activities are on average going to be a very significant distance away from the site boundary, the 'average case' assessment should reflect this.

3.5.69. In relation to the guiding advice used for construction noise assessments, the Applicant states that construction noise has been calculated in full compliance with the methodologies set out in BS 5228 Part 1. As the British Standard specific to the prediction and assessment of construction noise, this is the correct calculation methodology for predicting construction noise. Furthermore, this methodology is consistent with the construction noise assessments for other similar DCO applications such as Northampton Gateway SRFI, West Midlands SRFI and East Midlands Gateway SRFI.

Acoustic absorption

3.5.70. Dr Moore, including at [REP6-039] has stated that the ground absorption coefficients used for noise modelling are inappropriate, including those used for the length of the existing rail line and the rail service yard.

3.5.71. Following our written questions on this matter (ExQ1.1.11 and ExQ1.8.12) [PD-011], the Applicant has drawn attention to Paragraph 10.220 of ES Chapter 10 [REP4-039]. This sets out that, for 'Do Minimum' scenarios, the Proposed Development area would not be built out and therefore remain as soft ground, with an absorption coefficient (G) of 1. For the 'Do Something' scenario, the ground absorption coefficient has been assumed to be 0 across the Proposed Development to reflect the situation that the scheme comes forward and the soft ground across the site is developed out to hard standing.

3.5.72. Although the railway could be considered hard ground, the area between the railway and receptors to the north of the railway is soft ground (fields). Therefore, although noise from the Proposed Development would propagate much further than the width of the railway, the majority of its path would cross soft ground. The industry standard approach when mixed ground types are present is to use an absorption coefficient of $G=0.5$, which the Applicant considers is appropriate in this case.

3.5.73. Overall, the Applicant has clarified that the ground conditions closest to the source and receiver are of most importance. The ground nearest the sources is considered to be acoustically reflective, where $G=0$, while the

ground nearest the receptors is considered to be acoustically absorbent, where $G=1$. Therefore, the generalised noise model setting has been set to $G=0.5$, which essentially takes into account the mixed ground conditions between source and receiver. On this basis, absorption coefficients are considered to be appropriate.

Off-site road traffic noise

Concerns

- 3.5.74. Interested Parties, including CPRE Leicestershire at [[REP3-106](#)], raise a number of concerns in relation to road traffic noise. This includes:
- the modelling does not account for the impacts from rerouted non-development traffic (particularly HGV traffic),
 - effects along the B4669 through Sapcote have not been assessed, and
 - that there is uncertainty in terms of mitigation that might be required.

- 3.5.75. ISH6 also involved a discussion regarding concerns relating to cumulative assessments.

Applicant's response

- 3.5.76. In responding to these points, including at [[REP4-126](#)], the Applicant has clarified that the 'Do Something' assessment includes the access infrastructure associated with the development and the traffic generated by the development. The road traffic model used allows for the reassignment of traffic. Rerouted traffic through villages has therefore been considered in the assessments.

- 3.5.77. Updated noise contours showing the difference between 'Without' and 'With' development for the short-term and long-term for links which extend beyond the study area close to and within Stoney Stanton and Sapcote were also provided at [[REP4-132](#)]. This shows that, for all additional links, the change in noise level in the short-term and long-term would be less than 3dB at nearby sensitive receptors, with the exception of two consecutive links. These are Stanton Lane and Hinckley Road off and north of the B4699. Here, short-term effects range from minor to moderate adverse and long-term effects range from negligible to minor adverse.

- 3.5.78. Consideration has been given by the Applicant to forms of mitigation at these locations. However, it has deemed that available measures are either unfeasible, or unlikely to result in a significant noise benefit at nearby properties. On this basis, and given that the long-term effects are not significant, mitigation measures to reduce noise levels at these two links are not considered by the Applicant to be necessary.

- 3.5.79. Lastly, the Applicant at [[REP5-025](#)] has confirmed that its cumulative road assessments have been guided by DMRB which states that the validation of baseline can be undertaken by comparing modelled noise levels to measured noise levels, using corrections to take account of

expected changes in traffic levels between the date of monitoring and the date of the baseline. BDC is now content with this approach.

Completed development model

- 3.5.80. WRs, including from Mr Moore [[REP1-239](#)], raise concern that the Applicant's 'Completed Development' models were incomplete, and that the magnitudes of impact derived from such models did not take into account additional noise sources such as fixed plant equipment and off-site road and rail movements.
- 3.5.81. In response to these points, including at [[REP7-068](#)], the Applicant has stated that, although the final details of fixed plant serving buildings are unknown, the approach to dealing with this (detailed at paragraphs 10.194 to 10.204 of ES Chapter 10 [[REP4-039](#)]) is agreed with BDC and HBBC. The assessment does not include off-site rail noise on the basis that NR control the off-site trains and could run these regardless of whether the Proposed Development comes forward or not. These are therefore not a consideration of the noise assessment. Noise from the A47 Link Road and the on-site operational noise, including the gantry cranes, has been included in assessments.

Background and Rating Levels

Concerns

- 3.5.82. WRs, including those highlighted and signposted within [[REP8-059](#)], raise concern that the Applicant has not applied acoustic character corrections to the specific sound level to account for factors including the tonality and impulsivity of specific noise when calculating rating levels, including for noise assessments with mitigation in place. Furthermore, they assert that the guidance within 'BS 4142:2014+A1:2019 "Technical Note"' published by the Association of Noise Consultants Good Practice Working Group in March 2020 should have been considered insofar as it relates to background and rating levels.
- 3.5.83. Addressing methodological concerns, Mr Moore's responses to our First Written Questions [[REP4-205](#)] presents a series of tables with additional impulsive and tonal rating penalty allocations, together with a discussion of the effect that this would have at NSRs 1 to 8 and 24 to 26 during the weekend daytime and night-time periods as a result of the operation of the Proposed Development (with and without mitigation).
- 3.5.84. For all weekend daytime and night-time scenarios, these tables show that rating levels are notably above the background sound levels which would represent major adverse impacts which would be significant. Applying reductions in rating levels due to partially open windows also results in internal sound levels above the night-time and daytime limits for bedrooms and living rooms denoted by WHO guidance and the contents of BS 8233'. Furthermore, rating levels exceed the WHO guideline level for serious annoyance, as well as BS 8233 limits for outdoor recreational areas. It is advanced that weekday assessments would yield similar results.

Applicant's Response

- 3.5.85. Firstly, the Applicant asserts that the 'BS 4142:2014+A1:2019 "Technical Note"' was neither an Institute of Acoustics endorsed document nor a prescriptive guide. It is therefore reasonable to use BS 4142+A1:2019 as a standalone document. Paragraphs 10.157 to 10.161 of the ES Chapter 10 [REP4-039] set out the rationale for the application of acoustic character corrections in the unmitigated noise assessment. The corrections range between 0 and 10dB, dependant on NSR and take into account impulsivity and tonality. The rating penalties have been applied in accordance with the subjective method detailed in BS 4142:2014+A1:2019, which states at Section 11 *"when making assessments and arriving at decisions, therefore, it is essential to place the sound in context"*.
- 3.5.86. Acoustic character corrections are not necessary for tonality and impulsivity as, although operations would include activities which are individually intermittent, many of these operations would overlap, which would give the impression of the site operating consistently.
- 3.5.87. In any event, the assessment has considered any differences between the character and level of the residual sound compared to the specific sound when applying acoustic penalties (pre and post mitigation scenarios), and the external and internal noise levels as a result of the Proposed Development (paragraphs 10.302 and 10.303 to ES Chapter 10 [REP4-039]) taking into account any facade treatment. Therefore, the assessment methodology is in line with the requirements of BS 4142+A1:2019.
- 3.5.88. The Applicant has provided a number of responses ([REP5-050]) in relation to the tables produced at written representation [REP4-205]. Amongst other things, the Applicant states that it is not appropriate to take the lowest measured level from a long-term data set, noting that 'typical conditions' in this instance are that trains run during the night. It is also contended that the tables apply rating penalties without taking into account factors such as distance and screening. On this basis, in the Applicant's view, Mr Moore's analysis [REP4-205] does not accurately depict effects.
- 3.5.89. Additionally, a sensitivity analysis has been undertaken by the Applicant where a 3dB penalty for additional operational noise associated with the Proposed Development has been applied. This sensitivity analysis concludes that, with the implementation of acoustic barriers, the resultant effects at nearby NSRs would not be significant.

Post-mitigation specific sound levels

- 3.5.90. Mr Moore [REP6-043] asserts that the post-mitigation specific sound levels listed in the Applicant's Tables 10.55 to 10.60 to ES Chapter 10 [REP4-039] do not include noise associated with the gantry cranes.
- 3.5.91. The Applicant draws attention to its tranquillity assessment which has been undertaken for Burbage Common Woods. This is detailed in

paragraphs 10.337 to 10.340 of ES Chapter 10 [REP4-039]. This assessment includes noise from the gantry cranes with the higher noise level (that prior to a 10dB reduction that may be applied as a result of mitigation to this equipment).

Window attenuation

3.5.92. Mr Moore in [REP5-099] raises concern with the 15dB reduction afforded to attenuation due to a partially opened window. This differs from other comparable DCO applications which assume that a partially open window would lead to a 12dB reduction of the sounds projected by a rail freight interchange scheme.

3.5.93. In response, including [REP7-077], the Applicant states that the reduction afforded by a partially open window is stated in BS 8233 as being 15dB. It is therefore appropriate to use this. Furthermore, the Applicant defends its 15dB estimate in the light of studies which have shown that, although noise break-in varies with the size of the window openings, a partially open window typically provides a reduction greater than 15dB.

ExA's Considerations

3.5.94. This section reports on our consideration of the Application during the Examination. This includes a discussion in relation to the adequacy of the Applicant's noise assessment with regard to the relevant tests at paragraph 5.193 of the NPSNN and paragraph 5.222 of the dNPSNN, a consideration of the other relevant tests of the NPSNN and dNPSNN and our conclusion in terms of overall noise effects.

3.5.95. That said, while tranquillity is a factor that would determine the likely noise impact, effects in this regard are considered under section 3.4.30 to our Report. Furthermore, in relation to paragraph 5.220 of the dNPSNN, our assessment of the effect of noise on wildlife and biodiversity is reported under section 3.8.

Noise Assessment

Noise Climates

3.5.96. On the evidence before us, particularly the summation of road and rail data depicted in Table 4 to the Applicant's Noise Update Note [REP3-061], we are satisfied that, as one moves further away from the rail line to the north, NSRs experience road traffic noise comparable to noise collected at NMPs close to the rail line. Such road traffic noise is not unduly inflated, noting, amongst other things, that noise collected at certain NMPs is within 3dB of the noise levels predicted by the 2019 baseline road traffic noise model.

3.5.97. Turning to rail movements, we acknowledge that, at present, trains do not tend to run on a Saturday night and that the number of freight train pass-bys during a typical day is lower than the number of freight trains within timetable listings. Furthermore, given the noise generated by

freight trains, there would not need to be a significant reduction in these particular movements to make a notable difference to noise assessments.

- 3.5.98. Nevertheless, the Applicant's surveys do not show the absence of train pass-by noise at NSRs for large periods. Indeed, there are engineering trains running on a Saturday night. Freight trains, which currently run six nights out of seven, could also theoretically run at night-time throughout the full week regardless of whether the Proposed Development comes forward or not. Additionally, the Applicant's assessments show that the ambient noise level measured on a Saturday night is similar to that measured for the remainder of the week.
- 3.5.99. Taking this into account, it is not unreasonable to consider that 'typical conditions' include freight trains running at night-time throughout the week. As such, we find that the Applicant's baseline off-site rail movements, confirmed by NR as being accurate (see [[REP3-050](#)]), are representative. This finding is reinforced given that measured noise levels at NSRs correlate with the annualised data for the long term average under DEFRA strategic noise mapping for the railway line.
- 3.5.100. Taking everything together, we are satisfied with the Applicant's logarithmic method utilised to determine the ambient noise levels at NSRs, with noise climates used in lieu of attenuated monitored noise as being representative. This is particularly so given that the predicted cumulative noise levels from other environmental noise sources are within 1dB of the noise levels used within the Applicant's assessment. Furthermore, specifically in relation to NSR 19 (Burbage Common and Woods), we find that the Applicant's consideration of the absolute noise levels and the change in noise levels here is in line with both relevant IEMA Guidelines and BS 4142+A1:2019.
- 3.5.101. Overall, we are satisfied that the Applicant's assessment is in line with paragraph 5.193 of the NPSNN and paragraph 5.222 of the dNPSNN insofar as it requires the adequate characterisation of the existing noise environment. In reaching this finding, we are mindful that the construction and operational phase noise assessment methodology, including the assessment of off-site rail noise and vibration, has been agreed with BDC and HBBC. Consequently, it is reasonable to perform an assessment based on the Applicant's methodology in this regard, rather than that presented by Dr Moore in [[REP4-195](#)].

Construction noise modelling

- 3.5.102. With regard to the relevant advice within BS 5228, we find that the study area for the construction noise models is appropriate. Following the Applicant's response to ExQ1.8.4 [[REP4-141](#)], we are also satisfied with the methodologies for the 'average case' and 'worst case' construction noise models, which depict a suitable range of potential outcomes for works.
- 3.5.103. In terms of plant machinery, the predicted resultant noise level at a given receptor has been calculated, and then an overall noise level has

been determined by logarithmically summing all individual resultant noise levels. We find this allows for what would be an accurate depiction of the total construction noise level experienced at a given receptor from all plant.

- 3.5.104. Overall, noting the similar methodology used for comparable DCO applications, it is appropriate for the Applicant's construction noise modelling to be primarily guided by the methodologies set out in BS 5228 Part 1, rather than ISO-9613-2-1996 'Acoustics – Attenuation of sound during propagation outdoors - Part 2: General method of calculation'. It is indeed logical for the Applicant to use the sound propagation model set out in BS 5228 to then compare results against the noise limit guidelines from that same document.
- 3.5.105. Taking everything together, and as the relevant criteria of BS 5228-1 do not allow, or require, the practitioner to adjust the resultant noise levels for acoustic character, the Applicant's construction noise modelling is considered to be robust. Assessments in this regard adequately predict how the noise environment would change at this stage, in line with the requirements of paragraph 5.193 of the NPSNN and paragraph 5.222 of the dNPSNN.
- 3.5.106. This finding is reinforced given that the Construction Phase Noise Assessment – Assessment Criteria, the Construction Phase Noise Assessment – Assessment Methodology and the Construction Phase Noise Assessment are agreed with both BDC and HBBC.

Acoustic absorption

- 3.5.107. Noting the varying ground types (soft or hard) at various stages of construction, we consider the ground absorption coefficients for the 'Do Minimum' and 'Do Something' scenarios, as illustrated by paragraph 10.220 of ES Chapter 10 [[REP4-039](#)], are appropriate.
- 3.5.108. In terms of the ground coefficient to be used for railway line, we consider the use of the industry standard approach for mixed ground types (absorption coefficient of $G=0.5$) is appropriate. In any event, given the short distance over which the sound would travel across the rail line, the coefficient setting here is unlikely to make any appreciable difference to resultant noise levels.
- 3.5.109. We are therefore satisfied with the Applicant's ground absorption coefficients, particularly noting that the modelling inputs and source data for the operational phase noise assessment are agreed with BDC and HBBC.

Off-site Road traffic noise

- 3.5.110. The PRTM model used by the Applicant allows for the reassignment of traffic and additional road links close to and within Stoney Stanton and Sapcote have been considered at [[REP4-132](#)]. Consequently, possible effects from road traffic noise in villages surrounding the Application Site have been assessed.

3.5.111. Overall, in accordance with the requirements of paragraph 5.193 of the NPSNN and paragraph 5.222 of the dNPSNN, we are satisfied that the Applicant's road traffic noise assessment depicts a robust range of outcomes for relevant receptors and adequately considers mitigation. This is particularly so noting that the Operational Phase Noise Assessment of Offsite Road Traffic is agreed with both BDC and HBBC.

Completed development model

3.5.112. The approach to dealing with unknown final details of fixed plant serving buildings, including in relation to noise level limits, is considered to be acceptable noting the level of agreement with BDC and HBBC in this regard.

3.5.113. The absence of off-site rail noise in completed development models is considered to be acceptable, noting the capacity and ability for trains to run regardless of whether the Proposed Development comes forward or not. Such noise would also be difficult to accurately assess. For example, it would be more or less impossible to identify the 'start point' for noise generation. Moreover, we have found that off-site road noise assessments, including noise from the A47 Link Road, are adequate.

3.5.114. In addition to the above, at ExQ1.8.16 [[PD-011](#)] we also queried the assessments in relation to noise from combustion engines for diesel locomotives. While the noise assessment has not specifically considered the starting up of a combustion engine, noise from a locomotive pulling away has been included within the assessment. There is no evidence before us to show that this is not similar to an engine starting up as advocated by the Applicant. Table 10.36 of the ES Chapter 10 [[REP4-039](#)] includes source noise data for a diesel locomotive idling/pulling away. Paragraph 10.154 (fourth bullet point) states how this noise source has been included in the noise model.

3.5.115. Overall, we consider the completed development noise model is robust. This is also true for the cumulative assessment of operational and construction phase activity, noting that such noise was not formally assessed under the applications for the Northampton Gateway and the West Midlands Interchange SRFIs owing to difficulties with reliably combining noise.

3.5.116. The agreement between the applicant and BDC and HBBC in terms of the operational phase noise assessment methodology, including the modelling inputs and source data, reinforces these findings.

Background and Rating levels

3.5.117. The Applicant's assessment of the Noise and Vibration Chapter prepared for Northampton Gateway SRFI at [[REP4-025](#)] illustrates that there is indeed no standard accepted methodology for determining rating levels. Rather, these are based on professional judgement, on a case-by-case basis, taking into account context. Chapter 9 of BS 4142:2014+A1:2019 also shows that corrections for tonal, impulsive or any other distinctive character should take into account the character of the area in which

sound occurs. In this circumstance, it is not unreasonable for the Applicant to apply subjective judgement to its consideration of background noise and rating penalty allocation.

- 3.5.118. We are satisfied that, given the overlapping of operations, acoustic character corrections are not required for tonality and impulsivity. In any event, the Applicant has considered any differences between the character and level of the residual sound compared to the specific sound when applying acoustic penalties in pre and post mitigation scenarios. In such scenarios, we are content that noise from gantry cranes has been considered and that the 15db reduction afforded by a partially open window, which is in line BS 8233, is appropriate.
- 3.5.119. Turning to the additional rating penalties and associated effects posited by Mr Moore in [[REP4-205](#)], the methodology used is based on the lowest measured level from the long-term data set relating to train movements. This results in an analysis based on the absence of train movements throughout a Saturday night. We have already found this to be atypical. Additionally, rating penalties do not appear to take into account environmental factors such as distance and screening. As an example, the dwelling at NSR 1 is located approximately 260m from the Proposed Development and is screened by the existing farm buildings. As such, and given that point noise sources attenuate quickly with distance, it is therefore unlikely that impulsive noise would be as perceptible as indicated. Neither does the methodology appear to take into account mitigation such as 'soft-dock' technology.
- 3.5.120. Taking everything together, including the Applicant's sensitivity testing and as the operational phase noise assessment is agreed with BDC and HBBC, we are satisfied with the assessment in this regard. We favour its methodology, together with associated outcomes, over that provided by Mr Moore in [[REP4-205](#)].

Overall findings – noise Assessment

- 3.5.121. As a result of answers and clarification provided and the level of agreement with BDC and HBBC, while having careful regard to the criticisms made, we are satisfied that the assessment undertaken is sufficiently robust to provide meaningful outputs that can be relied upon. Assessments therefore accord with the requirements stated at paragraph 5.193 of the NPSNN and paragraph 5.222 to the dNPSNN.
- 3.5.122. Moreover, with regard to the Applicant's response to ExQ1.8.17, the overall level of uncertainty with the assessment is considered to be low. In reaching this finding we note, amongst other things, the length of the measurement periods, the removal of adverse weather conditions and the use of suitable modelling software which assumes downwind sound propagation in all directions.

Discussion - effects

Construction noise and vibration

- 3.5.123. Regarding construction site noise and vibration, even if significant residual effects were to occur with works taking place at distances closer than 25m, this would only be at NSRs 1, 9, 10, 15 to 19 and 24.
- 3.5.124. These effects would not be for the entire duration of the construction phase and prolonged construction is unlikely to take place close to NSRs over the build-out period. Construction hours are appropriately managed by Req 16 and have been agreed with BDC and HBBC. Moreover, once constructed, on-site buildings are likely to mitigate noise to a degree. Indeed, with regard to the Applicant's response to ExQ2.8.1 [PD-013] in [REP5-036], we are satisfied that alternative options for the orientation of buildings, layouts and noise sources have all been considered in the evolution of the design, Parameters Plan [REP4-016] and, ultimately, the Design Code [REP7-051] to reduce noise effects while preserving the functionality of the Proposed Development.
- 3.5.125. The final design and layout of buildings would also be considered at a later date by relevant local authorities pursuant to Req 4. All of the above is in accordance with paragraph 5.198 of the NPNNN and paragraph 5.227 of the dNPSNN insofar as it seeks to ensure that a scheme's layout is optimised to minimise noise.
- 3.5.126. The updated CEMP [REP6-011] provides additional measures to ensure that construction activities and traffic minimise disturbance in terms of both noise and vibration. These include following the guidance given in BS 5228 Parts 1 and 2. This would be incorporated, as appropriate, within the method statement which would form the basis for the implementation of construction works.
- 3.5.127. Furthermore, Req 28 would ensure that acoustic barriers would be in place at appropriate times during construction (and indeed operation). These barriers could be constructed using absorptive surfaces as secured by Req 4. The arboricultural effect of these barriers, the only matter not agreed by BDC and HBBC in relation to noise, is discussed in section 3.4.48 to this Report.
- 3.5.128. Consequently, noise and vibration effects are likely to be lower than predicted and any major adverse effect would be short-term. In our view, effects during the construction stage would not be unacceptable and the Applicant, in accordance with paragraph 5.195 of the NPSNN and paragraph 5.232 of the dNPSNN, has demonstrated that adverse impacts would be mitigated and minimised.

Operational noise and vibration

- 3.5.129. Regarding the operation of the Proposed Development, the resultant L_{AFmax} levels are predicted to be above the adopted criteria (60db L_{AFmax}) for certain NSRs even with mitigation in place. This includes at NSRs 1,

7, 8, 24, 25 and 26 as a result of impulse noise associated with spreader impact and container placement.

- 3.5.130. That said, exceedances are only predicted when the source is operating near the receptor, and models do not account for any screening provided by container stacks or other sources. Furthermore, the assessment does not rely on any reduction as a result of soft-dock technology. This would be incorporated at the Proposed Development, secured and managed through Req 26, and could markedly reduce noise levels associated with container placement. Req 26 would also ensure that suitable mitigation would be incorporated into gantry crane machinery.
- 3.5.131. Details of mechanical and ventilation plant would be suitably managed by Req 27, which, amongst other things, requires details to be approved by relevant planning authorities and compliance with government and local policy on noise.
- 3.5.132. Turning to rail noise, we are satisfied that off-site movements would not result in significant effects over the baseline position. In reaching this finding, we are particularly mindful that this is a key strategic freight line and that there is existing capacity to run the additional trains associated with this Proposed Development throughout the week.
- 3.5.133. Although trains would take longer to pass over parts of the line close to residential properties at Bostock Close (at the southern part of Elmesthorpe), the Applicant has confirmed [[REP5-049](#)] that a train travelling at a slower speed would result in lower noise levels than a train travelling at a higher speed. Moreover, the western connection to the rail service yard is around 1.7km away from Elmesthorpe.
- 3.5.134. We note that 'wheel squeal' can be highly perceptible at tight track radii. The Applicant has submitted a survey of Wheel Rail Noise on Tight Curves [[REP5-035](#)]. The distances from the curved section of rail to the two closest receptors is 126m (dwelling along Billington Road) and 220m (Langton Farm).
- 3.5.135. The Acoustic Barrier Locations plan [[APP-279](#)] shows the positioning of a 6m barrier close to the curved section of track. This is in line with the recommendations of [[REP5-035](#)] and would mitigate noise to below the WHO guideline criterion for sleep effects at the closest residential dwellings. Moreover, 'wheel squeal' noise can also be managed via the application of gauge face lubrication to reduce friction at the wheel/rail interface. It is recommended that Req 4 is amended to ensure that on-site rail infrastructure is maintained in this manner. It follows that noise from wheel squeal would not be unacceptable at NSRs.
- 3.5.136. In terms of road noise, any noise experienced at a limited number of NSRs would not exceed SOAEL. This includes receptors at Stoney Stanton and Sapcote and the surrounding villages (with absolute noise levels here falling between LOAEL and SOAEL). In line with the Noise Policy Statement for England, which underpins the NPSNN and the dNPSNN in

relation to noise, we are satisfied that predicated noise levels for off-site road traffic have been mitigated and minimised as far as practicable.

- 3.5.137. Specifically in relation to the Narborough Level Crossing, we acknowledge the potential for an increase in rerouted vehicles queuing here as a result of additional barrier down time. Nevertheless, vehicle waiting times would not be significant and associated noise during such events would be as a result of engine idling only. Consequently, this noise is unlikely to be unduly disturbing when considered against baseline conditions and would not occur for a sustained period of time.
- 3.5.138. Turning to cumulative effects, there is no substantive evidence before us to show that cumulative off-site road noise would cause significant effects. This would also be true for cumulative construction and operational noise, particularly given that early phases of the operational development would begin in the absence of construction noise (which would generally cease throughout the night).
- 3.5.139. Taking into account all of the matters raised by IPs, including those within [[REP4-196](#)], [[REP5-057](#)] and [[REP6-031](#)], we are satisfied that the operation of the Proposed Development would not cause an environment dominated by noise or harmful vibration and noise would not be highly perceptible at most times. In asserting this, we are mindful that identified L_{AFmax} levels present a worst-case scenario and would likely be lower than those predicted for reasons given.

ExA's Conclusions

- 3.5.140. Taking all relevant documents and policies into account, we are satisfied that the mitigation measures for the Proposed Development, together with the controls provided through the requirements in the recommended dDCO, would be adequate to mostly avoid significant adverse impacts on health and quality of life.
- 3.5.141. Notwithstanding this, as identified above, significant residual adverse effects occurring during construction and operation cannot be ruled out at certain receptors. This is contrary to the objectives of paragraph 5.195 of the NPSNN and paragraph 5.232 of the dNPSNN insofar as it seeks to avoid such effects.
- 3.5.142. That said, significant residual effects would occur at a number of identified receptors. These would typically occur during worst-case scenarios, where noise is likely to be lower than that predicted. Taking this into account and on the basis of all of the above, identified harm and conflict with the NPSNN and dNPSNN carries moderate weight against this Proposed Development.

Additional Evidence Submitted at the end of the Examination

- 3.5.143. At D8 to the Examination additional evidence was provided by Dr Moore and Mr Moore in relation to noise and vibration. This included

[[REP8-047](#)], [[REP8-048](#)], [[REP8-049](#)], [[REP8-050](#)], [[REP8-051](#)], [[REP8-059](#)], [[REP8-060](#)], [[REP8-061](#)], [[REP8-062](#)], [[REP8-063](#)] and [[REP8-064](#)]. The key points made within this evidence are summarised as follows.

- 3.5.144. [[REP8-048](#)] and [[REP8-060](#)] show a third party noise report entitled 'Billington Lakes Noise Measurements 26th Feb 24 V2' commissioned by these IPs. For this report, noise measurements were conducted over a continuous and uninterrupted test period of 24½ hours at the property known as Billington Lakes. This is around 200m from the railway line and the monitoring position is indicated in Figure 1 of this report. Noise collected at Billington Lakes is considered at [[REP8-049](#)].
- 3.5.145. [[REP8-050](#)] and [[REP8-064](#)] then compare the noise levels measured at NMP 4 (used for associated NSRs), together with ambient and road noise levels used within the Applicant's Noise Update Note, with noise collected at Billington Lakes.
- 3.5.146. They show that daytime, night-time and 24-hour noise levels measured at Billington Lakes are all notably lower than those measured at NMP 4. The greatest difference is 11.1dB for the daytime noise level.
- 3.5.147. Both the daytime and night-time ambient noise levels measured at Billington Lakes are notably lower than corresponding data within the Applicant's Noise Update Note. The greatest difference is 8.3dB for the daytime noise level.
- 3.5.148. Lastly, noise collected suggests that the Road Noise levels used by the Applicant in its Noise Update Note are in error by 9.6dB.
- 3.5.149. Given the late stage at which this evidence was provided, the Applicant has not had the opportunity to respond to it. In our view to consider it would be procedurally unfair to the Applicant. We have therefore not taken it into account in the above discussion.

3.6. SOCIO-ECONOMIC CONSIDERATIONS

Introduction

- 3.6.1. This section addresses the potential impacts and effects of the Proposed Development arising from its socio-economic effects.

Policy

NPSNN

- 3.6.2. The NPSNN sets out various aspects of socio-economic considerations to be considered as part of an NSIP, and it identifies a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity (paragraph 2.2)

- 3.6.3. Paragraph 2.29 outlines the Government’s vision to develop the country’s rail network to support economic and social development.
- 3.6.4. The Government recognises that for development of the national road and rail networks to be sustainable these should be designed to minimise social and environmental impacts and improve quality of life. In delivering new schemes, the Government expects applicants to avoid and mitigate environmental and social impacts in line with the principles set out in the Framework and the Government’s planning guidance. It further elaborates that applicants should provide evidence that they have considered reasonable options to deliver environmental and social benefits as part of projects (paragraph 3.3).
- 3.6.5. In relation to the assessment of NSIP proposals it advises that environmental, safety, social and economic benefits and adverse impacts, should be considered at national, regional and local levels.
- 3.6.6. Paragraph 5.202 recognises that the development of national networks can have a variety of impacts on the surrounding transport infrastructure including connecting transport networks. Impacts may include economic, social and environmental effects.

dNPSNN

- 3.6.7. The dNPSNN reiterates much of the 2014 NPSNN with paragraphs 5.234 to 5.242 setting out the socio-economic considerations and potential mitigation needed. It states the SoS should have regard to potential socio-economic impacts of new infrastructure identified by the applicant and from any other sources that the SoS considers to be both relevant and important to its decision.

National Planning Policy Framework

- 3.6.8. The Framework also sets out socio-economic objectives and priorities through the achievement of sustainable development, and supporting development that meets our social and economic needs.

Planning Policy for Traveller Sites

- 3.6.9. The Government has issued the Planning Policy for Traveller Sites (updated December 2023). In paragraph 2 it sets out that the policy must be taken into account in the preparation of development plans, and is a material consideration in planning decisions. Furthermore, at paragraph 3 it states its aim is to *“to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.”*

Local Policies

- 3.6.10. The local socio-economic policy context is provided by the development plan documents referenced earlier for BDC and HBBC. BDC’s LIR [[REP1-055](#)] indicates a number of policies in the BCS with socio-economic implications, these are:

- Policy CS11: Infrastructure: Requires new developments to be supported by physical, social and environmental infrastructure at the appropriate time in order to meet the needs of the community and mitigate any adverse impacts of development;
- Policy CS12: Planning Obligations and Developer Contributions: Where requirements for infrastructure, arising from growth, are identified through robust research and evidence;
- Policy CS14: Green Infrastructure: Seeks to protect existing, and provide new, 'networks of multi-functional green spaces', comprising both publicly owned and private land; and
- Policy CS15: Open Space, Sport and Recreation: proposed developments must provide sufficient accessible open space, sport and recreation (either on site or through financial contributions) taking account of local deficiencies.

3.6.11. HBBC in its LIR [[REP1-138](#)] refers to the following policies in the HBCS and HBDPD that have socio-economic implications:

- HBCS Policy 1: Development in Hinckley, looks at managing development that contributes to the towns character and infrastructure; and
- HBDPD Policy DM3: Infrastructure and Delivery: which looks at development which will create a need to provide additional or improved infrastructure, amenities or facilities, developers will be expected to make such provision directly or indirectly through the appropriate funding mechanism.

Case for the Applicant

3.6.12. Chapter 7 of the ES [[REP3-155](#)] presents an assessment of the likely significant effects of the Proposed Development with respect to land use and socio-economics. The chapter sets out the methodology and data sources used for the assessment, and reviews the legislation, policy and relevant guidance to set out how the proposals fit with plans and priorities for economic development. A baseline assessment was presented to understand the local context with regards to the size of the labour market, the construction labour market, logistics sector employment, housing needs and levels of local deprivation. The level of employment and the likely residential locations for the majority of the labour force is an important consideration given the employment generating use of the Proposed Development and its relationship with housing supply.

Employment and Skills

3.6.13. Paragraph 7.2 of Chapter 7 of the ES [[REP3-155](#)], in relation to jobs and skills, highlights the likely socio-economic effects that are anticipated to arise from the construction (temporary) and operational (permanent) phases of the Proposed Development. This included an estimate of the number of direct and indirect construction jobs, and an estimation of the operational phase jobs once the construction has been completed. The GVA and business rates benefit, the impact on the demand for housing, the impact on the logistics sector and land use and accessibility were also

considered. The Applicant also provided a description of any additional enhancement and mitigation measures that are proposed to minimise the potential adverse effects identified by the assessment of the Proposed Development.

- 3.6.14. The Applicant concludes, in paragraph 7.305 of Chapter 7 of the ES [[REP3-155](#)], that the construction of the Proposed Development is anticipated to deliver 461 on-site jobs per annum during the construction period of 10 years. Once leakage, displacement and multiplier effects are considered, it is anticipated that there would be a net addition of 740 jobs per annum. This is judged by the Applicant to be a moderate beneficial effect over the short term.
- 3.6.15. In terms of operational employment, the Applicant has suggested that the Proposed Development is likely to accommodate a mix of NDCs and RDCs. Therefore, different employment densities associated with each were adopted, and employment estimates were presented as a range. It is estimated that the proposal would generate between 8,400 and 10,400 gross on-site jobs. Once leakage, displacement, and multiplier effects have been considered, the Proposed Development is expected to generate some 10,400 to 12,900 on and off-site jobs. The effect of operational jobs from the Proposed Development is predicted by the Applicant to be moderate beneficial over the long term.
- 3.6.16. As part of the wider economic considerations, GVA is an indicator of wealth creation, measuring the contribution to the economy of economic activity associated with the Proposed Development. The direct GVA that the Proposed Development is expected to generate by the Applicant, associated with the operational on-site jobs is between £329 million and £406 million per annum. The 6,300 to 7,800 additional jobs on-site, accounting for displacement of jobs from elsewhere, would represent a GVA contribution of between £247 million and £305 million per annum. In addition to this, the Applicant suggests that the Proposed Development would also safeguard the contribution of £82 million to £102 million per annum by re-allocating existing logistics jobs to a more optimal location.
- 3.6.17. This and other schemes planned for in the study area are cumulatively estimated to provide circa 16% of identified logistics space requirements within the catchment area identified in the plan shown at Figure 7.2 of Chapter 7 of the ES [[REP3-155](#)]. The cumulative developments are therefore estimated by the Applicant to have a medium positive impact on the high-sensitivity logistics businesses that could benefit from the Proposed Development. The resulting effect of the Proposed Development with the cumulative schemes is considered by the Applicant to be a major beneficial effect over the long term to the wider supply chain for the logistics sector.
- 3.6.18. The immediate area surrounding the Application Site does not have large concentrations of deprivation, except the south-west of Hinckley. Neighbouring Nuneaton and Bedworth have communities in the top 10%

and 20% most deprived, as do Coventry and Leicester which are further afield.

Housing Supply and Demand

- 3.6.19. The Proposed Development, if permitted, could potentially impact on the areas housing demand and supply, as additional employment floorspace in an area can give rise to housing demand as employees look to live closer to where they work. The Applicant has examined this as part of its submissions and the assessment of housing need accounts for this labour market growth in addition to the latest five-year housing land supply, and five-year housing need. In Chapter 7 of the ES [[REP3-155](#)] the Applicant provides an overview that the five-year housing land supply is greater than the needed requirements.
- 3.6.20. The Applicant's analysis of needs assessment from the HEDNA (2017) and of population capacity of surplus housing may suggest that the Housing Market Area may not be able to fully respond to the need arising from workers at the Application Site if permitted and would thus experience some pressure under the higher sensitivity scenario. There are different scenarios approached to forecasting housing need and demand, and the higher sensitivity scenario looks at the impact of the operational employment of the Proposed Development. The employment generation that the scheme is anticipated to deliver is anticipated by the Applicant to be low negative on the high sensitivity demand for housing, which looks at the strength of demand for housing, which would result in a minor adverse effect in the medium to long term.
- 3.6.21. The Applicant further reports that the Office of National Statistics' Annual Population Survey concludes that in terms of any additional mitigation measures proposed to minimise the potential adverse effects identified by the assessment, adverse land use and socio-economic effects are anticipated for the existing agricultural land holdings. These would be mitigated by the financial gain of the owners from the sale of the land, which could be reinvested in replacement land holdings if available. No additional mitigation measures are said to be required, apart from the measures proposed in the transport and traffic, air quality, and noise and vibration sections and discussed in the relevant sections of this Report.
- 3.6.22. The Applicant concluded that the quantum of planned development, when combined with the intended housing land supply planned by the local authorities in their areas mean that the Proposed Development would not have a significant impact on local housing provision.

Community and Social Infrastructure

- 3.6.23. Given the quantum of development proposed, it is not inconceivable that, if consented, the Proposed Development may give rise to additional need for other community and social infrastructure to help mitigate any adverse impacts of the Proposed Development. This was explored during the Examination, in line with the requirements of paragraph 3.3 of the NPSNN.

- 3.6.24. In Chapter 7 of the ES [[REP3-155](#)] the Applicant provided a review and assessment of community land and assets and whether it considers they would be impacted as a result of the Proposed Development. Paragraph 7.24 refers to the consideration of mitigation measures, residual effects and cumulative effects. At Paragraph 7.314 the Applicant concludes "*The impact magnitude of the Proposed Development on the affected community land and assets would be low negative. The sensitivity of the community land assets is medium, resulting in a minor adverse effect over the long term*".
- 3.6.25. We set out at the start of the Examination some principal issues we wished to consider. One of these was to explore whether the Applicant's assertion that the Proposed Development should not incur charges from the Community Infrastructure Levy (CIL). As the examination progressed it was established that none of the local authorities where built development would take place were a CIL charging authority. Therefore, no CIL can be levied upon this development.
- 3.6.26. Whilst the Applicant has concluded in [[REP3-155](#)] that the impact of the Proposed Development on community infrastructure and need for more would be low, it has entered into an agreement [[EEAS-001](#)] and unilateral undertaking [[EEAS-002](#)] pursuant to s106 of the TCPA. These are discussed further in section 7.5 of this Report.

Health

- 3.6.27. The Applicant submitted a Health and Equalities Briefing Note [[REP4-050](#)]. It defines the local study area for health-specific baseline statistics relating to human health effects from environmental changes on several wards (Croft Hill; Hinckley de Montfort; Burbage St Catherine's & Lash Hill; Stanton & Flamville; Barwell; Broughton Astley-Primethorpe & Sutton; Cosby with South Whetstone; Lutterworth West; Ullesthorpe; and Revel and Binley Woods), using district (Blaby; Hinckley and Bosworth; Harborough; and Rugby), regional (East Midlands and West Midlands) and national (England) averages as comparators. This concluded that indicators relating to socio-economic circumstance show that, generally, the population living within the local study area show lower levels of deprivation when compared to the national average. Although there are specific wards noted to be significantly worse than national unemployment and long-term unemployment rates, the Applicant concluded the rates in the overall ward study area remains low across the district.
- 3.6.28. The indicators analysed by the Applicant which relate to physical health show that the overall burden of poor health is low. Life expectancy for males and females in the ward study area is higher than the district study area, regional study area and the national averages. The ward study area has an aging population and relatable hip fractures within the ward study area are higher than the national average.
- 3.6.29. The Health and Equalities Briefing Note [[REP4-050](#)] sets out that mental wellbeing in the study area appears to be strong as the hospital stays for self-harm are similar to or significantly lower than the national average in

all wards. Data on the suicide rate is only available at the district level; this shows that suicide rate at the district level is better than the national average.

- 3.6.30. Data relating to behavioural risk factors shows that the prevalence of overweight and obese children and adults in the district is high in the reception year at school. However, data for adults is not available at the ward level and so it is difficult to ascertain whether this is representative across the ward study area. The ward-specific data for prevalence of overweight and obese children at reception shows a disparity across the wards, where four wards have significantly higher prevalence of obesity in children and others are similar and/ or better than the national average.
- 3.6.31. Overall, the Applicant considered that the population living within the local study area are not particularly sensitive to environmental changes associated with the Proposed Development, but sensitive to socio-economic opportunities, particularly employment. While this does not exclude the probability that there would be some individuals or groups of people who do not conform to the overall profile. This data was further corroborated within the LIRs sharing sections of the Joint Strategic Health Needs Assessment.

Agricultural Land

- 3.6.32. The Ministry of Agriculture, Fisheries, and Food Agricultural Land Classification categorises land into five grades numbered 1 to 5, with grade 3 divided into two subgrades (3a and 3b). Grade 1 being excellent quality and 5 being poor. Grade 3a is classed as good quality and 3b classed as moderate. The majority of the site is classified as 3b, with a small area classified as 3a. This can be seen in [[APP-303](#)].
- 3.6.33. Government guidance in the Framework (Paragraph 180(b)) looks to protect the best and most versatile agricultural land, and this is defined as agricultural land in in grades 1, 2 and 3a of the Agricultural Land Classification.
- 3.6.34. Paragraph 16.90 of Chapter 16 of the ES [[APP-125](#)] references "a small pocket (approximately 2.9ha) of Grade 3a land in the north of the site", shown in Figure 11.19. This would represent Best and Most Versatile (BMV) Agricultural Land. The Applicant states at Paragraph 3.6 of Chapter 3 of the ES [[APP-112](#)] that the main part of the Application Site is approximately 187ha. The BMV Land therefore equates to approximately 1.6% of the main part of the Application Site, and the Applicant considers it not significant in area.
- 3.6.35. In Chapter 7 of the ES [[REP3-155](#)] the Applicant provides references that farming operations and agricultural businesses within the main part of the Application Site would be acquired and therefore permanently cease operation. It proceeds to assess the impact and conclude that "*the impact magnitude of the Proposed Development on the agricultural land holdings is expected to be high negative. The sensitivity of the agricultural land holdings is high, resulting in a major adverse effect over*

the long term. However, it is acknowledged that the owners of the farm have voluntarily entered into an agreement with Applicant to sell their land."

Case for Interested Parties

Employment and Skills

- 3.6.36. BDC in its LIR [[REP1-055](#)] at paragraph 1.10 stated that it generally accepts that the Proposed Development would be beneficial in terms of employment growth. However, it contends that given the comparatively low sector pay for the future operational wages at the Proposed Development it is likely that fewer employees would reside in Blaby District and Leicestershire, with more residing in Leicester and Coventry. This would, in its view, reduce the positive impacts in the local area.
- 3.6.37. Furthermore, at paragraph 1.11, it states in relation to skills and training that, *"Overall, whilst the effect on employment within the area is considered beneficial, the likely employment requirements of the Proposed Development as it progresses towards operation, could have significant negative impacts for resourcing staff or particular skills in the area. BDC considers these impacts must be sufficiently mitigated through a robust employment, skills and training programme which goes further than that proposed by the Applicant"*.
- 3.6.38. HBBC also cited concerns relating to skills and training as part of its LIR [[REP1-138](#)] (Paragraphs 10.6 to 10.9) stating that *"Overall, whilst the provision of employment within the borough is considered a positive impact, the likely employment requirements of the proposed development as it progresses towards operation could have significant negative impacts for resourcing staff or particular skills"*.
- 3.6.39. During the course of the Examination the Applicant and local authorities met and discussed improvements to the Skills and Training package that could be delivered as part of the implementation of the Proposed Development. Consequently, the Applicant has proposed that this is subject to a S106 agreement (Appendix 3: Skills and Training Plan) of [[EEAS-001](#)]. Both BDC and HBBC have agreed this approach in their signed SoCGs submitted at D8 [[REP8-020](#)] and [[REP8-021](#)].

Housing Supply and Demand

- 3.6.40. A number of the RR's, such as Stephen Hunt [[RR-1294](#)], cited negative impacts on the local housing market, as a result of increased demand from employees of the Proposed Development.
- 3.6.41. During the course of the Examination, we explored and tested the assertions made by the Applicant in its submissions. BDC in its LIR [[REP1-054](#)] at paragraph 10.2.2 states that there would be *"Neutral impacts on the current demand for housing to meet employee requirements during operation"*.

- 3.6.42. HBBC in its LIR [REP1-155] alluded to negative housing impacts as a result of increased employment opportunities in the area. In ExQ1.9.16 to ExQ1.9.18 [PD-011] we asked the local authorities for their view on housing impacts following on from comments in the LIRs. Whilst HBBC in its response [REP4-173] provided details of potential additional housing sites, including two Sustainable Urban Extensions (SUE) in Barwell and East Shilton, it failed to provide any detail or evidence of negative housing impacts as a result of the Proposed Development. Indeed, the two SUE's would potentially yield around 3,500 additional new housing units on their own, providing a potential significant contribution to housing land supply in the area.
- 3.6.43. Notwithstanding this, by the end of the Examination in their respective SoCGs with the Applicant, both BDC [REP8-020] and HBBC [REP8-021] agreed that housing land supply impact would not be unacceptable as a result of the Proposed Development.

Community and Social Infrastructure

- 3.6.44. During the Examination questions were asked and sort clarity regarding the s106 agreement, and this has been refined by the Applicant during the course of the Examination as it and the local authorities continued their dialogue.
- 3.6.45. We asked local authorities during the Examination [EV8-005] as to whether they considered further enhancements to local infrastructure would be required as a consequence of the Proposed Development. BDC in its submission at D3 [REP3-091] outlined the situation by stating that they had no specific requests for contributions in respect of impact on local services. Furthermore, other than sports and recreation and green space, BDC is not responsible for calculating any other S106 contributions. It further elaborated and outlined that they were not responsible for calculating any other contributions. BDC did confirm with LCC, who calculate such contributions for services that are not within BDC's remit, other than those contributions for archaeological monitoring, sustainable transport and a skills and training package, no additional contributions were being sought with regards to the impact on local services and assets.

Health

- 3.6.46. BDC in its LIR [REP1-055] disputed some of the findings of the Applicant's Health and Equalities Briefing Note [REP4-050], and outlined what it considered to be the negative impacts upon health and wellbeing as including:
- reduced accessibility to social infrastructure due to the increased downtime at the Narborough Level Crossing;
 - negative mental and physical health impacts due to the reduction in the Burbage Common area. Further, BDC considers there has been a lack of analysis around the qualitative nature of replacement rural open space bridleways. BDC considers the change in user experience for bridleways from a previously natural experience to a

predominantly urban one would have negative physical and mental impacts; and

- negative impacts on mental health from a reduction of the tranquillity of Burbage Common due to excessive noise impacts.

3.6.47. BDC in its submission advocated that the Applicant should be required to commit to the following measures to mitigate these adverse impacts:

- ensure quality open space provision: the Landscape Plan should include Burbage Common to ensure that the quality of the open space is improved from the Open Space Assessment's current assessment of being below the target of 80% and
- a signage and wayfinding strategy should be proposed in and around the Proposed Development to mitigate the health impact community severance by promoting pedestrian safe movements thereby encouraging active travel and fostering a sense of belonging.

3.6.48. HBBC also cited health issues as a concern in its LIR [[REP1-138](#)]. It considered that there were direct impacts on health, well-being and quality of life related to traffic flows, noise, vibration, air quality and emissions, dust, light pollution and/ or community severance. Indirect impacts were also highlighted such as access to housing, social infrastructure and services, local transport, opportunities for cycling and walking or the use of open space for recreation and physical activity.

3.6.49. Overall, HBBC suggested that the impacts of the proposal on health are negative and suggested that a full Health Impact Assessment should be submitted to fully understand the impacts of the proposal on the local health of the borough's population.

3.6.50. LCC in its LIR [[REP1-154](#)] refers to the Applicant's Policy and Legislation statement [[APP-164](#)]. This, it is stated, includes legislative and policy requirements pertinent to the assessment of health and equality. However, LCC points out that it does not include the Leicestershire 2022 - 2032 Joint Health and Wellbeing Strategy (JHWS) and the Leicestershire Health Inequalities Joint Strategic Needs Assessment 2023, both of which, LCC states, provide robust, up to date, local data.

3.6.51. LCC reference that the JHWS provides a comprehensive assessment of health and wellbeing in the county, establishes an overall vision for health as well as outlining the strategic priorities for health for Leicestershire. It recognises that the health and wellbeing of residents is generally good compared with England, however, there are significant inequalities and challenges in certain communities.

3.6.52. In particular, it is noted:

- inequalities in life expectancy are widening, with increases in life expectancy growing at a faster rate in least deprived compared to most deprived groups in the area;
- even though Leicestershire is a relatively affluent county, pockets of significant deprivation exist, with some neighbourhoods falling into the 10% most deprived neighbourhoods in England;

- data around education, skills and training and barriers to housing and services for Leicestershire indicate a higher number of neighbourhoods in the top 10% deprived nationally compared to other deprivation domains;
- Leicestershire performs significantly worse than England for the adults walking for travel at least three times per week (%), and access to travel (disabilities or no car);
- Leicestershire performs significantly worse than England for the gap in the employment rate for those in contact with secondary mental health services and the overall employment rate.

3.6.53. In the absence of a full Health Impact Assessment and cross referencing to air quality issues identified in Chapter 9 of the ES [[APP-118](#)], LCC recommends the following areas of mitigation:

- air quality, noise, dust and lighting are to be monitored on a regular and ongoing basis throughout construction and operation in locations resided by vulnerable groups and wider local communities to ensure air quality does not diminish, and noise, dust and lighting levels increase to unacceptable levels as advised by Environmental Health;
- financial support is provided for GP support/ out-reach youth workers for children and young people in Earl Shilton and Barwell to help ensure health inequalities do not widen;
- active travel provision by foot or cycle to, from and across the site is enhanced for all identified vulnerable groups, with severance of existing routes avoided wherever possible;
- financial support to the Multi-Agency Traveller Unit (the MATU), or successor, to assist with advice to the Gypsy and Traveller community at Aston Firs to help ensure health inequalities do not widen and they have a clear, trusted channel to express concerns;
- sufficient advance notification provided for local communities of forthcoming disruptions (including utilities) and diversions to lessen the impact on daily living;
- improvements to accessibility at Narborough Train Station step-free alternatives to crossing barrier to reduce disruption for disabled residents in accessing key services and local amenities; and
- analysis of impacts to traffic flow due to increased barrier downtime and work with the emergency services to ensure response time is not compromised as a result of more frequent barrier downtime.

3.6.54. A number of RRs, such as Joan Miller [[RR-0582](#)], Louise Dinsley [[RR-0772](#)] and Paul Kenney [[RR-1053](#)], cited an array of general health issues emanating from the Proposed Development, if consented. These mainly focused on the loss of green space. There were also a number of RRs, such as David Roger [[RR-0305](#)], Graham Parkes [[RR-0432](#)], and Steven Tideswell [[RR-1301](#)], who referenced the likely impact on mental health.

3.6.55. At D2 the Applicant responded to the concerns raised by the local authorities. In relation to BDC [[REP2-068](#)] it submitted that BDC had not established or provided any evidence of any actual health impact and did not present any evidence that would contradict that provided or infer any gap in the assessment submitted.

3.6.56. In its response to the LIR from HBBC, the Applicant asserted [[REP2-069](#)] that the data it has used to inform the Health and Equalities Briefing Note is the same data that underpins the JHWS, and the Applicant argues that this provides a consistent message on local health issues.

3.6.57. On the issues raised by LCC in its LIR, the Applicant [[REP2-070](#)] references, in its opinion, that LCC does not, provide a Health Impact Assessment of its own, do not indicate any gaps in the assessment, and do not present any evidence to question or contradict that already provided. Furthermore, in relation to the mitigation measures proposed by LCC, the Applicant contends that none of the requests are supported by any evidence of a significant impact; or have not already been addressed through the DCO, including:

- monitoring of air, noise and lighting for vulnerable groups during both construction and operation to levels advised by Environmental Health have been requested. However, no significant impact has been identified by LCC, and vulnerable groups vary geographically and change over time. On this basis, the mitigation is not specific, is not supported, and devoid of a receptor. Should a significant residual impact be identified, appropriate mitigation would be justified;
- the Applicant suggests that the request for financial support for General Practitioners was not geared to any impact, directly attributable to what is proposed, where neither construction nor operation would change local health care. The area is a net exporter of construction staff, would utilise local employment and the development does not propose housing that might alter population net gain or alter health care demand. Instead, the mitigation seeks to address existing barriers to socio-economic benefit uptake, of which given the significant socio-economic benefit the project would deliver, it is agreed important and addressed within the socio-economic mitigation in the planning obligation (as set out in Appendix 3 to [[EEAS-001](#)]);
- in relation to Active Travel provision, this was agreed and is included in paragraph 8.315 of Chapter 8 of the ES [[APP-117](#)];
- financial support to the MATU is requested to assist with advice to the Gypsy and Traveller community to help ensure existing health inequalities do not widen, but no evidence of an impact has been supported or even suggested for construction or operational activities;
- sufficient advanced notification has been requested for particularly disruptive construction activities. The Applicant felt this was reasonable and a fairly standard commitment in the CEMP;
- a step free crossing at the Narborough station to aid mobility impaired individuals has been requested. However, the intermittent, temporary, short-lived delay (2 minutes 30 seconds for each of the additional crossings per day) is not sufficient to result in any health impact or rationalise claims of community severance or inequality, and does not justify lift access that would likely take longer than the individual rail crossing event; and
- an analysis of the impacts to traffic flow due to increased barrier downtime is requested. The Applicant refers back to the TA

[[REP3-157](#)] and considers no evidence has been presented to contradict or contest it.

- 3.6.58. The loss of green space was questioned during ISH4 [[EV8-002](#)] to [[EV8-005](#)]. In response, the Applicant [[REP3-072](#)] explained that over 22ha of new green space would be provided adjacent to Burbage Common as part of the delivery of the Proposed Development. In addition, HBBC [[REP3-123](#)] accepted that additional accessible green space would be delivered but questioned the qualitative aspect.
- 3.6.59. In response to ExQ2.9.1 [[PD-013](#)], the Applicant [[REP5-036](#)] provides additional information on the increased green space provision. It states "*Landscape proposals for this open space will include public access on clearly defined paths rather than free roaming access to protect grassland habitat and promote the biodiversity of the area. Paths will incorporate nature/activity trails to engage users in the establishment and management of the habitats and the range of species and wildlife opportunities in the area.*"
- 3.6.60. As well as visual impact, noise can also be a trigger for mental health issues and general loss of amenity. We looked at noise, from both construction and operational activities.
- 3.6.61. To mitigate noise from construction and operational activity, discussed in detail in section 3.5, a series of acoustic barriers would be constructed at various locations around the Proposed Development. These are shown on the Acoustic Barriers Locations plan [[APP-279](#)]. Most of these would be positioned away from residential properties. That said, 4m and 6m acoustic barriers would be constructed around parts of Aston Firs Caravan Park. Detailed drawings of these barriers, together with their locational context, are provided at [[REP4-026](#)].

Other Socio-economic impacts

- 3.6.62. The loss of agricultural land was referenced by a number of IPs such as David James Black [[RR-0287](#)], Jane Astley [[RR-0525](#)], and Sarah Elliot [[RR-1219](#)]. At the time of our USIs the majority of the main Application Site was in autumn-sown cereals, with land in the south under grassland used to graze sheep and cattle.

ExA's Considerations

- 3.6.63. We have reviewed the potential effects of the Proposed Development on socio-economic considerations, and the proposed mitigation measures to address any impacts.

Employment

- 3.6.64. During the Examination, we explored concerns that there was insufficient local labour supply to service the proposal, and that the Proposed Development would result in a much greater demand for housing in the area as people may look to relocate closer to their place of work.

3.6.65. In regard to the employment issue, the creation of at least 8,400 jobs should be given substantial weight in the consideration of the application overall. Whilst it was accepted by the Applicant and local authorities that some local people may find it difficult accessing employment opportunities arising for the Proposed Development, this could be mitigated by the provision of the Employment and Skills programme proposed. This also gives priority to some groups such as those rehabilitating from offending and former military personnel. This is proposed to be facilitated and delivered through the planning obligation [[EEAS-001](#)]. We conclude that this would be acceptable and appropriate mitigation.

Housing

3.6.66. In respect of the Housing provision, the LIRs submitted by BDC and HBBC both provide comfort that the local housing market area and provision would not be negatively impacted by the Proposed Development, and that existing planned housing supply provisions would be sufficient to meet local housing need if the Proposed Development was to come forward in any event.

Community Infrastructure

3.6.67. BDC [[REP3-091](#)] confirmed that they considered that the local social infrastructure, such as doctors' surgeries, schools, etc., were sufficient to absorb the Proposed Development. They also confirmed that there would be no requirement for commuted sums to assist the delivery of such infrastructure. We therefore conclude that in relation to housing and social infrastructure that there would be a neutral impact and as such should be given neutral weight in the consideration of the Application.

3.6.68. LCC have not requested any contributions to community infrastructure through its negotiations in relation to commuted sums through the S106 process.

3.6.69. We also conclude that in respect of green space provision, the proposal for an additional 22ha of green space to extend Burbage Common is acceptable mitigation.

Health

3.6.70. Moving to health, a number of IPs cited the potential negative impacts on health if the Proposed Development was implemented. As stated in section 3.6.27 above, the Applicant submitted a Health and Equality Briefing Note [[REP4-050](#)] which considered the impacts of the Proposed Development on various health and equality issues. We consider that these have largely been adequately assessed and dealt with apart from the effect on occupiers at the Aston Firs Travellers site which is discussed below.

Agricultural Land

3.6.71. We have considered the Proposed Development in relation to government policies on the development of agricultural land. We conclude that given

that the vast majority of the site is graded as moderate, 3b, the use of the land is in accordance with the Framework which looks to protect the best and most versatile agricultural land. Nevertheless, there would be some loss of agricultural land and we give this little weight against the Proposed Development.

Effects in relation to Aston Firs Travellers Site

- 3.6.72. In ExQ2.9.2 [[PD-011](#)], we asked for clarity on the effect of the acoustic fence which is proposed to be constructed close to the Travellers site at Aston Firs.
- 3.6.73. Responding to ExQ2.9.2, the Applicant has provided a detailed discussion of the effects of these acoustic barriers on existing residents at Aston Firs Travellers site [[REP5-039](#)]. Noting its scale and the distance from residential properties, we find that the 4m barrier along the north-western boundary would not appear unduly oppressive.
- 3.6.74. The 6m barrier would run along the entire length of the south-eastern boundary, within close proximity of a number of residential units. This barrier would not appear as an unduly intrusive feature when viewed from within nearby units that are orientated with an intervening amenity building which do not have windows in its south-eastern elevation. Having said that, the fence would be dominant in garden/ amenity areas within the curtilage of those units.
- 3.6.75. However, following USV1, we note that other residential units close to the south-eastern boundary would be located close to the 6m barrier. There is no evidence to show that these homes are unlawfully positioned as caravans can be located with any orientation. Even with the presence of the existing boundary treatment, the proposed 6m barrier fence would be readily perceptible from windows within the south-eastern elevations of these units. Its scale and positioning would therefore appear visually dominant and oppressive, to the considerable detriment of the living conditions and the potential mental health of a small number of existing residents in terms of outlook.
- 3.6.76. Such harm from a fence in this location would typically result in the refusal of a planning application, and we afford it very substantial weight against this Proposed Development. This is so despite the Applicant confirming that this is the "*optimum position*" for the 6m barrier at ISH6 (00:59:50 to 01:00:11 on [[EV12-008](#)]).
- 3.6.77. That the existing hedgerow along the boundary is up to 6m high already does not, in our view, mitigate this to any extent. This is because, the hedgerow is 'gappy', particularly at height, is partially made up of invasive species such as brambles that should be managed, and the nature of a man-made, solid, high fence is very different from a hedgerow which, even in leaf, allows light to permeate giving a less oppressive nature.
- 3.6.78. We have concluded that the Proposed Development would have less than substantial impact on health and equalities, generally, with the exception

of the construction of the 6m high fence at adjacent to the Aston Firs Travellers site. In part, this would have a significant overshadowing and dominant effect resulting in a loss of outlook on a small number of units on the site with a major adverse permanent effect that cannot be mitigated.

- 3.6.79. In addition, given the Government's overarching aim is to ensure fair and equal treatment for Travellers, in a way that facilitates the traditional and nomadic way of life of Travellers while respecting the interests of the settled community, we consider that the 6m high acoustic fence adjacent some Travellers homes would be considered discriminatory and result in a breach of the PSED if approved. This is discussed further in section 5.4.
- 3.6.80. We consider that the amenity issues and the implications for the PSED means that we recommend they should be given very substantial negative weight in the decision making process.

ExA's Conclusions

- 3.6.81. Taking all the relevant documentation and policies into account, we conclude as follows:
- the Proposed Development would result in significant job creation opportunities in the Leicestershire area. The proposed Employment and Skills programme would assist more local people into work. This has substantial weight in our view to support the development.
 - there would be limited impact on the local housing market as a result of the Proposed Development and the consequent jobs created. We consider this has neutral weight in the overall balance.
 - the loss of moderate agricultural land and a small proportion of good agricultural land has little weight in our opinion against making the Order.
 - health issues generally are considered to have limited harmful impact.
 - the effect of the acoustic fence on the residents of Aston Firs Travellers site would have a very significant, visually dominant and oppressive, to the considerable detriment of the living conditions and the potential mental health of a small number of existing residents resulting in a loss of outlook on a number of units on the site that cannot be mitigated. In our view this should be given very substantial weight against making the Order.
- 3.6.82. The Proposed Development would, be contrary to policies set out in the NPSNN, principally paragraph 3.3, in that it fails to avoid or mitigate the impact of the proposed acoustic fence on the residents of Aston Firs Travellers site, where it runs adjacent to homes on the site. Similarly, paragraph 5.241 of the dNPSNN seeks applicants to address any social impacts arising from the development. We therefore consider that the proposal is contrary to this, by virtue of the impact of the acoustic fence. In addition, this aspect of the Proposed Development would also be contrary to the Governments Planning Policy for on Travellers Sites.

3.7. AIR QUALITY AND EMISSIONS

Introduction

- 3.7.1. The effects in terms of air quality and emissions on ecological receptors are considered at section 3.8. This section of the Report therefore only considers effects on human receptors, together with the Proposed Development's effects on carbon emissions in relation to climate change objectives.

Policy

Air Quality – General Policy Context

NPSNN and dNPSNN

- 3.7.2. Paragraph 5.7 to the NPSNN, together with paragraph 5.12 to the dNPSNN, require an adequate air quality assessment. Amongst other things, this should illustrate any air pollutant emissions that would lead to a deterioration in air quality and their mitigation.
- 3.7.3. Paragraph 5.12 of the NPSNN states that the SoS must give air quality considerations substantial weight where, post-mitigation, a project would lead to a significant air quality impact. However, paragraph 5.21 to the dNPSNN recognises that any increase at all in air pollutant emissions is not a reason in itself to refuse development consent, though any deterioration in air quality should be given appropriate weight in coming to the decision.
- 3.7.4. Additionally, in broad terms paragraphs 5.14 and 5.117 to the dNPSNN state that the SoS should ensure that the Applicant has provided sufficient information to show that any necessary mitigation would be put into place for emissions.

Local policies

- 3.7.5. Relevant policies at a local level include Development Management Policy 13 of BDDPD. This seeks to avoid unacceptable impacts in terms of air quality. Similarly, Policy DM7 to HBDPD seeks to prevent adverse impacts from pollution and ensure that development does not contribute to poor air quality.

Particulate Matter and NO₂ Objectives

- 3.7.6. The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 were made on 30 January 2023 and came into effect on 31 January 2023. This introduces an annual mean concentration target of 10 micrograms per cubic metre ($\mu\text{g}/\text{m}^3$) for Particulate Matter with a diameter of 2.5 micrometres or less ($\text{PM}_{2.5}$) and a population exposure reduction target of at least 35% to be achieved by the end of 2040. Government policy on how the 2040 target will be achieved is still emerging. Until then the Limit Values in the Air Quality Standards Regulations 2010 remain in force and are the most relevant limit for the purposes of this decision. Relevant annual mean targets are therefore

40µg/m³ for Particulate Matter with a diameter of 10 micrometres or less (PM₁₀) and 25µg/m³ for PM_{2.5}.

- 3.7.7. Turning to nitrogen dioxide (NO₂), the Air Quality Standards Regulations 2010 require that the annual mean concentration of NO₂ must not exceed 40µg/m³ and that there should be no more than 18 exceedances of the hourly mean limit value (concentrations above 200µg/m³) in a single year.

Climate Change, Particularly Carbon Emissions

General Policy Context

NPSNN and dNPSNN

- 3.7.8. For decision making, paragraph 5.18 of the NPSNN indicates the Government's overarching carbon reduction strategy *"includes a range of non-planning policies which will, subject to a very unlikely event occurring, ensure that any carbon increases from road development do not compromise overall carbon reduction commitments. Therefore, any increase in carbon emissions is not a reason to refuse development consent unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets"*.
- 3.7.9. Paragraph 5.19 of the NPSNN notes that evidence of appropriate mitigation measures in both design and construction should be presented. The SoS *"will consider the effectiveness of such measures in order to ensure, in relation to design and construction, the carbon footprint is not unnecessarily high"*.
- 3.7.10. Amongst other things, paragraphs 5.29 and 5.34 to the dNPSNN show that the SoS must be satisfied that the Applicant has as far as possible assessed the GHG emissions at all stages of the development. Paragraph 5.36 of the dNPSNN states that the SoS should be content that the Applicant has taken all reasonable steps to reduce the total GHG emissions from a whole life carbon perspective.
- 3.7.11. Specifically in relation to SRFIs, NPSNN paragraph 2.53 sets out the Government's belief that it is important to facilitate the development of the intermodal rail freight industry. The transfer of freight from road to rail has an important part to play in a low carbon economy and in helping to address climate change. This is echoed by paragraph 2.3 of the dNPSNN.
- 3.7.12. One of the four elements of the Government's vision and strategic objectives for national networks is the support and delivery of environmental goals and the move to a low carbon economy (NPSNN, box on page 9). Paragraph 2.40 of the NPSNN, together with paragraph 2.25 of the dNPSNN, note that modal shift from road to rail can help reduce transport's carbon emissions.

3.7.13. The addressing of climate change is self-evident when set against NPSNN paragraph 2.53 and dNPSNN paragraph 3.100. Together, these show that the transfer of freight from road to rail has an important part to play in a low carbon economy and in helping to address climate change and net zero objectives.

Local Policies

3.7.14. BDC’s District Local Plan Policy CS21 and HBBC’s Spatial Objective 12 within the HBCS seek to manage resources effectively and minimise energy use.

Carbon Budget

3.7.15. The Climate Change Act 2008 (2050 Target Amendment) Order raised the legally binding framework to cut GHGs from 80% to 100% of the ‘net UK carbon account’ (the amount of net UK emissions of targeted GHGs for a period adjusted by the amount of carbon units credited or debited to the account) for the year 2050. The duty is now to ensure that the net UK carbon account is lower than the ‘1990 baseline’.

3.7.16. Achieving this will require future GHG emissions to be aligned with any future new or revised carbon budgets that may be set out by Government to achieve the target of net zero carbon by 2050.

3.7.17. The Government announced its Sixth Carbon Budget (CB) (the GHGs emitted over a 5-year period from 2033-2037) in April 2021. This is the latest of a series of carbon budgets. No Carbon Budgets have been published beyond 2037. Table 5: UK Carbon Budgets sets out the periods, carbon limits and per centage reductions below 1990 levels up to 2037.

Table 5: UK Carbon Budgets

Budget	Period	Carbon limit (Million tonnes CO ₂ equivalent)	Reduction below 1990 levels
Third (3CB)	2018 – 2022	2,544	37%
Fourth (4CB)	2023 – 2027	1,950	50%
Fifth (5CB)	2028 – 2032	1,725	68%
Sixth (6CB)	2033 – 2037	965	78%

Case for the Applicant

Air Quality

3.7.18. ES Chapter 9 Air Quality [[APP-118](#)] describes the methods used to assess air quality impacts, the baseline conditions currently existing at the Application Site and study areas are identified, together with the potential direct and indirect impacts of the Proposed Development. Effects were considered against relevant guidance from the Institute of Air Quality Management (IAQM) and Environment Protection UK (EPUK),

including its Air Quality Management and Environmental Protection UK (2017) Land-Use Planning and Development Control: Planning for Air Quality.

- 3.7.19. In support of Chapter 9 of the ES [[APP-118](#)] the Applicant provided several appendices and figures. These include a Construction Phase Dust Assessment [[APP-165](#)], an Air Quality Back-Up CHP Assessment Building Parameters [[APP-171](#)], an Air Quality Operational Phase Road Traffic Emissions Assessment - Human Receptor Results [[APP-173](#)] and an Air Quality Operational Phase Cumulative Impacts - Human and Ecological Receptors [[APP-179](#)]. A glossary of air quality terminology can be found in at [[APP-163](#)].
- 3.7.20. For the purposes of the air quality assessment, the applicant has identified existing sensitive receptor locations in [[APP-166](#)] (human receptor locations) and [[APP-242](#)] (human receptor locations in relation to the construction phase road traffic emissions assessment).
- 3.7.21. Where applicable, in ES Chapter 9 [[APP-118](#)] the Applicant identifies mitigation measures required to prevent, reduce or offset air quality impacts, and describes the remaining (residual) impacts with such mitigation measures in place. Broad mitigation measures are detailed at Tables 9.40 and 9.41 to ES Chapter 9 [[APP-118](#)]. A qualitative construction phase dust assessment was also undertaken, and measures were recommended for inclusion in the CEMP [[REP6-011](#)] to minimise emissions during construction activity. Such measures include the production of a Dust Management Plan and an appropriate procedure to deal with dust and air quality complaints.
- 3.7.22. Moreover, to mitigate effects from construction phase road traffic, a CTMP [[REP3-040](#)] has been prepared by the Applicant for the Proposed Development. Amongst other things, this would inform the routing of deliveries and construction workers and consolidate deliveries to minimise trips associated with the construction phase.
- 3.7.23. For operational activities, the Applicant has produced a STS [[REP4-052](#)] and a Framework Site Wide Travel Plan (FSWTP) [[REP7-031](#)], [[APP-160](#)], [[APP-161](#)] and [[APP-162](#)] to promote the use of sustainable transport methods such as public transport, walking and cycling to the Application Site to reduce emissions associated with the Proposed Development. The Applicant contends that no mitigation measures would be required to minimise exposure of users of the Public Right of Way network to pollution.
- 3.7.24. Overall, following mitigation and amongst other things, the Applicant's air quality assessment shows that:

Construction Phase

- The residual impacts from construction phase dust are considered local, medium term, temporary and 'not significant' in accordance with IAQM/ EPUK guidance.

- In terms of construction phase road traffic impacts on human receptors a negligible impact is predicted. The residual impacts are predicted to be local, temporary and 'not significant' in accordance with IAQM/ EPUK guidance.

Operational Phase

- For road traffic emission impacts on human receptors, there would be negligible effects at the majority of receptors with regard to concentrations of NO₂, PM₁₀ and PM_{2.5}. The only exception to this would be at two residential dwellings (receptors R110 and R205 respectively) in the Opening Year 2026. Receptor R110 is located on the B4668 Leicester Road, north of the new A47 Link Road, adjacent to the roundabout junction with the A47. Receptor R205 is located adjacent to the A5 at the roundabout with the A426.

Here, 'slight adverse' impacts were predicted in terms of NO₂ emissions. Nevertheless, pollutant concentrations at all receptors in both the 2026 Opening Year and 2036 Future Year scenarios are predicted to be below the relevant current air quality objectives. The residual impacts are therefore predicted to be local, permanent negligible and 'not significant' in accordance with IAQM/ EPUK guidance.

- Rail emissions from the use of diesel locomotives from the operation of the Proposed Development are considered to be 'negligible' and 'not significant' in accordance with IAQM/ EPUK guidance.
- The back-up CHP system would have a 'not significant' effect on pollutant concentrations at existing human receptors in accordance with IAQM/ EPUK guidance.

Cumulative Effects

- Cumulative effects, including construction phase road traffic emissions and in-combination effects arising as a result of back-up CHP emissions, would not be significant in accordance with IAQM/EPUK guidance.

3.7.25. Finally, in relation to Air Quality Management Areas (AQMA), the main part of the Application Site is not located within, or immediately adjacent to, any such designation. Nearby AQMAs within BDC's administrative area include AQMA 2, located along the M1 corridor between Enderby and Narborough, and AQMA 3, which covers the M1 corridor between Thorpe Astley and Kirby Muxloe and extends along the A47 Hinckley Road. AQMA 6 also covers an area at Mill Hill, Enderby. No significant effects are predicted by the Applicant.

Climate Change, particularly Carbon Emissions

3.7.26. Amongst other things, ES Chapter 18 [[REP4-045](#)] provides an assessment of the potential effects of the Proposed Development on the magnitude and mitigation of GHGs emitted during construction and operation.

- 3.7.27. ES Chapter 18 shows that, on the whole and prior to mitigation, the Proposed Development would not make a meaningful contribution to the UK's trajectory towards net zero. Overall, this would result in a net significant, moderate adverse, effect.
- 3.7.28. That said, to reduce embodied carbon sources during construction, the Applicant has committed to deliver net-zero buildings. In accordance with the 'RIBA Stage 1 Embodied Carbon Report' [[APP-218](#)], the as-built verification of the embodied carbon for the logistic units would form the basis of the Net Zero Carbon 'In Construction' declaration for each building. This would be secured by Req 17 which requires detailed Energy Strategies to accompany each phase of the Proposed Development.
- 3.7.29. The Applicant has proposed a number of mitigation measures in order to reduce effects during construction. For example, development would be guided by the CEMP [[REP6-011](#)] and a CTMP [[REP7-059](#)]. Amongst other things, these would promote the training of employees in how to handle machinery to reduce GHGs and would encourage the switching off of machinery and vehicles when not in use.
- 3.7.30. During the demolition of on-site structures, the Applicant is proposing the re-use, recycling and reduction of construction waste to minimise the need to extract raw materials. This management of waste has been set out in the Site Waste and Materials Management Plan (SWMMP) [[APP-361](#)] and would be secured by Req 22.
- 3.7.31. Turning to the operational stage, the Applicant expects that CO₂ emissions would decrease gradually over the lifetime of the Proposed Development in accordance with Government standards and policies and industry trends. This includes the possible phasing out of diesel motor vehicles. In addition, the Applicant contends that the FSWTP [[REP7-031](#)], [[APP-160](#)], [[APP-161](#)] and [[APP-162](#)] would mitigate GHG emissions associated with staff vehicle movements by, amongst other things, reducing the reliance on the use of private motor vehicles.
- 3.7.32. Moreover, the Energy Strategy [[REP3-024](#)], again secured by Req 17, includes a range of energy efficiency measures in accordance with the energy hierarchy. This would support a built-in Building Energy Management System which would control the heating, lighting, ventilation, hot water supply and renewable energy interfaces to manage the use of and save energy.
- 3.7.33. The construction and operation of the Proposed Development would take place across the 4CB, 5CB and 6CB periods. The likely residual total emissions per emission source following mitigation are shown at Table 18.22 to ES Chapter 18 [[REP4-045](#)]. There would be residual emissions of 13.7 kilotonnes CO₂ equivalent (ktCO₂e) associated with embodied carbon for highways infrastructure during the construction stage, together with a net residual effect of approximately 247.36ktCO₂e per annum from the operation of the Proposed Development. The Applicant contends that such residual effects would not inhibit commitments necessary to achieve the UK's trajectory towards net zero, as they

represent less than 1% of both the representative target for 2036 and the total UK's 6CBD (the most stringent benchmark). Effects in terms of emissions are therefore considered by the Applicant to be minor adverse.

- 3.7.34. Furthermore, the Applicant's initial assessment of lorry miles saved was around 83 million HGV road miles per annum [APP-131]. A discussion on this topic was facilitated at various oral hearings, including at ISH2 [EV6-007] and ISH4 [EV8-005]. To reaffirm the accuracy of HGV road miles saved, a detailed analysis of HGV miles and associated carbon savings was provided by the Applicant at [REP3-052]. On this basis, the Applicant contends that the approximate saving of 83 million HGV road miles per annum would save around 104.783kt CO₂e per annum.

Case for Interested Parties

Air Quality

- 3.7.35. The SOCGs between the Applicant and BDC [REP8-020] and HBBC [REP8-021] show that all matters relating to air quality are agreed. The only exception to this concerns the wording of Req 28 (combined heat and power), which has not been agreed with BDC.
- 3.7.36. In essence, BDC requested certainty that the undertaker would maintain an up-to-date usage report covering a period of at least 12 months for the back-up CHP plant for the lifetime of the Proposed Development. To address this, the Applicant has proposed at D8 a revision to the text of Req 28. This is shown at page 14 to [REP8-031] and would secure a usage report in line with the Council's requirements.
- 3.7.37. A number of representations, for example Catherine Bass [RR-0943], Steven Bass [REP1-222], the Stoney Stanton Action Group [REP1-225] and [REP8-057], raise concern in terms of air quality and emissions. Concerns relate to matters including the effect of pollutants at nearby villages such as Narborough, Elmesthorpe and Stoney Stanton.
- 3.7.38. Responding to these concerns, including at [REP1-019], [REP2-065] and [REP6-027], the Applicant has confirmed that receptors at nearby villages were included in the air quality assessment. Predicted impacts at these locations, agreed by both BDC and HBBC, were considered to be 'not significant' with regard to the IAQM/ EPUK guidance.
- 3.7.39. To reinforce these assertions, the Applicant draws attention to its air quality addendum [AS-023]. Taking into account the revised PM_{2.5} air quality objectives published by the Government in early 2023, this addendum shows that the impact of the Proposed Development is predicted to be 'not significant' in relation to the future PM_{2.5} objective with regard to IAQM/ EPUK guidance. Moreover, the Applicant has provided an assessment of the air quality impact of queueing traffic on receptors close to Narborough Level Crossing at [REP3-058]. This shows that impacts are predicted to be 'negligible' at all receptors, with the exception of two receptors on Leicester Road and in the grounds of St George's Nursery School (plan in Appendix A), where 'slight' impacts

are predicted for NO₂. These 'negligible' and 'slight adverse' impacts would be 'not significant' for the purposes of the IAQM/ EPUK guidance.

Climate Change, Particularly Carbon Emissions

- 3.7.40. All matters relating to climate change and GHG emissions are agreed with BDC and HBBC in [REP8-020] and [REP8-021]. This includes matters pursuant to; assessment methodologies, mitigation, energy efficient design, sustainable construction practices and the wording of Req 17 (Energy Strategy). Indeed, to address initial concerns, such as those within [REP1-055], the Applicant's Energy Strategy [REP3-024] has been updated to consider Ground Source Heat pumps, as well as Air Source Heat pumps, where feasible.

ExA's Considerations

Introduction

- 3.7.41. With particular regard to the level of agreement with BDC and HBBC, we are satisfied that the assessments undertaken for both air quality and emissions are sufficiently robust to provide meaningful outputs that can be relied upon. They are in line with the requirements of paragraph 5.7 to the NPSNN and paragraphs 5.12 and 5.29 to the dNPSNN. In reaching this finding we are mindful of the Applicant's confirmation at ISH3 [EV7-002] (20:21 to 21:26), and subsequently at [REP3-055], that emission assessments align with the Court of Appeal's findings in *R (Boswell) v Secretary of State for Transport* [2024] EWCA Civ 145. The absence of a cumulative GHG assessment, which would be dependent on the global climate, is therefore acceptable.

Air Quality

Construction effects

- 3.7.42. Regarding construction effects, we are satisfied that mitigation measures, including the CEMP [REP6-011] secured by Req 7, would result in dust effects that would be local, medium term and temporary. This would not be unduly harmful to human receptors. In terms of construction-phase road traffic, on the evidence before us there is no reason to depart from the Applicant's view that this would have a negligible effect on all human receptors during the peak construction phase and would only have local, temporary residual effects. On this basis, we are satisfied that there would not be unacceptable construction effects in relation to air quality.

Operational effects

- 3.7.43. Regarding operational effects on air quality, we acknowledge that wind conditions could carry pollutants away from the Application Site and towards sensitive receptors. Nevertheless, even if this was the case, with particular regard to the Applicant's Air Quality Addendum [AS-023], we are satisfied that the operation of the Proposed Development would result in negligible annual mean NO₂, PM₁₀ and PM_{2.5} concentrations at nearly all sensitive receptors.

- 3.7.44. The only exception to this would be at two residential dwellings which would experience NO₂ levels above a 'negligible' effect in the 2026 Opening Year as a result of road traffic emissions. These are receptors R110 and R205 as shown at [APP-166] and [APP-242]. As discussed, they are on the B4668 Leicester Road and adjacent to the A5 at the roundabout with the A426 respectively. Furthermore, there would be two receptors in Narborough that would experience 'slight' impacts for NO₂ as a result of queuing traffic during barrier down time.
- 3.7.45. However, as illustrated at [APP-173], receptors R110 and R205 are predicted to experience an increase in annual mean NO₂ concentrations of 6% of the annual mean NO₂ UK objective of 40µg/m³, with total predicted NO₂ concentrations considerably below 75% of the annual mean NO₂ UK objective. The receptors are also adjacent to main carriageways which would experience the largest increases in traffic as a result of the Proposed Development and are already subject to existing vehicle queuing. As such, we are content with the Applicant's assertion that the Proposed Development would only result in a slight adverse effect to these receptors compared to the existing situation, which would not be unacceptable. This would also be true for effects from queuing traffic at Narborough Level Crossing, as illustrated by the Applicant's assessment at [REP3-058].
- 3.7.46. Turning to rail movements, ES Chapter 9 [APP-118] provides the screening assessment undertaken in relation to both stationary and moving locomotives as a result of the Proposed Development. Table 9.33 to ES Chapter 9 compares relevant DEFRA screening criteria (detailed at paragraph 9.43 to ES Chapter 9) to the Proposed Development. Consideration was therefore given to both the NO₂ annual mean and the sulphur dioxide 15-minute mean air quality objectives for England.
- 3.7.47. It was determined by the Applicant that the Proposed Development would not exceed any of this screening criteria and no IP suggested otherwise. Consequently, there is no substantive evidence before us to show that effects from emissions by diesel locomotives would be anything other than 'not significant' with regard to IAQM/ EPUK guidance. Rail movements would therefore not have an unacceptable effect on air quality.
- 3.7.48. In terms of the back-up CHP, we find that effects on air quality and emissions would be negligible. This finding is reinforced given that both BDC and HBBC agree with the Applicant's assessment of unit emissions ([REP8-020] and [REP8-021]) and as the main source of on-site energy would be provided by a Photovoltaic array. Subject to the revised wording proposed by the Applicant for Req 28 at [REP8-027], which would necessitate a change to the dDCO [REP7-011], the use of the back-up CHP would be adequately monitored and managed. Additionally, although our attention has been drawn to the possibility that the back-up CHP may need to be subject to relevant permitting arrangements ([RR-1356]), as discussed in section 7.6.4 this would not have any bearing on the ability to implement the Proposed Development and can be addressed separately in due course.

- 3.7.49. In addition, noting that BDC has agreed, at [\[REP8-020\]](#), that there would be no significant impacts at its AQMA 6, there is no evidence before us to show that the Proposed Development would have an unduly harmful effect to the air quality at any AQMAs.
- 3.7.50. Overall, we are satisfied that the Proposed Development would not result in unacceptable harm to human receptors in terms of air quality. Neither is there any evidence before us to suggest that harmful cumulative effects would arise. Notwithstanding this, the Proposed Development would result in the worsening of conditions for a very small number of receptors. This therefore weighs against the grant of the DCO, but with little weight. Reinforcing these findings, we note that Appendix 2 to [\[REP8-020\]](#) shows that mitigation measures would exceed the damage cost calculated. This is in accordance with the thrust of paragraphs 5.14 and 5.117 to the dNPSNN, as well as paragraphs 5.14 and 5.15 to the NPSNN.

Climate Change, Particularly Carbon Emissions

- 3.7.51. For the purposes of this assessment, the dNPSNN represents the Government's most recent advice in relation to carbon emissions. Consequently, and given that it post-dates the Paris Agreement on Climate Change, we have given greater weight to the relevant advice of the 2023 dNPSNN rather than that of the 2015 NPSNN and assessed the Application on that basis.
- 3.7.52. As recognised by paragraph 5.26 to the dNPSNN, the construction and operation of the Proposed Development would inevitably lead to carbon emissions. Nevertheless, there is significant agreement on matters relating to vehicular emissions, embodied carbon and energy demand in relation to GHG emissions between the Applicant and BDC and HBBC.
- 3.7.53. On this basis, we are satisfied that the SWMMP [\[APP-361\]](#) would adequately manage embodied carbon in construction materials. The measures outlined within the CTMP [\[REP7-059\]](#) and CEMP [\[REP6-011\]](#) would also reduce vehicle emissions. Notwithstanding our findings in relation to the effectiveness of sustainable travel strategies at section 3.3.425, vehicle emission reduction would also be assisted to a degree by the FSWTP [\[REP7-031\]](#), [\[APP-160\]](#), [\[APP-161\]](#) and [\[APP-162\]](#), the STS [\[REP4-052\]](#) and FSWTP [\[REP4-055\]](#).
- 3.7.54. Additionally, the Energy Strategy [\[REP3-024\]](#) would manage energy demand during the operational stage, even if, as we find in section 3.11.30, this was a lost opportunity. This would provide a platform to re-assess energy solutions, including the incorporation of other emerging technology to minimise the Proposed Development's carbon footprint. This would be suitably secured and managed by Req 17 of the dDCO [\[REP7-011\]](#) although limited by Article 3(2). We also find that on-site energy generation provisions would be made by incorporating Photovoltaics to all available roof space to help to satisfy the energy demands of the Proposed Development.

- 3.7.55. Within the terms of the Application as limited by Article 3(2) of the dDCO [[REP7-011](#)], we are therefore content that the Applicant has taken all reasonable steps to reduce the total GHG emissions from a whole life carbon perspective in accordance with paragraph 5.36 to the dNPSNN.
- 3.7.56. In addition, it is acknowledged that it is not possible to assess the Proposed Development against Carbon Budgets beyond 2037 (none have been published). Nevertheless, given that the residual carbon emissions would represent less than 1% of both the representative target for 2036 and the total UK's 6CB, we are also satisfied that the Proposed Development would not materially affect the UK Government's ability to meet carbon budgets (including international obligations under the Paris Agreement on Climate Change) and, ultimately, net zero. This is in line with the objectives of paragraph 5.29 to the dNPSNN.
- 3.7.57. Lastly, the evidence before us, particularly [[REP3-052](#)], shows that the Proposed Development would provide a major shift from road transport to rail. It would result in an approximate saving of 83 million HGV road miles per annum, which would save around 104.783ktCO₂e per annum. This is in accordance with the dNPSNN and NPSNN insofar as they seek to support the transfer of freight from road to rail to foster a low carbon economy. That said, while a large amount, this would represent a relatively modest contribution to the UK's overall carbon savings required per annum. On this basis, this benefit carries moderate weight in favour of this Proposed Development.

ExA's Conclusions

- 3.7.58. Taking everything together, we agree with the Applicant's assessment of the environmental effects of the Proposed Development in terms of air quality and GHG emissions at [[APP-118](#)] and [[REP4-045](#)] respectively. Namely that:
- residual effects from construction phase dust and construction phase road traffic on human receptors would be local, temporary and 'not significant' in accordance with IAQM/ EPUK guidance and can be managed through CEMP;
 - the Proposed Development would have a negligible impact on annual NO₂, PM₁₀ and PM_{2.5} concentrations at most receptors in accordance with IAQM/ EPUK guidance;
 - slight adverse impacts would occur as a result of NO₂ emissions from operational road traffic at four receptors (R110 and R205 and two at Narborough). However, the residual impacts in this regard would be local, permanent negligible and 'not significant' in accordance with IAQM/ EPUK guidance;
 - the Proposed Development would not have an unduly harmful effect at any AQMA in terms of air quality;
 - rail emissions associated with the Proposed Development and those from the back-up CHP would be negligible' and 'not significant' in accordance with IAQM/ EPUK guidance;
 - cumulative effects, including construction phase road traffic emissions and in-combination effects arising as a result of back-up CHP

emissions, would not be significant in accordance with IAQM /EPUK guidance;

- Overall, in air quality terms the Proposed Development would be slightly harmful and we give this little weight;
- the Proposed Development would not affect or delay the SoS's ability to meet carbon budgets and ultimately, net zero; and
- the approximate saving of 83 million HGV road miles per annum would save approximately 104.783ktCO₂e per annum. This should be given moderate weight in favour of the Proposed Development.

3.7.59. We consider that the Proposed Development would, overall, comply with the relevant policies set out in the NPSNN and dNPSNN. We also afford moderate weight in favour of the proposal's reduction in overall GHG emissions as a consequence of the transfer of goods movements from road to rail.

3.7.60. Having said that, there would be slight harm to a limited number of identified sensitive receptors in relation to air quality, resulting in conflict with local planning policies such as Policy DM7 to the HBBC's HBDDP insofar as they seek to prevent such adverse effects. This carries little weight against the Proposed Development.

3.8. BIODIVERSITY

Introduction

3.8.1. This section considers the effects of the Proposed Development on biodiversity and the natural environment. It includes effects on protected species and consideration of sites of national, local and regional interest.

3.8.2. Matters relating to international sites and HRA are set out in section 4 of this report. Discussion over air quality effects is undertaken further in section 3.7, and those relating to the Water Environment are dealt with in section 3.10.

Policy

Environment Act 2021 and Biodiversity Net Gain

3.8.3. The Environment Act 2021 makes a 10% Biodiversity Net Gain (BNG) mandatory for all but exemptions and small sites. For NSIPs this is scheduled for implementation in November 2025.

3.8.4. BNG is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity.

NPSNN

3.8.5. Paragraph 5.23 requires the applicant to "*show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests*".

- 3.8.6. NPSNN paragraphs 5.24 to 5.35 identify the biodiversity considerations to which the SoS must have regard. Paragraphs 5.36 to 5.38 consider biodiversity mitigation.
- 3.8.7. Paragraphs 5.27 to 5.31 explain how the Proposed Development should respond to the site protection system, from international via nationally to regionally and locally designated sites. Paragraph 5.31 makes clear that regionally and locally protected sites (including Local Wildlife Sites (LWS)) should receive due consideration but given the need for national networks infrastructure, will not in themselves provide a basis for refusing an application for development consent.
- 3.8.8. Paragraphs 5.34 and 5.35 explain the approach to be taken to protected species, which should be protected from the adverse effects of development. Paragraphs 5.36 to 5.38 identify that appropriate construction and operational mitigations, taking account of observations by and agreements with NE, should be provided and secured.

dNPSNN

- 3.8.9. The dNPSNN repeats much of the NPSNN, but at paragraphs 5.41 and 5.42 the dNPSNN expects the applicant to consider all potential impacts on ecosystems as well as considering potential net gain as part of their proposals.
- 3.8.10. Paragraph 5.49 also advises that the SoS will need to take account of the advice provided to the applicant by NE.
- 3.8.11. Paragraphs 5.50 to 5.52 looks at decision making and refers back to the mitigation hierarchy.
- 3.8.12. Paragraphs 5.61 to 5.64 identifies that development proposals provide many opportunities for incorporating beneficial biodiversity, improvement to, habitats and species in, around and beyond developments, and that the SoS should consider whether the applicant has maximised such opportunities and enhancement of wider biodiversity, in and around developments. The SoS may use requirements or planning obligations, where appropriate, in order to ensure that such beneficial features are delivered, and ongoing management and maintenance secured.

National Planning Policy Framework

- 3.8.13. The Framework also considers biodiversity considerations. Section 15 of the Framework contains policies for conserving and enhancing the natural environment, which are closely aligned with considerations to be taken into account under the NPSNN.

Local Policy

- 3.8.14. BDC in its LIR [[REP1-055](#)] sets out that it considers Policies CS14 and CS19 of the BCS [[REP4-165](#)] are relevant to the consideration of this Application.

- 3.8.15. Policy CS14 – Green Infrastructure seeks to protect existing, and provide new, 'networks of multi-functional green spaces', comprising both publicly owned and private land. Aston Firs/ Burbage Common, which adjoins the Proposed Development, is specifically identified by the policy as an area to be retained as an important recreation resource and valuable wildlife habitat.
- 3.8.16. Policy CS19 Biodiversity and Geodiversity sets out the approach where development may impact on a SSSI and other LWSs.
- 3.8.17. HBBC also set out in its LIR [[REP1-138](#)] relevant policies pertaining to biodiversity that they consider apply to the Proposed Development.
- 3.8.18. Policy CS20 in the HBCS [[REP4-178](#)] focuses on the Green Infrastructure network and has an aspiration to increase the size of Burbage Common and Woods. The aim of this policy is to increase the community value and the biodiversity holding capacity of the asset.
- 3.8.19. Policy DM6 of the HBDPD sets out that development proposals must demonstrate how they conserve and enhance features of nature conservation and geological value including proposals for their long term future management.
- 3.8.20. Policy DM9 of the HBDPD 'Safeguarding Natural and Semi-Natural Open Spaces ' seeks to retain and enhance the accessibility of the space and its recreational value whilst ensuring the biodiversity and conservation value is also enhanced.
- 3.8.21. Policies GI1 and GI5 of the Harborough Local Plan and Policies NE1, NE2, NE3 and SDC2 of the Rugby Local Plan deal with biodiversity and green spaces. Amongst other things, they seek to protect wildlife and habitats, together with networks of multi-functional green spaces that contribute to the health and quality of life of communities.

Neighbourhood Plans

- 3.8.22. The southern and eastern extents of the main part of the Application Site fall within the Fosse Villages Neighbourhood Plan area. The Neighbourhood Plan [[REP4-165](#)] also identifies the presence of three ecologically important SSSIs within the Plan area, all of which are within 5km of the main part of the Application Site, namely: Burbage Wood and Aston Firs SSSI, Croft Hill SSSI, and Croft Pasture SSSI. Potential effects on these SSSIs are considered in the assessment.
- 3.8.23. Policy FV4: Biodiversity of the Fosse Villages Neighbourhood Plan requires new development to minimise impacts on and provides net gains for biodiversity. New development is also expected to maintain and enhance existing ecological corridors and landscape features (such as watercourses, hedgerows and tree-lines) to support biodiversity.
- 3.8.24. Policy 8 of the Burbage Neighbourhood Plan [[REP4-167](#)] seeks to protect areas, such as Burbage Common from negative impacts from

development. The policy in particular seeks to protect and enhance the features that give the LWSs their biodiversity significance.

- 3.8.25. In addition, Policy 9 seeks to protect and enhance the network of green spaces, stepping stones and wildlife corridors including species rich hedgerows.

Case for the Applicant

Baseline Surveys

- 3.8.26. Chapter 12 of the ES [[REP7-024](#)] addresses ecology and biodiversity issues. It assesses the likely significant environmental effects in terms of the features of ecological importance that are present within and adjacent to the Proposed Development. The ES is supported by a considerable number of supporting statements and appendices, which include details of:

- Surveys [[APP-308](#)] to [[APP-328](#)];
- Air Quality Road Traffic Emissions Assessment - Ecological Transect Locations - Construction Phase and Operational Phase [[APP-167](#)];
- Air Quality Construction Phase Road Traffic Emissions - Ecological Results [[APP-174](#)];
- Air Quality Operational Phase Road Traffic Emissions Assessment - Ecological Assessment Result [[APP-176](#)];
- Air Quality Operational Phase Back-Up CHP Emissions Assessment - Ecological Receptor Results [[APP-178](#)];
- Air Quality Operational Phase Cumulative Impacts - Human and Ecological Receptors [[APP-179](#)];
- Shadow Habitat Regulations Assessment (sHRA) [[APP-199](#)];
- ES - Figure 12.24 - Ecological Mitigation Proposals [[APP-329](#)];
- Ecological Mitigation and Management Plan (EMMP) [[APP-363](#)];
- Biodiversity Impact Assessment (BIA) calculations [[REP7-034](#)] and [[REP7-036](#)];
- Ecological Baseline (Appendix 12.1) [[REP4-065](#)]; and
- LEMP [[REP7-053](#)].

- 3.8.27. The Applicant's approach is summarised at ES Chapter 12 paragraph 12.3: *"This chapter describes the methods used for the assessment, a summary of the baseline conditions currently existing within the DCO Site and in its surroundings, the likely direct and indirect effects arising from the Proposed Development during construction and operation, and the mitigation measures required to avoid, mitigate or compensate likely significant adverse effects. It also provides an assessment of the potential opportunities to provide enhancements over the existing situation with likely significant beneficial effects."*

Habitats

- 3.8.28. The extent of the study area for this assessment has been defined by the Applicants through an ecological Zone of Influence of the Proposed Development. This has been determined through a review of the baseline ecological conditions relative to the Proposed Development in the context

of the proposed activities and was informed by engagement with statutory bodies such as NE. The Applicant's desk study search radii around the main part of the Application Site included a:

- 30km radius for international statutory designations;
- 5km radius for national statutory designations;
- 3km radius for non-statutory local sites;
- 6km radius for bat species records; and
- 3km radius for all other protected/notable species records.

3.8.29. No part of the Application Site is covered by an internationally, nationally or locally important statutory designation. That said, the Applicant identified the following sites pertinent to the ES assessment:

Statutory designated sites [[APP-306](#)]

- Ensor's Pool Special Area of Conservation (SAC)
- The River Mease SAC
- Burbage Woods and Aston Firs SSSI
- Burbage Common and Woods LNR

Non-statutory Designated Sites [[APP-307](#)]

- Burbage Common and Woods LWS
- Field Rose Hedgerow LWS
- Elmesthorpe Plantation Hedgerow LWS
- The Borrow Pit LWS
- Billington Rough LWS

3.8.30. Table 1.4 to ES Appendix 12.1 [[REP4-065](#)] shows the Applicant's view of important ecological features, of varying nature conservation importance, warranting consideration for the above sites. These include nationally important Ash-Oak-Maple woodland at Burbage Woods and Aston Firs SSSI and semi-natural woodland and mesotrophic grassland of national/county level importance at Burbage Common and Woods LNR. For non-designated sites, important features identified by the Applicant include semi-natural woodland and mesotrophic grassland, wet grassland and species rich hedgerow of national or county level importance. Internationally important statutory designations are dealt with in the SHRA [[APP-199](#)].

3.8.31. In addition, some sites are classified as a potential Local Wildlife Site (pLWS) or a candidate Local Wildlife Site (cLWS). Any individual or organisation may volunteer a site as a pLWS. If enough information or surveys have been submitted it can then be assessed by a Local Wildlife Trust panel to assess whether it can then become a cLWS, where further surveys by a professional ecologist following strict standards, would be undertaken to put before a further panel. The panel would then assess the site using the information from the new survey to determine whether to delete for further information or designate formally as a LWS.

3.8.32. Table 1.4 also sets out other important ecological features at sites in in the surrounding area identified by the Applicant. This includes broad-leaved woodland with moderate botanical diversity at Woodland adjacent

to Aston Firs pLWS, mesotrophic grassland at Hay Meadow LWS, Stanton Road Verge 2 pLWS, Home Farm Grassland pLWS and Trackside Meadow Candidate LWS and networks of ponds, streams, ditches and hedgerow and trees. These features and habitats are considered by the Applicant to be a mix of county, local and district level importance.

- 3.8.33. Potential impacts on Narborough Bog SSSI have been scoped out by the Applicant as it is considered to be sufficiently distant from the Application Site not to be at risk of any adverse effects from the Proposed Development, including air pollution.

Species

- 3.8.34. Amongst other things, Table 12.6 to ES Chapter 12 [[REP7-024](#)] summarises the important fauna identified by the Applicant for consideration. This includes bats (roosting and foraging), European hare and common toad which are all of local importance. Otters, also of local importance, have been found by the Applicant to use a single wet ditch in the north-western corner of the main part of the Application Site.
- 3.8.35. Breeding farmland specialist birds of district importance identified by the Applicant include a population of up to 42 pairs of skylark and other ground nesting species are identified. Part of an active badger sett and records of grass snake and slow worm have also been evidenced by the Applicant at the Application Site.

Construction Impacts

- 3.8.36. The Applicant in the ES has assessed the unmitigated likely significant effect on habitats and species as a result of the Proposed Development during construction and when operational. Amongst other things, constructional effects could result in:

- habitat loss and fragmentation;
- habitat degradation and damage;
- harmful impacts from noise;
- light and human disturbance;
- pollution of groundwater; and
- increased nitrogen deposition.

Mitigation During Construction

- 3.8.37. The EMMP [[APP-363](#)] sets out in detail the measures which would require implementation during the demolition and construction phase of the Proposed Development. It is proposed that the methodologies prescribed within the EMMP would be overseen by an appointed Ecological Clerk of Works. This would be secured through Req 20 of the dDCO [[REP7-011](#)].
- 3.8.38. The CEMP [[REP6-011](#)] sets out more general environmental control measures during construction and would be secured by way of a suitably worded DCO requirement (Req 7). Additionally, the LEMP [[REP7-053](#)] sets out the proposed measures for the on-going management, maintenance and monitoring of the important ecological features and of

newly created habitats whereby the Applicant seeks to maximise opportunities for biodiversity enhancement and gain.

3.8.39. The Applicant goes on to provide in the CEMP [[REP6-011](#)] that mitigation measures during construction would include:

- the establishment of Ecological Protection Zones (EPZs), protected by fencing and signage to prevent activities such as the incursion by vehicles or personnel, fires and stockpiling of materials;
- retention of habitats (including nesting and invertebrate habitat) and trees with bat roost potential included within EPZs;
- restricted working hours and use of lighting to minimise disturbance to foraging and commuting habitats; and
- the creation of new habitat for invertebrates.

Operational Impacts

3.8.40. The Applicant has identified likely general impacts [[REP7-024](#)], which could arise as a result of the operation of the Proposed Development in the absence of mitigation include the following:

- impacts of light and noise/ visual/ human disturbance to habitats and species;
- increased risk of nitrogen deposition on sensitive habitats due to increased air pollution;
- increased risk of collision to species arising from increased traffic movements; and
- alteration of groundwater flows.

Mitigation during Operation

3.8.41. In Chapter 12 of the ES [[REP7-024](#)] the Applicant suggests at paragraph 12.211 that negative effects for the operational phase have been avoided or reduced through inherent mitigation incorporated into the Project Description [[APP-112](#)], the Parameters Plan [[REP4-016](#)] and Illustrative Landscape Strategy [[REP7-043](#)]. The Applicant also includes the following matters pertinent to the ecological impact assessment in the layout shown in the Parameters Plan [[REP4-016](#)] and mitigation:

- substantial buffer of a minimum of 25m, but with a majority exceeding 50m, between built development and Burbage Wood and Aston Firs SSSI and Freeholt Wood pLWS/ Ancient Natural Woodland off-site woodland;
- retention of on-site Broadland semi-natural woodland and buffer from the built development, including Woodland adjacent to Aston Firs pLWS;
- retention and provision of buffers to hedgerows around the western, southern and eastern boundaries of the main part of the Application Site, including Field Rose Hedgerow and Elmesthorpe Plantation Hedgerow LWS, and Elmesthorpe Boundary Hedgerow pLWS;
- provision of a large wildlife area (approximately 11.34ha) in the west of the main part of the Application Site, comprising open meadow

grassland, shrub and tree planting and wetland/ Sustainable Drainage System (SuDS) features;

- provision of habitat (11.33ha) to the south of the A47 Link Road proposals to complement and buffer the Burbage Common habitats; and
- provision of new structural and hedgerow planting in addition to connected aquatic/ SuDS features.

3.8.42. Detailed Design Measures, such as the Landscape Strategy [[REP7-043](#)], are also key mechanisms which would be implemented. These are illustrative and allows flexibility for specific detailed design measures to be secured and included within the Proposed Development. Key aspects of the design include:

- external lighting – to be designed to avoid impacts on nocturnal wildlife where in close proximity to retained habitats;
- surface water drainage system – to be designed to maintain/ improve water quality and maintain existing run-off rates, and provide additional wetland habitat; and
- soft landscape scheme – to be designed to include new habitats of ecological value within the areas of open space.

3.8.43. A full summary of operational impacts and mitigatory measures proposed is provided by the Applicant in Table 12.8 of Chapter 12 of the ES [[REP7-024](#)] (pages 88-91).

3.8.44. The Applicant considers there to be a potential risk of negative indirect impacts upon the Burbage Wood and Aston Firs SSSI resulting from increased recreational pressure associated with the Proposed Development. The Applicant proposes mitigation to reduce this risk includes the implementation of a Woodland Management Plan [[REP1-015](#)]. This details an access and movement management strategy, that details the location and routes of proposed and existing access points and permitted routes for walking within the Proposed Development as an alternative to the woodland. A monitoring programme to ensure that the woodland is not being detrimentally affected and details of funding/ responsibility for on-going management and monitoring are also set out. The Applicant considers that subject to the implementation of the above measures, indirect adverse impacts from recreational pressure would be reduced to not significant levels. This is proposed to be secured through Req 31 of the DCO.

3.8.45. The EMMP [[APP-363](#)] as proposed by the Applicant includes measures to restore, maintain and enhance the non-statutory designations and other valued habitats on-site, including the grassland, hedgerows, trees and woodland, in order to increase their resilience and mitigate long-term disturbance effects. In addition, the EMMP includes measures to establish and maintain new habitats of long-term ecological value within the Proposed Development's open spaces.

Biodiversity Net Gain

- 3.8.46. The extent of important ecological habitats within the main part of the Application Site, and the quantities retained, lost and proposed, have been assessed by the Applicant using the DEFRA Metric 3.1 BIA Calculator. These BIA calculations, which are provided in ES Appendix 12.2 [REP7-034] and [REP7-036], have been used, according to the Applicant, to objectively provide an overall biodiversity score for the Proposed Development. The Proposed Development does not achieve 10% BNG on-site in either linear habitats or habitat areas, including for the loss of ponds, realignment of the stream, and degradation of wet ditches.
- 3.8.47. Consequently, an area of off-site mitigation in close proximity to the Application Site has been included in the calculations by the Applicant. Negotiations are on-going to secure this land. As discussions had not concluded by the end of the Examination the additional 23.44 units required would therefore be secured through an off-setting scheme, such as the Environment Bank. This will be delivered through an off-setting scheme. This would be secured by Req 29.
- 3.8.48. Measures included within the LEMP [REP7-053] to create, enhance and manage habitats would also, the Applicant suggests, minimise the level of net loss in habitats of ecological value. These include:
- sensitive management of retained semi-improved neutral grassland along the M69 corridor;
 - restoration of retained hedgerows;
 - creation and management of SuDS that will intercept pollutants and provide habitat for a variety of wildlife; and
 - the re-profiling of banks following watercourse redirection to create a more naturalistic channel, suitable for a range of riparian species.
- 3.8.49. Indeed, the Applicant further elaborates that the creation of meadow grassland, in addition to hedgerow, woodland, wetlands, the redirection and enhancement of the stream corridor and the contribution towards off-site habitat enhancement or creation will potentially result in a beneficial significant effect on these habitats at a local level and contribute to an overall net gain in valuable habitats.
- 3.8.50. In terms of species, in addition to measures proposed by the Applicant to restore, maintain and/ or enhance habitats of ecological value, additional species-specific measures to minimise operational impacts and provide enhanced opportunities for species breeding and refuge are detailed within the LEMP. These would include:
- a total of 68 durable bird boxes erected on trees;
 - erection or retention of durable bat boxes, bat roosting features will be incorporated into selected new buildings;
 - creation of new wetland habitat; and
 - connection of green and blue infrastructure to prevent habitat isolation.

3.8.51. Subject to the above mitigation, the Applicant anticipates that there would be no significant effects on species during the operational phase of the Proposed Development are anticipated.

Other Considerations

3.8.52. The potential for cumulative effects, caused by the combination of a number of individual effects on identified receptors, has been considered by the Applicant within the assessment [REP7-035]. The effects considered include dust generation, noise, traffic, hydrological effects and landscape effects (the effects which have the greatest potential for adverse effect). No likely significant cumulative effects have been identified.

Summary

3.8.53. Overall, the Applicant's assessment has identified that certain actions could result in significant negative impacts on important ecological features without mitigation. Inherent avoidance, mitigation and compensation measures and the implementation of an EMMP [APP-363], and LEMP [REP7-053] are considered by the Applicant to ameliorate those significant impacts identified to a residual level where no significant negative effects are likely (as shown by the summary at Table 12.8 to ES Chapter 12 [REP7-034]). Furthermore, the Applicant considers such measures can potentially deliver considerable positive effects with respect to BNG.

Case for Interested Parties

Natural England

3.8.54. NE confirmed in its letter at D1 [REP1-183] that the majority of its concerns raised within its RR [RR-0974] had been addressed by the Applicant, with the key outstanding element at the time being the finalisation of Letters of No Impediment for protected species licencing. This was progressed during the Examination concluding in the Applicant submitting letters from NE at D5 [REP5-034] stating that they saw no impediment to issuing licences in respect of bats and badgers providing certain measures were addressed when the Applicant submits a formal license application to NE. For bats these issues were:

- a named and suitably experienced Ecologist to be provided in the application;
- details of any impact on Burbage Wood/ Aston Firs SSSI;
- updated surveys during the active period in 2025;
- if additional species, or more significant numbers are recorded in future surveys, further consideration may need to be given to the impacts of habitat loss for foraging and commuting;
- exclusion of the use of lighting from the Method Statement; and
- based on the existing survey results the proposal to install 68 bat boxes across the site is considered adequate.

3.8.55. For badgers these issues were:

- a named and suitably experienced Ecologist to be provided in the application;
- a further Risk Assessment to be completed prior to the final surveys;
- consideration of any impact on the Burbage Wood and Aston Firs SSSI;
- updated surveys during the active period in 2025;
- any changes to badger activity on the site may require alternative methods and these should be outlined in the revised application; and
- based on the existing survey results an artificial sett will not be required. However, if the update surveys identify a main sett on site that cannot be retained an artificial sett will need to be provided and should be installed at least 6 months prior to closure of the main sett. This should be of a similar size to the main sett being closed and must be located in suitable habitat within the existing territory of the badger clan.

3.8.56. A SoCG with NE was submitted and signed at D4 [[REP4-139](#)] identifying no areas of disagreement on biodiversity issues with NE on the Proposed Development.

Local Authorities

BDC and HBBC

3.8.57. The LIRs submitted by BDC and HBBC referenced issues with biodiversity related matters. However, by the close of the Examination, SoCGs were submitted and signed by BDC and HBBC [[REP8-020](#)] and [[REP8-021](#)] which agreed some matters.

3.8.58. Agreement was reached on Management Plans, the impact on Ancient Woodland and the potential loss of hedgerows, with the Applicant also agreeing to a full BIA report, inclusive of condition assessment sheets being delivered at detailed design stage as part of the BNG Strategy (secured under Req 29). The detailed BNG metric would be reviewed by a Suitably Qualified Ecologist and would be required to be approved by the planning authority.

3.8.59. However, there remained a number of issues that the two local authorities did not agree on with the Applicant, namely:

- whether it was appropriate that the full survey results for water vole, otter and badger be provided separately, rather than within the body of ES Chapter 12;
- the search radii used for the Barbastelle Bat survey;
- whether a matrix of biodiversity effects should be included within the ES Chapter 12;
- whether an outline decommissioning plan be included as part of the overall biodiversity assessment;
- whether a long term management plan be included with regard to BNG and offsite measures which are yet to be secured;
- whether the Application demonstrates the delivery of a feasible strategy to deliver at least a 10% net gain in biodiversity value;

- whether the provision of further measures such as passes under/ over the road, which are recommended rather than fencing which is deemed ineffective by the local authority; and
- the addition of 'and associated remedial measures' at the end of Req 19(2).

Baseline Surveys

- 3.8.60. At the commencement of the Examination BDC raised concerns with the grading of importance to ecological receptors and features, which appeared to be based on presence and abundance within the main part of the Application Site as opposed to status or level of protection. However, by the end of the Examination in the SoCG [REP8-020] between BDC and the Applicant it was agreed that this would be resolved through the imposition of Req 19(2)(a). This would require the Applicant, in its submission of the LEMP, to include reference and details of the identification of features of ecological importance.
- 3.8.61. The scope of the Phase 2 surveys and as a result, the Applicant's conclusions were questioned by HBBC in Section 8 of its LIR [REP1-138]. The Application Site does include additional non-contiguous areas of land which would be subject to highway enhancements, traffic management measures, and pedestrian level crossings. The Applicant asserted that an extended Phase 1 survey was undertaken of the additional areas included for the highways works. A review of the proposals for these non-contiguous areas found them to be ecologically insignificant, given that they typically would involve development of already developed areas.
- 3.8.62. The Applicant clarified that no Phase 2 surveys are proposed in these areas. Update habitat walkover surveys are scheduled for 2024/ 2025 and would include all areas where the proposals would impact semi-natural habitats. The Applicant outlines that the CEMP [APP-359] proposed to be secured by Req 7, would ensure appropriate working methodologies for any removal of habitat to ensure no adverse impacts on protected species.

Construction Impacts and Mitigation

- 3.8.63. BDC set out in its LIR [REP1-055] its concerns in relation to constructional impacts on biodiversity as follows:
- a risk of increased air pollution to Burbage Common as a result of construction activities which would negatively impact ground flora due to the effects of excess nitrogen deposition;
 - the impact of construction workers on the Ancient Woodland Sites, which would result in the degradation of Ancient trees; and
 - loss of and damage to hedgerows would occur as a result of the construction phase, causing the loss of 13.44km of hedgerow leading to habitat severance and fragmentation.
- 3.8.64. Likewise, HBDC, in its LIR [REP1-138] set out its concerns in relation to constructional activity as follows:

- an increased buffer of 500m should be provided during construction for suitable great crested newt (GCN) habitat;
- the loss of foraging habitat for badgers;
- loss of and damage to hedgerows;
- a risk of increased air pollution from construction activities which would negatively impact ground flora due to the effects of excess nitrogen deposition; and
- potential light spillage and negative impacts on birds, bats, otter and badger.

Operational Impacts and Mitigation

3.8.65. BDC set out in its LIR [[REP1-055](#)] its concerns in relation to operational impacts on biodiversity as follows:

- whether there will be a permanent loss of water bodies; and
- potential impacts upon species: including bird species, reptiles, invertebrates and amphibians.

3.8.66. HBDC [[REP1-138](#)] similarly raised its concerns relating to operational impacts on biodiversity as follows:

- long term operational impacts on designated sites, such as pollution and potential water inundation on adjacent ancient woodland and broadleaved woodland habitats, including the potential for nutrient enrichment impacts on ground-level flora requires further and more detailed analysis due to the potential negative impacts; and
- significant impacts from the loss of woodland, mature trees, hedgerows and watercourse and the fragmentation of habitats, particularly in relation to species such as bats, birds and GCN.

Biodiversity Net Gain

3.8.67. Moving on to BNG, BDC in its LIR [[REP1-055](#)] suggested that rather than being a net gain there would actually be a loss. HBDC in its LIR [[REP1-138](#)] accepts that there would be an on-site loss but stated at paragraph 8.20: *"It is considered that the development, including the provision of offsite BNG, provides significant opportunities for enhancement, creation and protection/retention of habitats to better mitigate for the impacts of the loss of habitat and the creation of large structures with extensive areas of hard standing"*.

3.8.68. HBDC further stated at that time that it was unclear as to how the BNG 10% net gain would be achieved.

3.8.69. Throughout Chapter 12 of the ES [[REP7-024](#)], the Applicant provides a commitment to delivering 10% BNG. It referenced the production of a BNG strategy to reinforce this and this would be supported by the inclusion in the dDCO of Req 29 to ensure its delivery and maintenance.

3.8.70. This is further supported by the Applicant through the provision of BIA calculations [[REP7-034](#)] which indicate that there is sufficient scope to achieve appropriate net gains through a mix of on-site and off-site solutions, though no off-site solutions have yet been secured.

- 3.8.71. The Applicant has provided a full BNG assessment, including the DEFRA Metric [[REP7-034](#)] and [[REP7-036](#)]. It states there is no legal requirement to provide a Statutory Metric in the future. The latest metric includes assessors' comments for amenity areas (that is modified grassland), which states for modified grassland "*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*". The Applicant considers that the provision of formal footpaths, combined with strategic planning as part of the detail designs and Woodland Management Plan subject to Req 31 of the dDCO [[REP1-015](#)], would largely keep footfall and dog fouling (and therefore, the associated impacts) to specific locations.
- 3.8.72. The Applicant stated at paragraph 12.232 of Chapter 12 [[REP7-024](#)], that discussions are ongoing to secure off site BNG credits locally and discussions have also taken place with the Environment Bank in relation to their BNG credit system.
- 3.8.73. However, BDC's position [[REP7-078](#)] remains that the final biodiversity position would need to be subject to the detailed design stage and supported by a detailed version of the DEFRA metric. At that time, it expects that further opportunities would potentially be identified to increase the level of biodiversity gain in respect of the Proposed Development.

Other Local Authorities

- 3.8.74. Both RBC and HDC had signed SoCGs [[REP7-071](#)] and [[REP3-081](#)] to agree that they raised no objection to the Proposed Development on biodiversity and ecology grounds.

Other Interested Parties

- 3.8.75. A number of IPs submitted RRs raising concerns in relation to the impact on ecology and biodiversity. These focused on loss of habitat (such as Mark Ludbrook [[RR-0832](#)] and Alan Davies [[RR-0020](#)]) and the impact on particular species (such as Stephen Harris [[RR-1293](#)] and David Crick [[RR-0282](#)]). The Applicant responded to these at D1 [[REP1-032](#)] advising that the issues raised had been considered and were covered by the relevant evidence base documents accompanying the Application.

ExA's Considerations

- 3.8.76. We have considered matters in relation to biodiversity and ecology, and note that NE, as the government's advisor on such matters, is content subject to the submission of the license at an appropriate time as outlined in section 3.8.54 above.
- 3.8.77. We also note that there has been progress between the Applicant and both BDC and HBBC in relation to biodiversity matters and this is manifested in the SoCGs, where there is general agreement on matters with the exception of the matters raised in section 3.8.59 above.

- 3.8.78. However, HBBC [[REP1-138](#)] has called into question the efficacy of some of these measures. It requested more certainty that these proposed mitigations would be effective, especially in the light of the proximity to SSSIs. That said, we consider that this can all be controlled, managed and monitored through the requirements relating to the CEMP, LEMP and EMMP for the reasons set out below.
- 3.8.79. The final version of the DCO [[REP7-011](#)] submitted by the Applicant contains a number of requirements that cover biodiversity and ecological matters. These are:
- Req 7: CEMP;
 - Req 19: LEMP;
 - Req 20: EMMP;
 - Req 21: Landscape Scheme;
 - Req 29: BNG; and
 - Req 31: Woodland Management Plan.
- 3.8.80. We consider that the outstanding information requested by BDC and HBBC, can all be subject to requirements and then approved by the discharging local planning authority, prior to the development commencing. Furthermore, we consider that these matters can be adequately managed in this manner, to protect features of biodiversity and ecology importance.
- 3.8.81. The principal area of debate in this matter, revolves around BNG. We recognise that there is no legal requirement for NSIP schemes to deliver BNG until November 2025. However, it is noted that the Applicant is committed to delivering 10% BNG as part of the benefits of the Proposed Development.
- 3.8.82. The question from BDC and HBBC is how would a BNG of ten percent be achieved? Some of this would be off-site, the location of which is not made clear. On-site, the Applicant in Chapter 12 [[REP7-024](#)] accepts that there would be a significant negative impact on biodiversity unless mitigation strategies are employed.
- 3.8.83. We consider that the mitigatory measures proposed for biodiversity matters and summarised in Table 12.8 for both construction and operational impacts would be effective and acceptable. Once these are in place, the Applicant predicts that there would be no significant effect. The BIA calculations demonstrate there would be sufficient scope to deliver some net gains on site, with options to deliver additional gains through off-site solutions, and therefore Req 29 is deemed appropriate.
- 3.8.84. Had the BNG been totally secured on-site we would have given this moderate beneficial weight, but as part would have to be delivered through off-site mitigation, we only give this little beneficial weight.

ExA's Conclusions

- 3.8.85. Taking all the relevant documentation and policies into account, we conclude as follows:

- the Proposed Development unmitigated would result in significant harmful impact to interests of Biodiversity and Ecology. However, through appropriate mitigation secured through the dDCO this harm could be satisfactorily mitigated or provide enhancements. This has neutral weight in our view to support the development; and
- the inclusion of, and a commitment to, BNG is not legally required but is welcomed particularly as a 10% net gain cannot be accommodated on site. Given the proposed Req 29 to secure 10% BNG, we consider this to have little weight to support the development.

3.8.86. The Proposed Development would be consistent with policies set out in the NPSNN and dNPSNN in that it seeks to mitigate and where appropriate enhance areas of biodiversity and ecological importance. It would also be consistent with the Framework for the same reason. We also consider it is consistent with local planning policy as set out in this section.

3.9. CULTURAL HERITAGE

Introduction

3.9.1. This section considers the policy matters relating to cultural heritage matters, before moving onto the Applicant's case, considering matters in the Examination and then our conclusions.

3.9.2. Where we find that harm would be occasioned to any heritage asset, we will make a finding in this section and take this through to our conclusions for this issue. However, the balancing exercise will principally be undertaken in section 5 relating to our overall conclusion in relation to the Case for Development Consent.

Legislation

3.9.3. Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (the Decisions Regulations) provides a duty on the decision maker when deciding an application which affects a listed building or its setting. This is that the decision-maker must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. Similar duties are provided in respect of Scheduled Monuments and on the desirability of protecting the character and appearance of a conservation area.

3.9.4. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides a general duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

3.9.5. S102 of the Levelling Up and Regeneration Act 2023 proposes to insert a new s58B into the TCPA. The purpose of this section is to require decision makers to have special regard to the desirability of preserving or enhancing a heritage asset or its setting.

Policy

NPSNN

- 3.9.6. Paragraph 5.131 of the NPSNN states that when considering the impact of a proposed development on the significance of a designated heritage asset, the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. Once lost, heritage assets cannot be replaced, and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given that heritage assets are irreplaceable, harm or loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a Grade II Listed Building or a Grade II Registered Park or Garden should be exceptional. Substantial harm to or loss of designated assets of the highest significance, including World Heritage Sites, Scheduled Monuments, Grade I and II* Listed Buildings, Registered Battlefields, and Grade I and II* Registered Parks and Gardens should be wholly exceptional.
- 3.9.7. Furthermore Paragraph 5.134 requires that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising from paragraph 5.131 that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss.

dNPSNN

- 3.9.8. The dNPSNN continues to seek protection for cultural heritage assets and also sees the theme as a means of contributing to the governments net zero targets (paragraph 3.17).
- 3.9.9. Paragraph 5.211 of the dNPSNN seeks to continue the protection of cultural heritage assets by requiring the SoS to consider the impact of a proposed development on the significance of a designated heritage asset, and that they should give great weight to the asset's conservation. As in the NPSNN, the dNPSNN reiterates the policies relating to protection of assets and their settings.

National Planning Policy Framework

- 3.9.10. The Framework was updated and revised in December 2023. It maintains an environmental objective to protect and enhance our natural, built and historic environment. Paragraph 195 maintains heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
- 3.9.11. Where proposals affect the historic environment, Paragraph 200 of the Framework advises that as a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary.

Development Plan

- 3.9.12. BDC suggest in its LIR [[REP1-055](#)] that its historic environment policies in the BDC and BDDPD are relevant. BDC refer to BCS Policy CS20 'Historic Environment and Culture' and Policy DM12 'Designated and non-designated heritage assets' of the BDDPD. The policies seek to preserve and enhance the historic environment as well as encouraging the design of new development to complement and enhance the setting of historic assets.
- 3.9.13. In addition, Burbage Parish Council submitted a copy of its Neighbourhood Plan at D4 [[REP4-167](#)]. Paragraph 21.5 states that there is a strong local resistance to any further destruction of the visual and ambient relationship between Burbage and its historic landscape as it merges with the Green Wedges designated through the HBCS.

Case for the Applicant

- 3.9.14. ES Chapter 13 deals with cultural heritage [[AS-015](#)]. This was also supported by a number of other documents including an Archaeology Assessment [[APP-201](#)], geophysical surveys parts 1 and 2 [[APP-203](#)], [[APP-204](#)], [[APP-205](#)], Heritage Assessment [[APP-202](#)], archaeological evaluation reports [[APP-206](#)], [[APP-207](#)], and an Archaeological Mitigation Strategy [[APP-208](#)].
- 3.9.15. The likely significant impacts on cultural heritage, which includes both built heritage and archaeology, have been assessed by the Applicant. Neither the main part of the Application Site, nor the associated development, contain any designated heritage assets.
- 3.9.16. Various assets outside of the site have been assessed in relation to potential impacts on the setting of a number of assets. There are 15 Scheduled Monuments, two Grade I, 11 Grade II*, 128 Grade II listed buildings and 11 Conservation Areas located within a 5km study area defined around the main part of the Application Site. The Applicant's detailed assessment set out in Appendix 13.2 [[APP-202](#)] considers that the majority of these assets have no potential to be affected by the Proposed Development due to a lack of any visual or functional association with it. Where the Proposed Development has the potential to result in effects to designated heritage assets, they are considered further below. The Application Site does not form part of a conservation area. The list of heritage assets considered is set out in Table 13.4 of ES Chapter 13 [[APP-122](#)] and the locations are also shown in [[APP-331](#)].
- 3.9.17. The Applicant, in Chapter 13 of the ES [[AS-015](#)], has provided commentary on the significance and relationships of the following identified designated heritage assets, which has been used in considering the impacts of the Proposed Development on cultural heritage matters.

Elmesthorpe Church Scheduled Monument

- 3.9.18. The Applicant's Cultural Heritage assessment has identified that the significance of a single Scheduled Monument, the ruins of Elmesthorpe

Church located north of the Application Site, has the potential to be affected by the Proposed Development within the main part of the Application Site. This is due to the potential for development to affect the appreciation of the ruined church from the wider landscape and erode its historically associated wider agricultural setting.

- 3.9.19. The Elmesthorpe Church Scheduled Monument comprises a 13th century ruined nave and west tower. It is adjacent to the Grade II listed Church of St Mary. The Scheduled Monument and attached church are located on rising ground in the linear settlement of Elmesthorpe.
- 3.9.20. The significance of this monument is primarily derived from its considerable archaeological interest, although the ruins also possess a high degree of historic and architectural interest.
- 3.9.21. The monument is set within the graveyard associated with the attached Church of St Mary which provides an understanding of the historic context of the ruins. The church is set back, but highly visible, from the adjacent road to the south, which affords the most common experience of the asset as can be seen in Figure 12 (source: Image 13.1 from [APP-335]). From the grounds of the monument there are wide views south over the modern developments in the settlement towards the lower-lying land that formed the monument's historic parish. These views also afford glimpses of the spire of the Church of St Catherine in Burbage.

Figure 12: View of Elmesthorpe Church Scheduled Monument from junction of B581 and Bridle Path Road



- 3.9.22. In accordance with the consultation advice from Historic England (HE), the Applicant's assessment has also considered other kinetic views of the

monument from the surrounding landscape beyond the Application Site. Views of the monument were considered from the PRow south of Elmesthorpe, to identify the locations where the experience of the monument interacts with the Application Site and therefore those locations where the experience of the monument has the potential to be affected by the Proposed Development.

- 3.9.23. The Applicant concludes at Paragraph 13.78 of Chapter 13 of the ES [AS-015] that from the PRow south of Elmesthorpe and north of the Application Site there was limited experience of the monument, due to the enclosing nature of the hedgerows defining the navigable routes, in combination with the topographic location of the monument, nestled into the rising ground. It also found that where glimpses of the monument could be obtained from these routes, such as looking north from PRow V50/1 (Figure 13.6, Image 13.5 [APP-335]) these views do not incorporate the main part of the Application Site and therefore would not be considered sensitive to change.
- 3.9.24. In addition, it is also concluded by the Applicant (Chapter 13 of the ES [AS-015]) that the Proposed Development within the main part of the Application Site would be visible in views south from the Scheduled Monument towards the Church of St Catherine in Burbage, adversely affecting the ability to appreciate the ruined church in context with part of its historically associated agricultural setting and this would also be experienced at night-time
- 3.9.25. Finally, Furthermore, the Applicant considers the appreciation of the significance of the Scheduled Monument would also be adversely affected to a negligible extent by the loss of localised glimpsed views towards the ruined tower from parts of the land within the main part of the Application Site, that is the loss of views captured in Photoviewpoints 1 and 2 of Figure 11.10 [APP-294] and Figure 11.16 of [APP-300] and Figure 13.6, Images 13.2 to 13.4 of [APP-335].
- 3.9.26. The Applicant states at paragraph 13.176 [AS-015] that these impacts, while representing a noticeable change in the setting of the asset, are expected to result in a small change to the significance of the Scheduled Monument overall, given that the overwhelmingly majority of the significance of the asset is derived from the fabric of its remains, which would remain unaffected. As such it is predicted by the Applicant that the Proposed Development would result in a minor adverse effect on this asset of high sensitivity, that is not significant and would be of less than substantial harm.

Listed Buildings

- 3.9.27. The significance and setting of the two Grade I, 11 Grade II* and 128 Grade II listed buildings within the study area has been assessed by the Applicant. This concluded that the significance of the following seven listed buildings has the potential to be affected by development within the main part of the Application Site:

- Wentworth Arms and Adjoining Stables, Grade II (HE List number 1307251) at Elmesthorpe;
- Church of St Mary, Grade I (1074229) at Barwell;
- Church of All Saints, Grade II (1177924) at Sapcote;
- Church of St Michael, Grade II* (1074704) at Stoney Stanton;
- Church of St Simon and St Jude, Grade II* (1074259) at Earl Shilton;
- Church of St Mary, Grade II (1074693) at Elmesthorpe; and
- Church of St Catherine at Burbage, Grade II*(1295212)

3.9.28. In general terms, the potential effects of the Proposed Development in the Application Site on these assets are predicted by the Applicant to arise through changes to the appreciation of these listed buildings from the Application Site and wider landscape and/ or the erosion of the appreciation of their historically associated wider agricultural settings in views to or from the assets.

Wentworth Arms and Adjoining Stables, Elmesthorpe

3.9.29. The Grade II listed Wentworth Arms and Adjoining Stables is located adjacent to the east of the main part of the Application Site on Station Road. The building, a public house, was built in 1896 to the designs of C F A Voysey for Lord Lovelace of Kirkby Mallory, as were the Wortley Cottages. The building is a single storey brick building built alongside the road. The Applicant states that the significance of the building is primarily derived from the historic and architectural interest of its built form (paragraph 13.90 of Chapter 13 of the ES [[AS-015](#)]).

3.9.30. The Applicant's assessment of the Wentworth Arms and Adjoining Stables concludes it to be of high sensitivity (paragraph 13.95 [[AS-015](#)]) but it considers the Proposed Development would have a minor adverse effect due to its relationship to adjoining agricultural land and views of the Proposed Development beyond the public house when viewed from the adjacent road. It indicates this would equate to less than substantial harm to the asset (paragraph 13.258 of Chapter 13 of the ES [[AS-015](#)]).

Church of St Mary, Barwell

3.9.31. In relation to the Grade I Church of St Mary, Barwell the Applicant's Heritage Statement sets out that there are glimpsed views from the churchyard over the lower-lying land to the south, albeit visibility is constrained by the vegetation enclosing the churchyard and the built form of the surrounding settlement.

3.9.32. The Applicant considers at Paragraph 13.97 of Chapter 13 of the ES [[AS-015](#)], that the significance of the church is primarily derived from the exceptional historic, architectural and artistic interest of its built form, which also has value due to its archaeological interest.

3.9.33. The Applicant notes that there is also the wide-ranging vista that can be appreciated from the footpath immediately south of the church and its enclosing churchyard. Although not key to the appreciation of the significance of the asset, the Applicant considers these views from the churchyard and its immediate environs allow some appreciation of the

wider landscape setting of the church. The asset is predicted by the Applicant to be affected by the operation of the Proposed Development through change within its wider setting. This is specifically through the visibility of the Proposed Development in views towards the church from the wider landscape, and through the loss of elements of its historical wider agricultural setting in views out from the church (paragraph 13.179 of Chapter 13 of the ES [[AS-015](#)]).

- 3.9.34. The Applicant further elaborates at paragraph 13.181 of Chapter 13 of the ES [[AS-015](#)] that the impacts of the Proposed Development, while representing a noticeable change in the setting of the asset, are expected to result in at most only a small change to the significance of the listed church, resulting in a minor adverse effect on this asset of high sensitivity, that is not significant. The Applicant concludes at paragraph 13.258 that in its opinion this would constitute less than substantial harm.

Church of All Saints, Sapcote

- 3.9.35. The Applicant considers the significance of the Church of All Saints in Sapcote is primarily derived (paragraph 13.115 of Chapter 13 of the ES [[AS-015](#)]) from the considerable historic, architectural and artistic interest of its built form. The Applicant considers its setting in the historic core of the settlement on the southern edge of Sapcote allows an appreciation of its context in relation to the surrounding historic buildings and space, as well as agricultural land to the south.

- 3.9.36. The Applicant sets out at paragraph 13.188 of Chapter 13 of the ES [[AS-015](#)] that the significance of the heritage asset is predicted to be affected by the operation of the Proposed Development in the main part of the Application Site through change within its wider setting. Specifically, this would be through the visibility of the Proposed Development in the main part of the Application Site in views towards the church from the wider landscape, and through the loss of elements of its historically associated wider agricultural setting.

- 3.9.37. The Applicant further states that the impacts, while representing a noticeable change in the setting of the asset are, given the long-range nature of these views, would be expected to result in negligible change to the significance of the listed church, resulting in a minor adverse effect on this asset, which it considers not to be significant. Again, it concludes at paragraph 13.258 that this would constitute less than substantial harm.

Church of St Michael, Stoney Stanton

- 3.9.38. The Applicant sets out in paragraph 13.120 of Chapter 13 of the ES [[AS-015](#)] that it considers the significance of the Church of St Michael in Stoney Stanton is primarily derived from the considerable historic, architectural and artistic interest of its built form, including its random granite rubble construction and west tower with spire. The Applicant considers its setting, prominent position in the core of the settlement,

enclosed by its surrounding churchyard and green spaces allow an appreciation of its context in relation to the wider surrounding historic buildings and spaces of Stoney Stanton.

- 3.9.39. In terms of sensitivity, the spires of the Church of All Saints in Sapcote and the Church of St Michael in Stoney Stanton can also be glimpsed in the distance. In these views from the immediate environs of the churches there is an experience of parts of the main part of the Application Site. These churches are also visible from many areas within and outside Barwell, and as such it is experienced in a wider landscape context as a focal point and landmark of the settlement. The Applicant considers that there would be a minor adverse impact from the Proposed Development on these assets (paragraph 13.189 to 13.193 of Chapter 13 of the ES [AS-015]) and it concludes at paragraph 13.258 that this would constitute less than substantial harm.

Church of St Simon and St Jude, Earl Shilton

- 3.9.40. The Grade II* Church of St Simon and St Jude is located approximately 2.4km north of the Application Site in the settlement of Earl Shilton. The earliest surviving part of the church dates to the 15th century though it was largely rebuilt in 1855. The Applicant sets out at paragraph 13.111 of Chapter 13 of the ES [AS-015] that it considers the significance of this asset is primarily derived from its considerable architectural and historic interest within its built form. In terms of its setting, the Applicant notes that the church is located on a ridge of high ground within the historically long linear settlement of Earl Shilton, within the centre of a large walled churchyard. The church is also located adjacent to the scheduled remains of a motte and bailey castle, which suggests it was founded on the site of an earlier church, and as such is has some archaeological interest.

- 3.9.41. Due to the church's location on higher ground, the spire is visible from the wider area to the south, and as such there are some glimpsed views available from parts of the Application Site towards the distant spire, most notably as one moves along the Burbage Common Road. As a consequence, the church is considered by the Applicant to be a sensitive receptor. The Applicant acknowledges at paragraph 13.186 of Chapter 13 of the ES [AS-015] that the appreciation of the significance of the church is expected to be adversely affected to a negligible extent by the loss of localised views towards the church spire from parts of the land within the Main part of the Application Site and to its immediate east. The Applicant concludes at paragraph 13.258 that, in its opinion, this would constitute less than substantial harm.

Church of St Mary, Elmesthorpe

- 3.9.42. The Grade II Church of St Mary, Elmesthorpe is located approximately 0.9km north of the Application Site within the settlement of Elmesthorpe. The church is set back, but highly visible, from the adjacent road to the south, which affords, according to the Applicant, the most common experience of the asset. From the grounds of the church there are wide views south over the modern developments in the settlement towards

the lower-lying land that formed the church's historic parish. These views also afford glimpses of the spire of the Church of St Catherine in Burbage. In these views from the church there is an appreciation of the north-western portions of the Application Site, which also have an historical functional association having formed part of the Elmeſthorpe parish associated with the church, albeit making only a very limited contribution to the significance of the asset through this association. Although the church is not widely visible from the wider landscape, being located nestled into a south facing slope, the building can be glimpsed from northern parts of the Application Site.

- 3.9.43. Its significance is reported by the Applicant at paragraph 13.183 of Chapter 13 of the ES [[AS-015](#)] as being derived because of it being associated with the scheduled remains of the Scheduled Monument outlined in section 3.9.18 above. The church's historical development is also significant, as having 14th century origins, though was rebuilt in 1868 in random granite rubble and dressed stone.
- 3.9.44. The significance of the Grade II Listed Church of St Mary at Elmeſthorpe is predicted by the Applicant (paragraph 13.182 of Chapter 13 of the ES [[AS-015](#)]) to be most affected by the operation of the Proposed Development through change within its wider setting, specifically the visibility of the Proposed Development in views towards the church from the wider landscape, and through the loss of elements of its historically associated wider agricultural setting, and the erosion of the appreciation of its historically associated wider agricultural setting from the church itself.
- 3.9.45. The Proposed Development is predicted to be visible in views south from the church towards the Church of St Catherine in Burbage. This, the Applicant considers, would adversely affect the ability to appreciate the church in context with part of its historical associated agricultural setting. Furthermore, the appreciation of the significance of the church would also be adversely affected to a negligible extent by the loss of localised views towards the church tower from parts of the land within the Application Site.
- 3.9.46. The Applicant considers that these impacts, while representing a noticeable change in the setting of the asset, are expected to result in small change to the significance of the listed church, resulting in a minor adverse effect on this asset of high sensitivity, that is not significant (paragraph 13.184 of Chapter 13 of the ES [[AS-015](#)]). Its overall conclusion is that this would represent less than substantial harm (paragraph 13.258).

Church of St Catherine, Burbage

- 3.9.47. The Grade II* listed Church of St Catherine is located on the east side of Church Street in Burbage, where the building, and the large yew trees in the surrounding churchyard, are defining elements of the street scene in the historic core. The church was built in 1842 but incorporates earlier medieval fabric and post-medieval monuments.

- 3.9.48. The Applicant considers that the significance of the building is primarily derived from the considerable historic, architectural and artistic interest of its built form, which also has value due to its archaeological interest. The Applicant considers that its setting in the historic core of the settlement allows an appreciation of its context in relation to the surrounding historic buildings and spaces. The church also forms a visible landmark within the settlement, reinforced by its high three stage tower and recessed spire. It is widely visible from many areas within and outside Burbage, and as such it is experienced in a wider landscape context as a focal point and landmark of the settlement.
- 3.9.49. The Proposed Development in the main part of the Application Site is predicted by the Applicant (paragraph 13. 195 of Chapter 13 of the ES [[AS-015](#)]) to be visible in views towards the church from the Church of St Mary at Elmesthorpe. This, according to the Applicant, would adversely affect the ability to appreciate the church in context with part of its historical agricultural setting, as well as featuring in views from the wider landscape. In addition, it also states that the appreciation of the significance of the church would also be adversely affected to a negligible extent by the loss of localised views towards the church spire from parts of the land within the main part of the Application Site; that is, the loss of the distant view of the spire.
- 3.9.50. The Applicant states that whilst the impacts represent a noticeable change in the setting of the asset, they are expected to result in no more than a small change to the significance of the listed church, resulting in a minor adverse effect on this asset of high sensitivity, which is not significant, and as a consequence it considers that this would represent less than substantial harm (paragraph 13.25 of Chapter 13 of the ES [[AS-015](#)]).

Aston Flamville Conservation Area

- 3.9.51. Paragraph 13. 141 of Chapter 13 of the ES [[AS-015](#)] identifies that the conservation area of Aston Flamville has the potential to be impacted through its proximity to the M69 J2 works.
- 3.9.52. The Aston Flamville Conservation Area is located around 50m south-east of the main part of the Application Site where the land inside the Application Site includes the M69. The conservation area encompasses the historic core of the small rural settlement with medieval origins. The settlement is focussed around the principal roads of Lychgate Lane and Hinckley Road and contains a number of historic listed buildings, as previously set out above. Aside from modern infill north of Lychgate Lane and the small development at Manor House Close, the settlement has undergone very little development since the post-medieval period and the historic layout and relationships between the historic buildings, including the manor house, church and farmhouses are still legible and contribute greatly to its character and appearance.
- 3.9.53. The Applicant sets out at paragraph 13.138 of Chapter 13 of the ES [[AS-015](#)] that the significance and setting of the conservation area is largely defined by its low-lying position and its enclosure on all sides by

surrounding agricultural land, that reinforces the historic context of the settlement as a rural hamlet and makes a positive visual contribution to the conservation area. It further states at paragraph 13.141 that the proximity of the conservation area to the arm of the Application Site within the M69 J2 works means there would be some limited potential for the Proposed Development to alter the contribution of setting to the heritage interest of this conservation area, and the ability to appreciate its significance. Therefore, Aston Flamville Conservation Area is considered to be a sensitive receptor.

- 3.9.54. The Applicant concludes at paragraph 13.198 that in terms of the proposed changes to the M69, it is expected that there would be no material change to the current experience of the conservation area through the operation of these elements of the Proposed Development. The loss of historically associated agricultural land, which cannot be appreciated from the conservation area, and any potential glimpsed views of the Proposed Development in the Application Site beyond the ridge to the north or changes to the already extant motorway infrastructure to the north-west are predicted to result in no more than a negligible magnitude of effect, which would result in a negligible adverse significance of effect, that is not significant, and therefore considered would result in less than substantial harm.

Non-designated heritage assets

- 3.9.55. Moving on onto non-designated heritage assets, the former farmhouse at Woodhouse Farm, a converted barn at Hobbs Hayes, and a former stable range at Freeholt Lodge are proposed to be demolished as part of the Proposed Development. The significance of these farmsteads can be attributed primarily to the standing remains of the principal farm buildings and barns of late 18th century date within them, rather than their archaeological potential.
- 3.9.56. The Applicant considers that these assets are of low importance and sensitivity. It considers that the Proposed Development would require the demolition of these assets, thereby resulting in a large magnitude of change during the construction phase. On this basis, the Proposed Development would result in a direct moderate adverse significance of effect to each of these assets, which the Applicant considers is not significant (Chapter 13 of the ES [[AS-015](#)] paragraph 13.169).
- 3.9.57. The Burbage Common Road bridge is also located within the Main Application Site, where it carries Burbage Common Road over the railway. The significance of the bridge is derived from the fabric of its built form and its limited architectural interest as a late 19th century structure associated with the railway. The Burbage Common Road bridge is considered by the Applicant to be a heritage asset of low importance.
- 3.9.58. The Proposed Development would require the demolition of the bridge, thereby resulting in a large magnitude of change to this asset of low importance during the construction phase. On this basis, the Proposed Development would result in a direct moderate adverse significance of

effect to this receptor, which the Applicant considers is not significant (Chapter 13 of the ES [[AS-015](#)] paragraph 13.170).

- 3.9.59. The Applicant states at paragraph 13.211 of chapter 13 of the ES that the moderate significance of effect from the Proposed Development on the Burbage Common Road railway bridge resulting from the demolition of this structure on the western boundary of the main part of the Application Site would be appropriately mitigated through a programme of building recording in advance of demolition.

Archaeology

- 3.9.60. The effects of the Proposed Development on archaeological interests was also considered as part of the assessment of the Application. The Applicant's Written Statement of Oral Case on Archaeological Mitigation [[REP3-063](#)] indicated that within the extents of the main part of the Application Site and that for the A47 Link Road, recorded archaeological activity ranges from the late Iron Age to 20th centuries, including most notably evidence for dispersed rural settlement activity of Iron Age date within the main part of the Application Site south of the railway line. Again, the Applicant has proposed a programme of archaeological recording and watching briefs in agreement with BDC as set out in the signed SoCG [[REP8-020](#)].

Case for Interested Parties

Historic England

- 3.9.61. HE is the Government's historic areas advisors and as such it was a statutory consultee for this Application. Its submission did not consider Grade II Listed buildings or Conservation Areas, and this was deferred to the local authorities for comment.
- 3.9.62. In its RR [[RR-0476](#)] HE raised no objection to the Proposed Development.
- 3.9.63. At the pre-application stage HE raised concerns with the impact of the scheme upon the setting of several designated heritage assets, and the level of information provided to assess this. These designated heritage assets comprise:
- Elmeshorpe Church ruins, Scheduled Monument;
 - Church of St Mary, Barwell, Grade I listed;
 - Church of St Catherine, Burbage, Grade II* listed; and
 - Church of St Simon and St Jude, Earl Shilton, Grade II* listed.
- 3.9.64. HE is now satisfied that sufficient further information has been provided as it requested, including additional descriptions and heritage specific photos and visualisations. This, in HE's view, has better evidenced and clarified the assessment of effect, considering intervisibility, kinetic views and the relationship between the assets and their surrounding landscapes. The ES also clarified, to HE's satisfaction, where effects beyond visual (such as noise or light pollution) might occur and provided more detail on how the embedded mitigation responds to the individual

designated heritage assets. Based on this and the information provided, it is HE's view that the proposals would have a low, but appreciable, level of less than substantial harm (as per the NPSNN) to the significance of the four designated heritage assets listed above. A signed SoCG with HE was submitted at D2 [[REP2-087](#)] setting out agreement on Cultural Heritage matters.

Local Authorities

- 3.9.65. BDC in its RR [[RR-0134](#)] concluded that further work was required to adequately assess the cultural heritage impacts of the Proposed Development. It considered that the impacts upon the settings of some of the designated assets assessed were undervalued, and the amalgamation of all heritage assets into a single entity in terms of impact was considered inappropriate.
- 3.9.66. BDC in its LIR [[REP1-055](#)] then progressed to agree with the Applicant in its assessment of the effect on the Church of St Mary at Elmesthorpe and the Wentworth Arms, which would result in less than substantial harm. BDC also confirms that it has entered into an agreement with the Applicant and LCC for an archaeological mitigation strategy.
- 3.9.67. HBBC in its RR [[RR-0474](#)] similarly cited a lack of information to deduce any local impacts on assets of cultural value.
- 3.9.68. By the end of the Examination both BDC and HBDC had signed SoCGs [[REP8-021](#)] and [[REP8-022](#)] agreeing matters on cultural heritage had been considered appropriately by the Applicant and in line with the NPSNN and other guidance. There were no matters of disagreement highlighted in the signed and submitted SoCGs from BDC or HBBC.
- 3.9.69. In policy terms, it was agreed that there would be minor adverse effects on designated heritage assets identified in this ES Chapter:

- Elmesthorpe Church Scheduled Monument and attached Grade II listed Church of St Mary;
- Grade II* listed Church of St Catherine at Burbage;
- Grade I listed Church of St Mary at Barwell;
- Grade II* listed Church of St Simon and St Jude at Earl Shilton;
- Grade II listed Church of All Saints at Sapcote;
- Grade II listed Church of St Michael at Stoney Stanton and Grade II listed Wentworth Arms and Adjoining Stables; and
- Aston Flamville Conservation Area.

Each is considered to equate to 'less than substantial harm' to each asset at the low end of this scale of harm.

- 3.9.70. LCC in its RR [[RR-0731](#)] makes no reference to heritage assets but in its LIR [[REP1-154](#)] offers that "*a number of non-designated heritage assets of local importance have been identified within the Main HNRFI Site. These assets comprise three farm buildings and the Burbage Common Road railway bridge, as well as discrete areas of ridge and furrow*

earthworks and the buried remains of discrete late prehistoric/Romano-British settlement activity” (thirteenth bullet of paragraph 3.16).

Other Interested Parties

- 3.9.71. There were several RRs, such as those from Deborah Garotomo [[RR-0320](#)], John Garotomo [[RR-0603](#)], Douglas James Means [[RR-0335](#)], Cathie Gibbens [[RR-0191](#)],Carolynn Jane Garvell [[RR-0184](#)], and Luke Cousin [[RR-0779](#)] who expressed concern over the Proposed Development impact on the character of the Fosse Valley,
- 3.9.72. In addition, RRs from Christopher Taylor [[RR-0231](#)], Helen Taylor [[RR-0468](#)], and Sasha King [[RR-1227](#)] referenced the impact of the Proposed Development on the heritage and identity of the wider area.
- 3.9.73. Other RRs, such as those from Burbage Heritage Group [[RR-0156](#)] and the Residents of 6 Wortley Cottages [[RR-1113](#)] suggested that the Proposed Development would impact on historic buildings through the vibration of HGVs travelling through villages.
- 3.9.74. Carlton Parish Council [[RR-0166](#)], Jackie Knight [[RR-0505](#)] and Vicki Ann Lock [[RR-1397](#)] all suggest that the Proposed Development would have an adverse impact on Burbage Common and Woods as an historic green space.
- 3.9.75. Other RRs cited general archaeological and heritage impact (Elmesthorpe Stands Together [[RR-0380](#)]), general impact on conservation areas (Andrew John Wiggins [[RR-0071](#)]), that the area was an early Bronze Age settlement and there was a Roman villa dating back to the 1st century AD (Jonathan Oakley [[RR-0632](#)]), the area was the heart of the Civil War (Christine Margaret Leigh [[RR-0216](#)]), and also the effect on Elmesthorpe as a historic landscape settlement (Dr David Moore [[RR-0300](#)]).
- 3.9.76. The Applicant response to these concerns was submitted at D1 [[REP1-029](#)]. The Applicant stated that it had discussed and agreed with BDC and concluded agreement in the SoCG [[REP8-020](#)].
- 3.9.77. The Applicant’s response to Interest Groups is set out in [[REP1-030](#)]. It confirms that Chapter 13 of the ES (as revised [[AS-015](#)]) sets out its view that there would be no effects on significance of heritage assets including the Burbage Conservation Area which are predicted to arise in respect of Traffic and Transport or vibration effects.
- 3.9.78. The Applicant also sets out that Chapter 13 of the ES [[AS-015](#)] includes a comprehensive assessment of the effect of the Proposed Development on the historic environment to counter any concerns that effects had been understated.
- 3.9.79. The Applicant’s response to concerns of Parish Councils that the Proposed Development would have an adverse impact on Burbage Common is set out in [[REP1-031](#)]. It responds by stating that the Proposed Development would extend the Common by 22ha as mitigation for any effects.

ExA's Considerations

- 3.9.80. During the Examination we requested additional information on a number of issues from the Applicant regarding cultural heritage. ISH3 [EV8-004] included provision to explore elements of the proposal on this topic area. This was followed by our first Written Questions [PD-011]. In particular, we sought assurances that the Proposed Development had been adequately assessed and any proposed mitigation was adequate and acceptable. The questions also sought clarity on issues raised by IPs.
- 3.9.81. We asked (ExQ1.4.1) how the stated effects on assets covered by the duty in Regulation 3 of the Decisions Regulations could be mitigated against in line with the duty provided by the Regulations.
- 3.9.82. HBBC [REP4-173] in response to ExQ1.4.5 provided further commentary on the effects on the Grade I Church of St Mary at Barwell, and the Grade II* churches of St Simon and St Jude, Earl Shilton and St Catherine, Burbage. It agreed that because of the distances involved the effect was on setting, and it confirmed that this, in its opinion, would represent a minor adverse effect in relation to the setting of the assets. It also confirmed that it considered that the harm would be less than substantial.
- 3.9.83. BDC [REP4-166] in its response to the written questions, also confirmed that it agreed that the harm to the assets in its area set out in Chapter 13 of the ES had been properly assessed and it agreed the harm would be less than substantial.
- 3.9.84. HBBC [REP4-173] in response to questions about the historic merit of Burbage Common (ExQ1.4.7) stated that the Common did not fall within the definition of a heritage asset as prescribed by the Framework, and that there was a lack of detailed information on the history of the Common. It further added that it had also considered whether the Common should be designated as a locally listed heritage asset and had concluded against it being included on the local list.
- 3.9.85. LCC [REP4-181] in response to ExQ1.4.8 provided information on the Romano – British settlement site referred to in RRs. It states the *"Assessment of the Main Site has identified a series of heritage assets including a Romano-British settlement site, with mitigation measures agreed as outlined in the Archaeological Mitigation Strategy (APP-208). Assessment of the off-site amendments to the transport network have not identified any significant impacts upon the archaeological resource. The Roman villa and bath house (Leics. HER ref.: MLE283) lies to the east of Sapcote, the current proposals do not introduce works likely to impact upon the archaeological resource."*
- 3.9.86. It also confirmed, in response to ExQ1.4.10, that the assessment of the main part of the Application Site *"identified the presence of later prehistoric archaeological remains, in addition to earthwork evidence of medieval and post-medieval cultivation, and a number of historic buildings. Mitigation measures to address the impact of development*

upon the remains is outlined in the Archaeological Mitigation Strategy (APP-208). Assessment of the off-site amendments to the transport network have not identified any significant impacts upon the archaeological resource. A scatter of Bronze Age and other prehistoric artefacts were reported from the area (Leics. HER ref.: MLE287), none are directly threatened by the proposed work”.

- 3.9.87. By the close of the Examination, we were satisfied that the suite of assessments relating to cultural heritage and archaeology, had properly assessed each heritage asset, and in accordance with policy and other related guidance.

ExA’s Conclusions

- 3.9.88. We have considered the effect of the Proposed Development on designated and non-designated heritage assets including archaeology and have concluded that there would be less than substantial harm to a number of designated heritage assets and the loss of non-designated assets would be significant but can be mitigated through recording as required by Req 12 of the dDCO [[REP7-011](#)]. These conclusions will feed into the overall assessment and planning conclusions at section 5 of this Report.

- 3.9.89. Great weight should be given to any heritage asset’s conservation, with the more important the asset the greater the weight, in accordance with paragraph 5.131 of the NPSNN, paragraph 5.211 of the dNPSNN and paragraph 205 of the Framework, and great weight and importance should be given to any harm to a heritage asset in the overall balance in line with Regulation 3 of the Decisions Regulations and this is done in section 5 below.

- 3.9.90. In the context of this section and the issues related to cultural heritage, taking all relevant matters into account, we conclude that the Proposed Development would result in less than substantial harm to the following designated heritage assets for the reasons set out by the Applicant:

- Elmesthorpe Church Scheduled Monument and attached Grade II listed Church of St Mary;
- Grade II* listed Church of St Catherine at Burbage;
- Grade I listed Church of St Mary at Barwell;
- Grade II* listed Church of St Simon and St Jude at Earl Shilton;
- Grade II listed Church of All Saints at Sapcote;
- Grade II listed Church of St Michael at Stoney Stanton;
- Grade II listed Wentworth Arms and Adjoining Stables; and
- Aston Flamville Conservation Area.

In each case this would be in relation to the effect on their settings.

- 3.9.91. We have also considered the impact of the Proposed Development on the harm to Burbage Common as a perceived heritage asset. HBBC, in response to our written questions (ExQ1.4.7 in [[REP4-173](#)]) has expressed its view that it did not consider the Common to be a heritage asset due to the lack of historical information on it. We acknowledge this

and therefore in the application of policy and consideration of matters we consider it is not a heritage asset.

- 3.9.92. Furthermore, because there is less than substantial harm to the setting of a number of heritage assets, we consider this would not be in breach of the Burbage Neighbourhood Plan, as the Proposed Development would not 'further destroy' the visual relationship between Burbage and its historic landscape, at worst it is a minor adverse impact.
- 3.9.93. The surveys undertaken so far have indicated potential impacts on archaeology, within the Order limits. We conclude that Req 12 is an appropriate measure to mitigate the potential impacts of the Proposed Development as far as is able and would be in line with paragraph 5.139 to 5.142 of the NPSNN (paragraphs 5.204 to 5.207 of the dNPSNN), and as such would provide neutral weight to the overall consideration of the Application in terms of archaeology.
- 3.9.94. The Proposed Development would, subject to the balancing exercise in section 5, comply with the relevant decision making policies set out in the NPSNN and dNPSNN and the Framework. Similarly, subject to the balancing exercise to be carried out in section 5, it would also be in accordance with BCS Policy CS20 'Historic Environment and Culture'. It is acknowledged that Policy DM12 'Designated and non-designated heritage assets' of the BDDPD, seeks to avoid harm to heritage assets, however, we agree that the loss of the non-designated assets can be accommodated, as their importance has been assessed and recording is an acceptable means to comply with the policy.

3.10. WATER AND FLOOD RISK

Introduction

- 3.10.1. This section of the Report addresses the effect of the Proposed Development on two aspects of the water environment:
- flood risk; and
 - water quality and resources.
- 3.10.2. It also considers the Water Framework Directive (WFD) Assessment.

Policy

NPSNN

- 3.10.3. Paragraph 5.91 of the NPSNN states that inappropriate development should be directed away from areas at risk of flooding and refers to the Framework. It goes on to indicate that where essential transport infrastructure has to cross areas at risk, it is permissible subject to the requirements of the Exception Test.
- 3.10.4. The NPSNN provides policy relevant to decision-making about flood risk and related drainage considerations in paragraphs 5.98 to 5.109. Policy relating to mitigation is set out in paragraphs 5.110 to 5.115. These include promotion of measures including SuDS, suggesting amongst

other techniques the use of basins and ponds to hold excess water after rain to enable controlled discharge. Paragraph 5.113 states: *"The surface water drainage arrangements for any project should be such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect."*

- 3.10.5. Policy relevant to water quality and resources is provided in NPSNN paragraphs 5.224 to 5.227. Paragraph 5.226 states that the SoS should be satisfied that a proposal has had regard to River Basin Management Plans and the requirements of the WFD. Policy relating to mitigation is set out in paragraphs 5.228 to 5.231. The NPSNN highlights that activities which give rise to discharges to the water environment during both construction and operation are subject to pollution control and so are subject to general policy considerations in paragraphs 4.48 to 4.56.

dNPSNN

- 3.10.6. The dNPSNN generally reiterates policy in the NPSNN but additionally provides clarity as to what represents SuDS. In relation to water resources, the dNPSNN makes clear that for proposals that would require significant supplies or impacts on other water supplies there should be consultation with the relevant water company and the Environment Agency (the EA). The dNPSNN does, however, indicate that projects should identify opportunities to protect and improve water quality through green and blue infrastructure, sustainable drainage and BNG.

National Planning Policy Framework and Planning Practice Guidance

- 3.10.7. The Framework sets out various planning policies to meet the challenge of climate change and flooding in paragraphs 157 to 175. This provides detail on the Sequential and Exception Tests as does the Flood Risk and Coastal Change section of the PPG. The PPG makes it clear that the Flood Risk Assessment (FRA) should cover all sources of flood risk. Categorisations of development in relation to flood risk is set out in Annex 3 of the Framework.

River Basin District Management Plan

- 3.10.8. The WFD aims to protect and enhance the quality of the water environment and is transposed into legislation in England by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. Under the WFD, 'waterbodies' are the basic management units, defined as all or part of a river system or aquifer. Waterbodies form part of a larger 'River Basin District', for which 'River Basin Management Plans' are used to summarise baseline conditions and set broad improvement objectives.
- 3.10.9. The main part of the Application Site is located within the Humber River Basin district which is managed by the Humber River Basin Management Plan.

Local Policies

- 3.10.10. BDC Policies CS21 Climate Change and CS22 Flood Risk Management [[REP4-165](#)] require the minimisation of risk of flooding to property, infrastructure and people, minimising vulnerability and providing resilience to climate change and flooding, by following a sequential approach and managing surface water run-off.
- 3.10.11. HBDDP Policy DM7 Preventing Pollution and Flooding [[REP4-177](#)] seeks to ensure that the adverse effects from pollution and flooding will be prevented by ensuring development will not adversely impact water quality, ecological value or drainage function of water bodies, ensure containment for oils, fuels and chemicals. The policy seeks development not to create or exacerbate flooding by being located away from areas of flood risk unless adequately mitigated in line with National policy.
- 3.10.12. LCC as Local Lead Flood Authority (LLFA) has produced a Preliminary Flood Risk Assessment which looks at floods that have taken place in the past and could take place in the future.

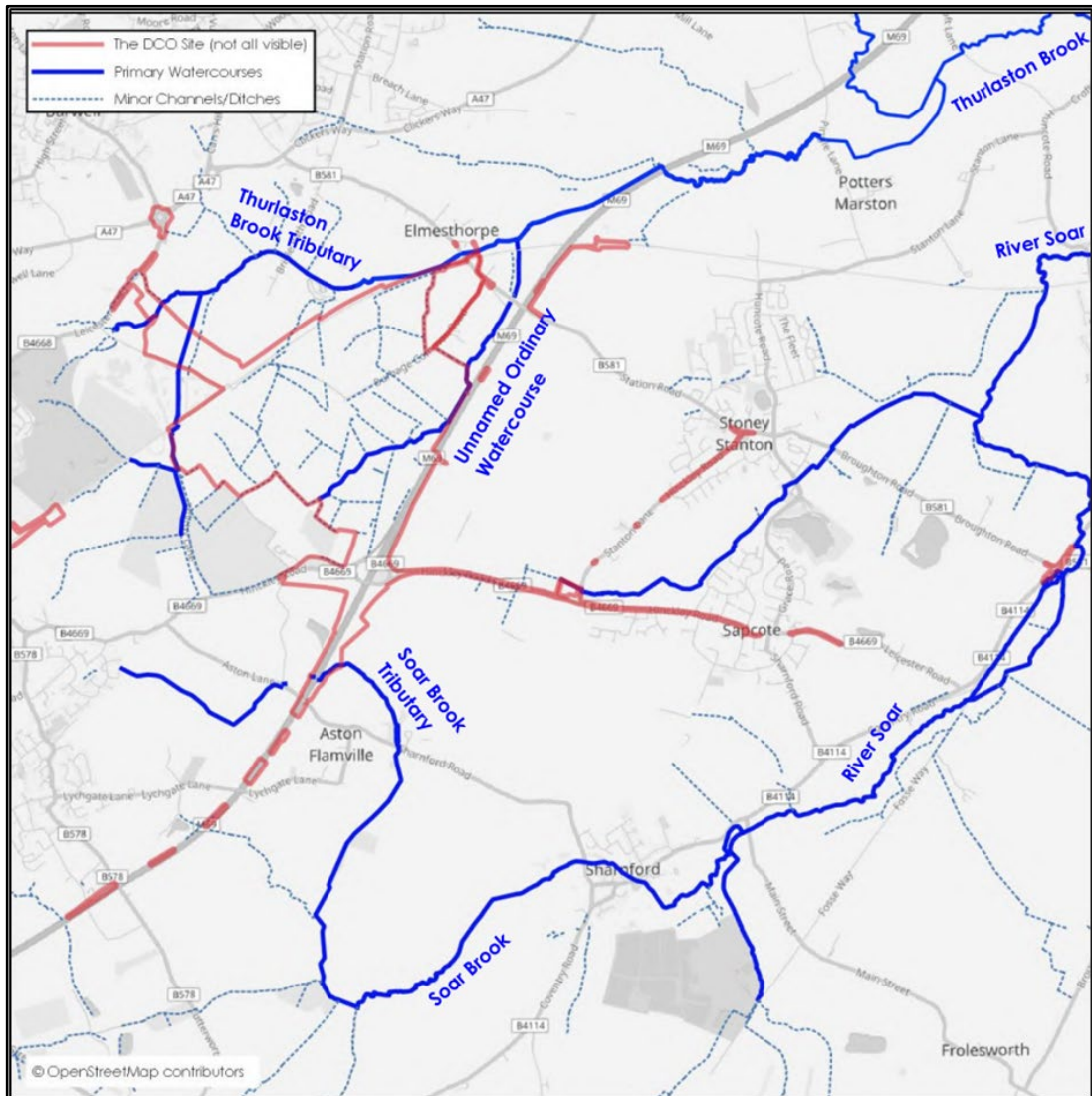
Case for the Applicant

- 3.10.13. Chapter 14 of the ES [[APP-123](#)] examines water resource and drainage. Amongst other things, this is accompanied by a FRA [[APP-209](#)], a Sustainable Drainage Statement (SDS) [[APP-210](#)] and Concept Surface and Foul Water Drainage Strategies ([[APP-339](#)] and [[APP-340](#)] respectively). Additionally, Concept Drainage Strategies for the A47 Link Road and M69 J2 are provided at [[APP-341](#)] and [[APP-342](#)] respectively.
- 3.10.14. The Applicant takes the view that, as the parts of the Proposed Development away from the main part of the Application Site are effectively minor revisions with negligible effects, it has limited its consideration to effects related to the main part of the Application Site.

Flood Risk

- 3.10.15. The Applicant notes that the Flood Maps for Planning shown as Figure 2.2 of the FRA [[APP-209](#)] identify that the majority of the main part of the Application Site, the A47 Link Road, and M69 J2 are located within FZ1, with the new rail connection to the existing railway Main Line, the A47 Link Road between the M69 and the B4668, and the M69 sliproads partially falling within FZ3 and FZ2.
- 3.10.16. The watercourses for the area are shown in Figure 13 which is Figure 1.2 in the FRA [[APP-209](#)].

Figure 13: Watercourse Network in vicinity of the main part of the Application Site



3.10.17. The main part of the Application Site is located within the catchment of an unnamed tributary of the Thurlaston Brook, which flows west to east from Hinckley to the north. Five smaller tributary watercourses/ ditches serve land to the south-west of and in the northern part of the main part of the Application Site. These pass beneath the railway line and join the unnamed tributary of the Thurlaston Brook as it flows to the north. The unnamed tributary then continues to flow north-east through Elmesthorpe.

3.10.18. An Unnamed Ordinary Watercourse (UOW) flows north-eastward through the centre of the main part of the Application Site before joining the tributary of the Thurlaston Brook just downstream of the railway line. The catchment of this UOW is largely made up of land within the Main part of the Application Site rather than being fed by a significant upstream catchment. There are also several field drainage ditches and small ponds which discharge into the UOW.

- 3.10.19. The Soar Brook tributary travels from the south-eastern side of Burbage. This flows beneath the M69 including that part of the Application Site for the proposed two south-facing slip roads. This then flows away to the east.
- 3.10.20. The railway line was constructed so that certain sections are in cuttings and others on embankments. Where watercourses flow under the embankments they are in culverts.
- 3.10.21. In Table 1.2 of the FRA [[APP-209](#)] the Applicant has divided the various parts of the Proposed Development into what it considers to be appropriate flood risk categories. It then goes on to base its assessment around these subdivisions. They are set out in Table 6.

Table 6: Applicant’s Classification of Development against Flood Risk

Development Group	Description	The Framework Vulnerability Classification
Primary Road and Rail Infrastructure	Includes works to the Main Line railway, the railway sidings and rail terminal, the link road between the M69 and the B4668 and the associated minor road diversions, and the new motorway slip roads (including widening of the M69 carriageway).	Essential Infrastructure
Warehousing and ancillary buildings	Includes Rail corridor within development zones, warehousing, ancillary buildings, energy centre, site hub, with associated parking, access, and frontage to railport.	Less Vulnerable
Watercourse Diversion	Relocation of an existing Unnamed Ordinary Watercourse into a new corridor alongside the M69.	Water Compatible
Open Land, Landscaping, Ecology, SuDS, Footpaths and Amenity Areas	Includes open land, landscaping and acoustic barriers; landscaped amenity areas; SuDS; footpaths and	Water Compatible

Development Group	Description	The Framework Vulnerability Classification
	bridleways and environmental zones for habitat creation.	

- 3.10.22. The Applicant notes in paragraph 2.11 of the FRA [[APP-209](#)] that the rail infrastructure's small encroachment into FZ3 in the north-east of the main part of the Application Site would be associated with connecting to the existing railway main line which is located in FZ3. Therefore, the Applicant asserts, this cannot be avoided. The Applicant also notes the existing railway main line is elevated above the floodplain. With the exception of this minor encroachment in FZ3, the new rail infrastructure would be located in FZ1.
- 3.10.23. The proposed A47 Link Road's small encroachment into FZ3 is associated with the A47 Link Road crossing a small UOW which flows between the railway line and the B4668. The Applicant considers that the proposed A47 Link Road needs to run between the B4668 and M69 J2; therefore, this crossing cannot be avoided.
- 3.10.24. In addressing the Exception Test the Applicant is of the view, see paragraph 2.15 of the FRA [[APP-209](#)], that the Proposed Development would be safe for its lifetime, without increasing flood risk elsewhere and where possible would reduce flood risk overall, and that the Proposed Development would provide wider sustainability benefits to the community that outweigh flood risk.
- 3.10.25. For the totality of the Proposed Development these asserted benefits are set out elsewhere and are thus not repeated. For the A47 Link Road specifically the Applicant indicates that it is of the view this would provide a better connection to the SRN for settlements to the north of Hinckley, including Barwell, Earl Shilton and Hinckley itself. Journey times would be reduced, and it would alleviate existing pressure in the centre of Hinckley for traffic heading to or from the M69. The Applicant considers journeys on the B581 crossing the M69 are also likely to shift to the A47 Link Road reducing traffic into the centre of Stoney Stanton. Additionally, the Applicant takes the view that the new slip roads on M69 J2 would also bring better connectivity to the villages to the east of the M69. These benefits are said to outweigh any "*relatively minor and very isolated flood risk*" on either the main part of the Application Site or the A47 Link Road. The Applicant considers that this part of the Proposed Development would meet the Exception test.
- 3.10.26. The Applicant has assessed the 1 in 100 year flood event in line, it maintains, with the PPG. This has additionally taken into account peak river flows caused by climate change as advised by the EA within the Soar Management Catchment of the Humber River Basin District.
- 3.10.27. The Applicant has considered potential sources of flood risk. These are fluvial, coastal, canals, groundwater, reservoirs and waterbodies, pluvial

runoff and sewers. The Applicant considers that there are medium risks from fluvial and pluvial flooding, and low risks from ground water and sewers. The remainder are considered not to be applicable due to the distances from potential sources of flooding.

- 3.10.28. As regards fluvial flood risk, there are no recorded incidents of flooding on the main part of the Application Site, but there is an anecdotal account of flooding in the FZ3 area. The Applicant considers that this *"was likely associated with heavy rainfall and poor land drainage"* (paragraph 3.4 of the FRA [APP-209]). It also considers that reports of waterlogging and shallow surface water on other parts of the main part of the Application Site are *also "likely associated with poor land drainage, and the poor permeability of the underlying soils and geology"* (paragraph 3.5). The Applicant has been unable to find any recorded incidents of flooding on either the Thurlaston Brook or the Soar Brook.
- 3.10.29. In consultation with the EA the Applicant has created a bespoke site-specific hydraulic model of the local watercourses draining towards the Thurlaston Brook. From this the modelled floodplains were identified. These are shown in Figure 3.2 of the FRA [APP-209]. A number of floodplains outside the banks of the individual watercourses were identified; these principally occurred where culverts, mostly under the railway line, were too small for the flows resulting in 'backing up'.
- 3.10.30. Downstream of the main part of the Application Site the floodplain is more extensive because flood water is attenuated by the existing culvert under Station Road in Elmesthorpe.
- 3.10.31. The Applicant's modelling shows that while the main railway line is located in FZ3, it is elevated above the modelled flood levels, including in the 1 in 1000-year flood event. The Applicant therefore believes that the railway infrastructure could remain operational during a flood event.
- 3.10.32. A second bespoke site-specific hydraulic model was developed by the Applicant for the tributary of the Soar Brook for the area of the proposed south-facing slip roads. This shows (Figure 3.3 of the FRA [APP-209]) that flows are attenuated upstream of Aston Road and the M69 due to their elevated positions. This leads to a relatively broad floodplain in these areas. Downstream of the M69 the floodplain is largely restricted to a well-defined corridor. The M69 is elevated over 2m above the 1 in 1000-year modelled flood event and, therefore, the Applicant considers, the flood risk from the watercourse is low.
- 3.10.33. Turning to groundwater, the Applicant investigated the geology of the area and its potential to hold water. While the British Geological Survey does indicate that the area may have some superficial deposits that have the potential to hold water, the preliminary ground investigation did not record these as being present. The underlying formation, Mercia Mudstone, is a Secondary B Aquifer which may store and yield limited amounts of groundwater due to localised features such as fissures, thin permeable horizons, and weathering.

- 3.10.34. Preliminary exploratory site investigations on the main part of the Application Site reported groundwater being encountered between 3.10m and 3.90m below ground level. These are in a cohesive geology and, the Applicant maintains, there is no significant groundwater reservoir or flow pathway that could impact the main part of the Application Site.
- 3.10.35. For pluvial flood risk, the Applicant notes that there has been no historical surface water flooding at the Application Site. The Applicant has interrogated the EA's surface water mapping with an extract given as Figure 3.4 of the FRA [[APP-209](#)].
- 3.10.36. This identifies a high to medium flood risk along the watercourse corridors and in the areas at risk of accumulated fluvial floodplain upstream of the railway line and the M69. The Applicant notes that this map is of a strategic scale and does not include details of culverts and other hydraulic structures whereas the bespoke hydraulic models do include this detail. The Applicant therefore maintains the bespoke models are a better dataset for assessing flood risk associated with the watercourse networks.
- 3.10.37. Apart from the watercourses, the Applicant has identified a number of low risk overland flow routes associated with localised valley lines which direct overland flows towards the watercourse network. These originate within the main part of the Application Site, and therefore do not represent run-off from third party land. The Applicant considers that the reported localised surface water flooding would be resolved through the reprofiling of the main part of the Application Site and through improved drainage.
- 3.10.38. The main part of the Application Site is not served by public sewers. Only one sewer can be found within the Application Site. This is at Smithy Lane and is associated with the Aston Firs Travellers Site and is directed away from the rest of the Application Site.

Flood Risk Mitigation

- 3.10.39. Under a heading "*Sequential Arrangement*" the Applicant states that the layout puts all the less vulnerable uses within the FZ1 areas, as is the majority of the essential infrastructure. "*The only encroachment into Flood Zones 2 and 3 is associated with establishing a railway connection to the existing main line in the north-east of the Main HNRFI Site, and the A47 Link Road crossing over an unnamed watercourse*" (paragraph 4.3 of the FRA [[APP-209](#)]).
- 3.10.40. Following the re-profiling of the main part of the Application Site the watercourse on the eastern side of the Application Site would be realigned alongside the M69 in a new channel which, the Applicant indicates, would be designed to convey the necessary flood flows. Two culverts are proposed by the Applicant for this re-profiled watercourse. One beneath the A47 Link Road near roundabout 1 and the second beneath a footpath which crosses the M69 (currently V29/6 although this is proposed to be relocated and re-provided as a bridleway).

- 3.10.41. The Applicant is proposing a new surface water drainage system to intercept, convey and store storm water falling on the main part of the Application Site. This would relocate rainfall to a new drainage system and would use the existing culverts under the railway line as outfall structures. Discharge would be restricted to equivalent greenfield QBAR (the mean annual maximum flow) rates. Figure 14.4 Main HNRFI Site Concept Surface Water Drainage Strategy [[APP-339](#)] indicates that the QBAR rate would be 4.1 litres/ second/ ha. This would have the effect, according to the Applicant, of reducing runoff during flood events.
- 3.10.42. The route of the A47 Link Road would cross a number of small watercourses. The Applicant notes that the road would be on an embankment with culverts. The exact sizes of the culverts would form part of the detailed design under Req 4 in the dDCO [[REP7-011](#)].
- 3.10.43. The Applicant indicates it has added the flood mitigation proposals to the site-specific hydraulic models and the range of flood events and these show that the mitigation would address the flood risk. The full details are set out for each watercourse or floodplain in paragraphs 4.11 to 4.27 of the FRA [[APP-209](#)]. This shows, according to the Applicant, that post-development dry access/ egress to and from the main part of the Application Site would be available along the A47 Link Road from both east and west.
- 3.10.44. Surface Water drainage would be designed to intercept and store storm water to ensure operability. Full details are set out in the SDS. In brief, the Proposed Development *would "continue to discharge surface water to the local watercourses at the equivalent greenfield QBAR rate"*.
- 3.10.45. Groundwater would be monitored by the Applicant during construction with dewatering utilised where necessary.

Off-site flooding effects

- 3.10.46. Having considered the effects on the Application Site, the Applicant has gone on to look at potential off-site effects in a series of 1 in 10-year and 1 in 100-year +30% return period events.
- 3.10.47. The Applicant maintains that the analysis shows with the mitigations in place there would be no significant off-site detriment. Rather, it *"potentially offers marginal downstream betterment due to the attenuation of surface water runoff"* (paragraph 5.3 of the FRA [[APP-209](#)]).
- 3.10.48. This would be most noted from the watercourse along the eastern side of the main part of the Application Site where the Applicant considers that predicted flood levels would reduce by almost 0.5m downstream. There would also be betterment upstream of some of the culverts under the A47 Link Road due to increased efficiency when compared to the vegetated channels being replaced.
- 3.10.49. Overall, the Applicant maintains that the modelling shows that the A47 Link Road would have no significant detrimental impacts downstream.

This would also apply to the proposed new slip roads to the M69 and from other off-site highway and railway works.

- 3.10.50. During the construction stage, the Applicant would follow good practice guidance on working near watercourses, with compounds located within FZ1. The CEMP, to be secured under Req 7, includes outline methods and monitoring requirements to prevent effects on surface water and flood risk. The diverted UOW would be constructed offline. Paragraphs 14.163 to 14.171 of Chapter 14 of the ES [[APP-123](#)] outline various measures to prevent pollution of the water environment.
- 3.10.51. Also during construction, foul water would be connected to part of the existing sewerage system on Burbage Common Road; this is shown in Figure 14.5 of the ES 'Main HNRFI Site Concept Foul Water Drainage Strategy' [[APP-340](#)]. This has been agreed with Severn Trent Water which has also indicated that potable water could be provided.
- 3.10.52. At the operational stage the Applicant maintains that the design of the Proposed Development would ensure that no land outside the main part of the Application Site would be at an increased risk of fluvial or surface water flooding, with some minor beneficial effects due the on-site management systems reducing peak discharges.
- 3.10.53. The maintenance schedule for cleaning and maintaining proposed oil interceptors would, according to the Applicant, mitigate against potential contaminated surface water runoff. As discussed below in relation to the WFD Assessment the loss of land for agricultural production would improve ecology.
- 3.10.54. As agreed with Severn Trent Water, foul and potable water solutions would be provided. The Applicant maintains the increases when compared to the current situation would not have a significant effect.

Water Framework Directive Assessment

- 3.10.55. The Application was accompanied by a Preliminary Water Framework Directive Assessment (PWFDA) [[APP-353](#)].
- 3.10.56. The PWFDA notes that the majority of the development assessed is located within the Thurlaston Brook catchment. This discharges around 6km downstream from the main part of the Application Site into the River Soar. Both the Thurlaston Brook and the River Soar are classified by the EA as Main Rivers. Other waterbodies in the area include the Soar Secondary Combined Groundwater Body.
- 3.10.57. The River Basin Management Plan identifies the objectives and measure required to improve the status of surface and ground waterbodies within the Humber River basin district catchment.
- 3.10.58. In 2009 the Thurlaston Brook (WFD Waterbody GB106040024190) was considered to have at a poor ecological status following monitoring of biological, physiochemical and hydromorphological elements. Failure to achieve good status is largely attributed to macroinvertebrate and

phytobenthos communities assessed as moderate and poor condition respectively whilst phosphate levels were similarly assessed as poor. In contrast, assessment of hydromorphological elements found the watercourse to achieve good status whilst fish populations and physio chemical elements comply with the criteria for high status. Further surveys in 2015 (Cycle 2 Assessment) confirmed this status.

- 3.10.59. The River Soar (GB104028046880) was similarly considered in 2009 to be at poor ecological status for similar reasons, although macroinvertebrate communities were good. The Cycle 2 assessment confirm this. Due to the distance from the Application Site the Applicant screened out this waterbody from further assessment.
- 3.10.60. For the Soar – Secondary Combined (GB40402G990600) the 2019 classification was good for all quantitative and chemical elements.
- 3.10.61. Likely effects on surface and/ or ground water bodies associated with the Proposed Development as ascertained by the Applicant are set out in paragraphs 1.31 for construction and 1.32 for operation of the PWFDA [[APP-353](#)].
- 3.10.62. The Applicant predicts there would be no direct impacts on the Thurlaston Brook given the distance and spatial separation from the main part of the Application Site. However, the Applicant considers that there would be the potential for indirect effects as the Thurlaston Brook is downstream.
- 3.10.63. The Applicant acknowledges there would be direct and indirect impacts on biological communities and water quality parameters on the various watercourses within the main part of the Application Site associated with the realignment and/ or culverting of each waterbody. The Applicant also acknowledges that there would be potential effects on the groundwater resource during the construction phase, leading to mobilisation of existing contaminants.
- 3.10.64. The Applicant has set out the various potential effects in Table 1.1 of the PWFDA [[APP-353](#)]. However, subject to detailed design it contends that through inherent mitigation, such as the design and implementation of a Surface Water Strategy [[REP4-083](#)] and SuDS designed to manage, treat and remediate surface water runoff from, some of these effects can be avoided. These are set out in paragraph 1.40 of the PWFDA. Additional design measures recommended for inclusion are set out in paragraph 1.41 of the PWFDA with the Applicant’s assessment of the likely residual effects of the Proposed Development set out in Table 1.2. In each case the Applicant concludes that there would be no deterioration at the waterbody level. It additionally concludes that in respect of Physiochemical Supporting Elements that there is the potential for positive effects following cessation of agricultural production on site.

Case for Interested Parties

Environment Agency

- 3.10.65. The EA in its RR [[RR-1356](#)] and WRs [[REP1-229](#)] confirms that the Applicant's hydraulic model assessing the potential off-site flood risk arising from the proposals, including fluvial risk from the ordinary watercourses on site is fit for purpose.
- 3.10.66. While some of the site is within FZs 2 and 3 near the site boundary the EA considers that the development is at an acceptable level of flood risk and, subject to the implementation of the flood risk management principles outlined in the FRA, that the Proposed Development would seek to appropriately mitigate flood risk in line with best practice guidance.
- 3.10.67. The EA notes that as there are no Main Rivers within the Application Site there is no requirement for a Flood Risk Activity permit.
- 3.10.68. The EA comments that surface water drainage would need to be managed appropriately during the construction phase and for the lifetime of the development, but this is mainly a matter for LCC as LLFA.
- 3.10.69. In relation to groundwater 'controlled waters' protection the EA has no adverse comments, although it supports Req 15 in the dDCO.
- 3.10.70. The EA notes the connection to the Severn Trent Water Ltd sewage drainage system and welcomes this arrangement.
- 3.10.71. In its SoCG with the Applicant [[REP2-085](#)] the EA agrees all matters, making particularly reference to the need for a phase-by-phase CEMP.
- 3.10.72. In relation to the Preliminary WFD Assessment, the EA has "*no adverse comments to make*".

Leicestershire County Council

- 3.10.73. LCC in its LIR [[REP1-154](#)] confirms as LLFA that "*the works proposed are sufficient to mitigate any surface water run-off and can be discharged as set out in the DCO*". The SoCG between the Applicant and LCC [[REP8-022](#)] identifies no matters in dispute.

National Highways

- 3.10.74. NH has not specifically commented on flood risk. However, its objections to CA and TP relate to drainage of the SRN which discharges in the UOW on the eastern side of the site. The objections, which are set out more fully in section 6.4.36 are that the SRN should continue to drain into this area.

Other IPs

- 3.10.75. A number of RRs, for example, Marc Slack [[RR-0797](#)] Richard John Hayes [[RR-0502](#)] set out generalised concerns about flooding based on the

increase in hardsurfaced areas on site when compared to the current situation noting that there has been flooding in recent years.

- 3.10.76. There were also concerns, including from Elmesthorpe Parish Council [[RR-0379](#)] Malcolm Bradbury [[RR-0790](#)] and Catherine Bass [[RR-0943](#)], [[REP1-172](#)] and [[REP3-104](#)] about flooding on the site, in Elmesthorpe and the Bostock Close area in particular. This because of run-off from the Application Site, the combined sewers in the area and the capacity of the treatment works to cope with the additional run-off.
- 3.10.77. There are also concerns set out by Richard Vanags, [[RR-1139](#)] and [[REP1-197](#)], about the foul drainage for the dwellings at Dunton Cottages, Burbage Common Road. Under the Proposed Development this part of the Application Site would be part of the Open Space, and Mr Vanags is concerned that the drainage of these properties would be lost, meaning that the properties would have no foul drainage.

ExA's Considerations

Flood Risk

- 3.10.78. In our view the Applicant's FRA [[APP-209](#)] provides an adequate basis for the SoS to make their assessment.
- 3.10.79. Annex 3 of the Framework sets out the flood risk vulnerability classification for development. There is no category for rail freight interchanges (or for that matter SRFIs). Given how the development has been designed, we consider it reasonable to sub-divide the Proposed Development for the main part of the Application Site into:
- the access development, that is the A47 Link Road from M69 J2 to the B4668 together with the works at M69 J2;
 - the amenity open space to the south of the A47 Link Road; and
 - the remainder, that includes the railport, the warehousing and ancillary development, such as internal roads, car parking and landscaping.
- 3.10.80. We do not agree with the Applicant that all the categories of development set out in the first row of Table 6 represent 'Essential Infrastructure'.
- 3.10.81. The first bullet in Annex 3 of the Framework under the heading 'Essential infrastructure' reads in full "*Essential transport infrastructure (including mass evacuation routes) **which has to cross the area at risk***" (our emboldening). In our view such development only is categorised as 'Essential Infrastructure' for flood risk when it has to cross an area in FZ2 or FZ3 to get between its two terminal points. On the assumption that access would be to the west as for access anywhere else would be another development proposal, this only applies for to the A47 Link Road between the B4668 and M69 J2 as it would need to cross the Thurlaston Brook Tributary.

- 3.10.82. We would agree with the Applicant that the amenity open space, nature conservation and PRow diversions to the south of the A47 Link Road would represent 'water compatible development'.
- 3.10.83. Beyond that, we consider it inappropriate to sub-divide up the remaining parts of the Proposed Development. Given that warehousing and ancillary buildings would fall within the 'less vulnerable' category we consider it reasonable to treat the remaining parts as such since none of the other elements would fall within the 'highly' or 'more' vulnerable categories.
- 3.10.84. Those areas of the main part of the Application Site which fall within FZ2 and FZ3 relate to the point where the railway line to/ from the east would join into the site and include one of the proposed surface water drainage ponds. In our view, due to the technical requirements to access the site, it would be reasonable to consider this element to be akin to a need to have part of the development between two terminal points outside the area at risk of flooding.
- 3.10.85. As set out in section 3.2 we have considered alternative sites and have concluded that the Applicant has reasonably considered other potential sites. While some of these were excluded for flood risk reasons, these were not the only reasons, and given the relatively small areas of this site within FZ2 or FZ3 we consider it reasonable to conclude that the Proposed Development on the main part of the Application Site has passed the Sequential Test in respect of river flooding.
- 3.10.86. This means that we need to consider the Exception Test for river flood risk. Under Table 2 of the PPG (Reference ID: 7-079-20220825) less vulnerable development is acceptable in FZ3a provided that it has been designed and constructed to remain operational and safe in times of flood. In FZ3b only essential infrastructure is permitted, but even then, it needs to be designed and constructed to remain operational and safe in times of flood, result in no net loss of floodplain storage and not impede flows and not increase flood risk elsewhere.
- 3.10.87. No information has been provided as to what part of FZ3 falls within sub-category FZ3a and what is within FZ3b. Therefore, to be robust, we have considered these parts of the Application Site as if they all fall within FZ3b.
- 3.10.88. Starting first with the main part of the Application Site, 'less vulnerable' development should not be permitted in FZ3b. However, we note that the existing railway embankment is in FZ3 and above the 1 in 1000 year flood event level and the Proposed Development would have to connect into it. On the evidence in front of us we consider that there is no other appropriate layout. We consider that the Proposed Development would remain operational and safe in times of flood. It has not been suggested by any party that there would be a net loss of floodplain storage nor impede flows, and indeed this could be secured as part of the detailed design pursuant to Req 4 [[REP7-011](#)] which includes relevant elements. The Applicant's analysis, which we accept, is that there could be a small betterment as regards off-site flood risk.

- 3.10.89. We therefore consider that, exceptionally, although representing 'less vulnerable' development in relation to river flooding, given the small intersection between FZ3 and the Proposed Development and the degree of betterment, this only weighs with little weight against development consent being granted. We will consider this further in section 5.
- 3.10.90. Turning to the crossing of the Thurlaston Brook by the A47 Link Road. We accept the evidence of the Applicant, which was not contested, that the development would meet the criteria for the Exception Test for a development in FZ3b.
- 3.10.91. In relation to the two proposed slip roads to and from M69 J2 this would effectively extend the existing culvert of the Soar Brook tributary under the M69. We are satisfied that this can be considered as 'essential infrastructure' as it would connect two terminal points either side of the flood zone. In light of the agreement of all parties on flood risk who made representations regarding flood risk in this area, we consider that this element of the Proposed Development would pass the Sequential and Exception Tests.
- 3.10.92. As water compatible development the amenity open space and similar areas are considered to be acceptable in relation to fluvial, river, flooding risk.
- 3.10.93. In relation to surface water, the extent of the groundworks to create the level plateaux are such that the existing on-site surface water environment for the main part of the Application Site would be eliminated. Therefore, in relation to the risk of flooding from surface water, given the re-creation of a new environment our view is the assessment should be whether the Proposed Development passes the same tests as set out in the PPG for less vulnerable development in the relevant FZ.
- 3.10.94. Both the EA and LCC as LLFA are content that the Proposed Development would be appropriately designed. Further, neither raise concerns with the Applicant's contention that the Proposed Development would be safe for its lifetime, without increasing flood risk elsewhere (paragraph 2.16 of the FRA [[APP-209](#)]).
- 3.10.95. In respect of NH's concerns, we are satisfied that with the proposed changes to the dDCO set out section 7 and Table 11 appropriate arrangements can be made for the drainage of the SRN.
- 3.10.96. In the absence of any evidence to the contrary we are therefore satisfied that the Proposed Development would pass both the Sequential and Exception Tests in respect of rain water, pluvial, flooding.
- 3.10.97. On the basis we have no contrary evidence we are satisfied that the proposals would be acceptable in terms of groundwater and that the Proposed Development would have no effect either on or from coastal flooding, canals, reservoirs and similar waterbodies.

- 3.10.98. While Severn Trent Water did not engage with the Examination, we are content that the proposals can be supplied with potable water and that the foul water can be drained appropriately. It would be Severn Trent Water's responsibility under the relevant Acts to ensure that the pumping station near Bostock Close in Elmesthorpe would have appropriate capacity.
- 3.10.99. The objections about the drainage of the dwellings at Dunton Cottages, Burbage Common Road are more fully considered in section 6.4.53. We conclude that appropriate drainage arrangements would be in place to ensure these properties can dispose of their foul water.
- 3.10.100. We are therefore satisfied that the Proposed Development would comply with both the NPSNN and dNPSNN in that, within the terms of the Application, cannot be located outside areas at risk of flooding, it would be safe and would not increase the risk of flooding elsewhere.
- 3.10.101. Drainage on the main part of the Application Site would utilise SuDS which are promoted in paragraph 5.111 of the NPSNN and paragraph 5.253 of the dNPSNN. The Proposed Development would also comply with the local planning policies.

Water Framework Directive

- 3.10.102. In our view the Applicant's PWFDA [[APP-353](#)] provides an adequate basis for the SoS to make their assessment.
- 3.10.103. We have no reason to dispute the Applicant's analysis and indeed the lack of objection from the EA and LCC as LLFA allows us to agree that the Proposed Development would not have an adverse effect on any WFD waterbody. Rather, through the removal of agricultural activities there may be a small level of improvement. We conclude that the Proposed Development would comply with the overall objectives of the River Basin Management Plan. We therefore give this little weight in favour of the Proposed Development.
- 3.10.104. We are therefore satisfied that the Proposed Development would be WFD compliant.

ExA's Conclusions

- 3.10.105. Taking all the relevant documents and policies into account and on the basis of the above, we consider as follows:
- while the main part of the Proposed Development would not on a site-specific basis pass the Exception Test, given the small intersection with FZ3, and the otherwise passing of the Exception Tests for 'essential infrastructure' the design solution is the only one suggested as being appropriate. We therefore give this failure little weight against the Proposed Development;
 - the Proposed A47 Link Road would comply with the Sequential and Exception Tests and the proposed amenity open space areas would represent 'water compatible development';

- the proposed slip roads to and from M69 J2 would comply with the Sequential and Exception tests for essential infrastructure;
- the new water environment being created on site means that the Proposed Development would not be susceptible to surface water flooding and would not result in higher flood risk off-site;
- the Proposed Development would be acceptable in terms of groundwater and would have no effect either on or from coastal flooding, canals, reservoirs and similar waterbodies;
- we are satisfied that appropriate arrangements can be made for potable water supplies and foul water disposal;
- the Proposed Development would be WFD compliant, and it would be likely to result in a small betterment to the overall condition and value of the potentially affected waterbodies.

3.10.106. Overall, taking consideration of the effects of the Proposed Development on the water environment as a whole, we give it little positive weight in the final planning balance.

3.10.107. The Proposed Development would generally comply with the relevant policies of the NPSNN, dNPSNN, the Framework and the PPG in that it has put forward proposals to mitigate adverse effect on the water environment, utilising SuDS where appropriate. The exception being in relation to the small part of the Application Site where the eastbound railway connection would encroach into FZ3.

3.10.108. Overall, the Proposed Development would comply with BCS Policies CS21 and CS22 and HBDPD Policy DM7 which all deal with effects on the water environment.

3.11. ENERGY

Introduction

3.11.1. This section considers energy, both that which would be produced on site and would be utilised in the operation of the Proposed Development.

Policy

National Policy Statements

3.11.2. Paragraph 4.29 of the NPSNN, in the 'good design' section, indicates that sustainable infrastructure should be efficient in the energy used. This is reiterated in paragraph 4.24 of the dNPSNN.

3.11.3. The dNPSNN also indicates that infrastructure should support innovation, including "*supplying the energy needed to support the evolution of vehicle technologies*".

3.11.4. NPS EN-1 notes that the need for development for the types of infrastructure that is covered by the NPS and that substantial weight should be given when considering applications for development consent under the PA2008.

- 3.11.5. NPS EN-3 notes that solar is a key part in the government’s strategy for low-cost decarbonisation of the energy sector and the Government is supportive of solar that is “co-located” with other functions (paragraph 2.10.10).

National Planning Policy Framework

- 3.11.6. The Framework in paragraph 163 indicates that in determining planning applications for renewable development authorities should recognise that even small-scale projects provide a valuable contribution to significant cutting GHG emissions.

Local Policies

- 3.11.7. BCS Policy CS22 seeks layouts and sustainable design principles to reduce energy demand, and also encourages renewable, low carbon and decentralised energy.

Transport Decarbonisation Plan

- 3.11.8. The Transport Decarbonisation Plan sets out the Government’s commitments and actions needed to decarbonise the entire transport system in the UK. Amongst other things, it outlines a pathway to net zero transport, illustrates the wider benefits net zero transport can deliver and shows the principles that underpin the Government’s approach to delivering net zero transport.

Case for the Applicant

Energy Generation

- 3.11.9. The Proposed Development includes the provision of two areas where energy would be converted to electricity primarily for use within the Proposed Development. The Applicant’s overall approach is set out in its Energy Strategy [[REP3-024](#)] which would be a certified document under the dDCO [[REP7-011](#)] and the subject of Req 17 which requires detailed submission under its approach for each phase before it is constructed.
- 3.11.10. Firstly, the roof areas of the main warehouses would be fitted with photovoltaic (PV) cells. The Energy Strategy [[REP3-024](#)] indicates (paragraph 7.2.4) that some 50% of the roof area would be occupied by PV panels.
- 3.11.11. We asked [[PD-011](#)] in ExQ1.0.16 for the Applicant to signpost how the PV arrays would be secured and delivered, and to estimate the current maximum energy generation that could be secured from the rooftop delivery of photovoltaic cells within the Proposed Development based on current technology (measured in alternating current).
- 3.11.12. The Applicant’s response [[REP4-141](#)] is that the PV panels would be secured through Req 4(1). This requires the application to follow the Design Code [[REP7-051](#)] which would be a certified document under Schedule 15 of the dDCO [[REP7-011](#)]. The Design Code references in paragraph 11.5 “*PV arrays will be fixed directly to the roof*”, and Req 17

which requires the submission of a detailed energy strategy on a phased basis. The Applicant estimates that the approximately 283,000m² of PV panels could generate some 48,000 megawatt hours (MWh) per annum with a peak simultaneous electrical output of 42.4MW, although the Applicant acknowledges that this is *"dependent upon a number of factors, including types of panels selected, panel efficiency and orientation"*.

- 3.11.13. Secondly, an Energy Centre, would be located south of the A47 link road in a similar location to the Lorry Park forming part of Work No. 5. This would be a CHP with the capacity to produce 5MW. This would be used as a 'back up' if there was an unforeseen requirement. The CHP would be capable of being powered by hydrogen in the event of the de-carbonisation of the gas grid but could also be powered by natural gas (methane), diesel or refuse-derived fuels. The Applicant also indicates the CHP could provide a district heat network *"should there be a demand on site"*.
- 3.11.14. The Energy Strategy also makes clear that the Proposed Development would include an on-site battery storage system which, if there was a shortfall in terms of PV energy output, would supply the site before import from the National Grid. It is stated that batteries would be scaled to suit the specific energy use profile of each building, but no rating has been specified. The Applicant estimates that the total operating time for a standby generator would be less than 50 hours per annum (response to ExQ1.1.11 [[REP4-141](#)]).
- 3.11.15. The Energy Strategy also considered a number of alternative technologies for use in the energy environment. The Applicant discounted wind, due to the low average wind conditions in the area, solar thermal, due to the low demand for hot water, and biomass, due to the greater detrimental effects on air quality when compared to methane/ hydrogen and higher maintenance costs. However, it has considered the use of air-source and ground-source heat pumps *"with the suitability of each being assessed on a range of factors, including suitability, long term operation and the infrastructure required for each, and the most suitable will be selected in each case"* (paragraph 3.2.1 of Appendix A). Air and ground-source pump technology is not included in the energy production calculations.

Energy Use

- 3.11.16. The Energy Strategy estimates the energy demand of the Proposed Development when operational under four scenarios:
- Occupancy
 - Occupancy + Heating
 - Occupancy + Heating + Electric Vehicles (EV)
 - Occupancy + Heating + EV + EHG
- 3.11.17. To estimate the occupancy and heating elements the Applicant indicates that the buildings, with regard to building thermal insulation and air tightness, would be constructed to a level slightly above the Building

Regulations. This is covered in the Design Code [[REP7-051](#)]. It would also use, according to the Applicant, efficient mechanical plant systems, and high efficiency lighting. The Applicant indicates that *"the development will target BREEAM – Excellent and an EPC A rating"* (paragraph 5.2 of the Design Code [[REP7-051](#)]).

3.11.18. Under Req 4(3) a minimum of 20% of the total car parking spaces are to be equipped with EV charging points at a minimum rating of 7.4 kilowatt-hour (kWh) and the remainder with passive provision, that is so as not to preclude the provision of future electric charging points. This is defined in paragraph 1 of Part 1 of Schedule 2 to the dDCO [[REP7-011](#)].

3.11.19. Table 7 sets out the Applicant’s expected peak energy use and also annualised requirement figures. This has been derived from Tables 5 and 7 from the Energy Strategy [[REP3-024](#)].

Table 7: Peak and Annual energy use against PV potentially generated

	Peak (MW)	Annual (MWh)	100% PV yield as % annual demand
Occupancy	10.2	22,300	215%
Occupancy + Heating	14.7	32,170	149%
Occupancy + Heating + EV	17.6	58,100	83%
Occupancy + Heating + EV + EHGV	28.7	154,940	31%

3.11.20. In addition, the Applicant estimates that the railport power requirement would be 2.0MW, which would represent approximately 5% of the PV generation.

3.11.21. It can thus be seen that, depending on the take up of EV charging, both cars and HGVs, that the Proposed Development could be a net exporter of electricity, but equally could be a net importer.

Case for Interested Parties

3.11.22. BDC in its WR [[REP1-050](#)] and LIR [[REP1-055](#)] did consider that the Applicant should aim for BREEAM standard ‘Excellent’ or ‘Outstanding’ as regards the buildings’ energy efficiency (or potentially the Future Buildings Standards) and the limit on energy generation should be justified. Rather, PV location and electricity productions should be expanded to *include "covered parking spaces, footpaths and/or cycleways, or perhaps ground-mounted panels"*. It also considered that ground and air source heat pumps should be used as they would *"make the onsite generated renewable energy (from solar) go further"*.

ExA's Considerations

- 3.11.23. The original draft DCO [[APP-085](#)] included a requirement, number 17, that the Proposed Development must not generate more than 49.9MW of electricity. We queried in Annex of our Rule 6 letter [[PD-005](#)] how this met the legal tests for "associated development" and how it related to s120 and paragraph 5 of Schedule 5 of the PA2008 and the policy tests for requirements.
- 3.11.24. For the avoidance of doubt, we are satisfied that as a 'generating station' the photovoltaic array, battery storage system(s) and CHP facility would represent 'associated development', rather our query related to whether as 'associated development' a generating limit was required either as a matter of law or policy. The question of law is discussed further in section 7.4.7.
- 3.11.25. Following discussion at ISH1, the Applicant submitted a 'Post hearing submission ISH1 and CAH1 [Appendix B Energy Note]' [[REP1-019](#)]. In this, in paragraph 12, the Applicant acknowledged that *"future advances in photovoltaic technology could enable the installation of more efficient roof mounted panels (or their replacement) within the same roof space which would take the capacity of the generating station over the 50MW threshold"*.
- 3.11.26. In ISH1 we queried why the Application had not 'future proofed' itself, so as to allow for the possibility of generating more than the 50MW threshold, particularly as there is a general predisposition towards non-carbon energy production technologies.
- 3.11.27. The Applicant indicated that it had not applied for an energy NSIP, and also pointed to Regulation 6 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations), which require an application for a non-offshore generating station to be accompanied by a statement of who will be responsible for designing and building the connection to the electricity grid, had not been complied with.
- 3.11.28. During the course of the Examination the latest suite of Energy NPSs were designated, and IPs were given the opportunity to make representations on their publication (ExQ1.016).
- 3.11.29. The Applicant emphasised ([REP4-131](#)) paragraph 3.10.2 of EN-3 which highlights the important role of solar co-located with other functions.
- 3.11.30. As the Applicant makes clear this proposal is not for an Energy NSIP, and we consider that this is a lost opportunity. It is not clear to us whether the whether the PA2008 threshold in s15(2) is based on generating capacity or export to the National Grid capacity (see footnote 92 of EN-3) or whether generation of greater than 50MW could be considered to be 'associated development' as a matter of law. However, limiting infrastructure so that it does not maximise renewable energy production where it would have no greater environmental or other harmful effects seems to us to be against the Government's overall policies. This is

particularly so as the only substantive reason given was a technical failure to comply with Regulation 6 of the APFP Regulations.

- 3.11.31. We also consider that the qualified commitment to ground source heat pumps would also be a missed opportunity given the amount of ground moving required to produce the plateaus for the warehouses and railport and the benefit that can be achieved through pumps' Coefficient of Performance.
- 3.11.32. Notwithstanding this, the Proposed Development would produce a significant quantum of energy from renewable sources, which would help to deliver the Government's overall objectives and assist with compliance with the Transport Decarbonisation Plan. We consider that this should be taken into account in the planning balance.
- 3.11.33. We also take into account the critical national priority for low carbon infrastructure set out in EN-1 and the national policy in EN-3 with both documents considered to be important and relevant within the consideration of this Application. Although the Energy Centre would be 'hydrogen ready', we consider it should be assessed on the basis that it would be fed with non-renewable sources as this is the most likely, at least initial, fuel.
- 3.11.34. Had the low carbon capacity been evidently greater than the NSIP threshold we would have given this substantial weight in line with paragraph 3.2.7 of NPS EN-1. However, as capacity would be less and predominantly used on site, we consider that energy production should only be given little weight in favour of the overall Proposed Development.

ExA's Conclusions

- 3.11.35. Taking all the relevant documentation and policies into account, in relation to Energy we conclude as follows:
- the energy production elements of the Proposed Development should be given little beneficial weight in favour of the granting the DCO.

3.12. GEOLOGY AND SOILS

Introduction

- 3.12.1. This section of the Report deals with the effect of the Proposed Development on the geology of the area and its suitability from the perspective of contamination.

Policy

NPSNN and dNPSNN

- 3.12.2. The NPSNN states that a preliminary assessment for land instability for the entire site should be carried out at the earliest possible stage before a detailed application for development consent is prepared. Furthermore, the NPSNN recommends that liaison with the Coal Authority should take

place if necessary (paragraphs 5.117 and 5.118). Similar advice is provided in the draft NPSNN at paragraphs 5.148 and 5.149.

3.12.3. **National Planning Policy Framework**

3.12.4. Paragraph 180 of the Framework also directs that planning decisions should protect and enhance "*sites of ... geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)*".

Development plan

3.12.5. While HBC cites Policy DM6 Enhancement of Biodiversity and Geological Interest in the HBDPD in its LIR [[REP1-138](#)], and LCC [[REP1-154](#)] refers to safeguarding policies M11 and M12 for minerals and associated infrastructure in its Minerals and Waste Local Plan [[REP5-076](#)], no objection is raised to the Proposed Development in relation to geology and soils.

Case for the Applicant

3.12.6. The main part of the Application Site has predominantly remained undeveloped agricultural land with a number of farm buildings. The Applicant submitted ES Chapter 16: Geology, Soils and Contamination [[APP-125](#)] and this is supported by the following appendices:

- Appendix 15.1 Phase 1 Geo-Environmental Assessment. [[APP-211](#)] to [[APP-214](#)]; and
- Appendix 15.2 Preliminary Ground Investigation Report. [[APP-215](#)] to [[APP-218](#)].

3.12.7. A desk study has been completed by the Applicant covering the Main Order Limits area and a preliminary ground investigation has been undertaken of the main part of the Applicant Site. The Applicant states at paragraph 16.5 of [[APP-125](#)] that further ground investigation would be undertaken to support detailed earthworks and foundation design and to investigate areas that are currently inaccessible, for example operational areas with farmyards and adjacent to the railway and M69. Based on the predominantly greenfield nature of the main part of the Application Site the Applicant suggests that there are unlikely to be significant contaminant linkages present that would impact on the viability of the Proposed Development. The Applicant further suggests that additional investigations would be completed following the making of any DCO and prior to construction works commencing on site in order to provide additional data to inform detailed design and associated mitigation. However, it suggests that the preliminary Ground Investigation undertaken is sufficient to allow adequate assessment for the purposes of the EIA Regulations.

3.12.8. Paragraph 16.7 of [[APP-125](#)] sets out the methodology used by the Applicant for the investigations. Paragraph 16.8 sets out the sources of data used to provide site specific factual data regarding geology, soils and groundwater and where available and relevant, has been used to

support the development of the baseline ground model and assessment of baseline conditions.

- 3.12.9. In paragraph 16.156 of [[APP-125](#)] the Applicant concludes that the geological make up of the predominant area of the Application Site is indicated to be directly underlain by topsoil over drift deposits comprising glacial deposits of the Thrussington Member and Bosworth Clay Member. Localised deposits of Alluvium and the Wolston Sand & Gravel are mapped at the Application Site. Bedrock is indicated to comprise the Mercia Mudstone.
- 3.12.10. Paragraph 16.157 of [[APP-125](#)] sets out that the natural undulating terrain inside the main part of the Application Site would be remodelled to provide two level plateaux for development. The elevation and shape of these plateaux would provide a suitable formation to deliver the development at, or below, the maximum FFLs. The earthworks required to provide the two plateaux require the movement of up to 2.35 million cubic metres (Mm³) of subsoil and have been designed, according to the Applicant, to provide a cut and fill balance across the main part of the Application Site, removing the need to import or export subsoil for earthworks. Re-use of soils would be completed under an earthworks specification and a Materials Management Plan in accordance with the Definition of Waste Code of Practice (CL:AIRE) to be prepared shortly prior to the start of works.
- 3.12.11. In paragraph 16.163 of [[APP-125](#)] the Applicant further states that intrusive ground investigation would be completed to support detailed design and confirm ground conditions, assess the presence of any soil or groundwater contamination and obtain information for foundation design. Ground gas monitoring would be undertaken, and a ground gas risk assessment completed to support the design of any required gas protection measures. The Applicant states that adequate ground investigation has been completed to demonstrate that there are limited adverse effects from ground contamination and geology at the site. Based on the historical use of the site, the low sensitivity to human health within the commercial development and low sensitivity of underlying aquifers it considers there is negligible risk that unforeseen contamination would be identified that could affect the feasibility of the development.

Case for Interested Parties

- 3.12.12. The EA in its RR [[RR-1356](#)] states that it has no adverse comments to make on the information submitted regarding the proposals for how any contamination found on site is to be dealt with to ensure the protection of 'controlled waters' (Chapter 16 of the ES [[APP-125](#)]). It supports the imposition of Req 15 in the dDCO in this regard. It also asks for a further provision for the production of verification report(s) at the appropriate stage of the mitigation/development process.
- 3.12.13. The UK Health Security Agency in its RR [[RR-1392](#)] confirms that it is happy with the methodology used to undertake the ES. It further

elaborates that the potential impacts arising from historic ground contamination have been considered in the dDCO. Additionally, there would be a requirement that a scheme to assess and manage these impacts, is agreed with the relevant local planning authority in consultation with the EA, as the relevant regulatory authorities with regards to contaminated land. It concludes that it is satisfied that the proposed development should not result in any significant adverse impact on public health.

- 3.12.14. BDC in its LIR [[REP3-055](#)] states at paragraph 1.25 "*no significant contamination of soils or groundwater is expected at the Site. The impacts of the Proposed Development with respect to contamination are negligible*".
- 3.12.15. The original dDCO [[APP-085](#)] included a requirement, number 15, that no phase of the Proposed Development was to commence until a remediation strategy to deal with any risks associated with contamination of land and controlled waters for that phase has been submitted to and approved by the relevant planning authority following consultation with the EA.
- 3.12.16. During the course of the Examination, the Applicant amended this Requirement to include an addition to require the submission of a verification report and, if necessary, remediation strategy, agreed by the relevant planning authority following consultation with the EA.

ExA's Considerations

- 3.12.17. We consider that the methodologies used, and the studies submitted comply with policies contained in the NPSNN (paragraphs 5.117 and 5.118), paragraphs 5.148 and 5.149 of dNPSNN, and is also consistent with policy in the Framework.
- 3.12.18. We agree with the Applicant that further intrusive ground investigation should be completed to support detailed design and confirm ground conditions, assess the presence of any soil or groundwater contamination and obtain information for suitable foundation design. Ground gas monitoring should be undertaken, and a ground gas risk assessment completed to support the design of any required gas protection measures. Adequate ground investigations have been completed to demonstrate to our satisfaction that there are limited adverse effects from ground contamination and geology at the site. Based on the historical use of the site, the low sensitivity to human health within the commercial development and low sensitivity of underlying aquifers we conclude there is negligible risk that unforeseen contamination would be identified.
- 3.12.19. We also consider that the insertion of Req 15(3) satisfies the EA's requests in its [[RR-1356](#)] submission and is reasonable. Furthermore, both BDC (1.11) [[REP8-020](#)] and HBDC (1.8) [[REP8-021](#)] both agree in their SoCGs that geology and contamination have been properly assessed

and appropriate mitigatory measures are proposed to address any impacts.

ExA's Conclusions

- 3.12.20. Taking all the relevant documentation and policies into account, in relation to Geology and Soils we conclude as that follows:
- the geology and soil elements of the Proposed Development do not affect the planning balance in determining the DCO.

3.13. CUMULATIVE EFFECTS.

- 3.13.1. This section will look at the cumulative effects of the Proposed Development both in terms of the effect with other developments and from the interaction of various effects.

Case for the Applicant

- 3.13.2. Chapter 20 of the ES [[APP-129](#)] Cumulative and In-Combination effects sets out the Applicant's assessment of cumulative effects. The Zone of Influence for each impact of the Proposed Development used in this assessment is set out at Table 20.1 to [[APP-129](#)]. A map showing, amongst other things, existing and approved developments and local plan residential and employment allocations that have been considered is provided at [[APP-345](#)]. An associated matrix summarising the potential adverse or beneficial cumulative effects of the project with 'other development' is found at [[APP-227](#)]. Furthermore, summaries of the outcome of the Applicant's cumulative assessment, as well as the interaction of residual adverse effects upon receptors, has been illustrated at Tables 20.2 and 20.3 to [[APP-129](#)] respectively.
- 3.13.3. In terms of construction phase cumulative effects, the Applicant considers that the main focus of impacts would relate to the historic environment, noise and vibration and socio-economic effects. It states that there would be a moderate adverse effect to the historic landscape as a consequence of hedgerow removal and a moderate adverse effect relating to noise generated during construction at noise sensitive receptors. That said, the Applicant has identified a minor socio-economic beneficial effect to local residents relating to employment during the construction phase.
- 3.13.4. Overall, the Applicant considers that these cumulative construction phase effects do not have the potential to result in a more significant effect than individual effects from the proposed development alone.
- 3.13.5. With regard to the summary of effects at [[APP-129](#)], the Applicant has acknowledged that the Proposed Development has the potential to produce significant adverse cumulative effects on local residents during the operational phase. In particular, effects relating to land use, together with noise and landscape effects, have significant potential to act cumulatively. Amongst other things, these include matters concerning:

- the acquisition of land from the farm operators and landowners;
- the reduction in amenity for local horse riders, walkers and cyclists;
- traffic noise (notably at NSR 1 – Bridge Farm);
- landscape harm; and
- the reduction in the enjoyment of PRow for users.

3.13.6. The Applicant states that weight given to cumulative operational harm would be tempered by benefits including the creation of jobs and a reduction in flood risk. Nevertheless, it concludes that significant adverse cumulative effects would remain during operation.

The Case for IPs

3.13.7. No IP has raised any specific concern with regards to the Applicant's cumulative assessment

ExA's Consideration

3.13.8. We are satisfied that the Applicant has properly taken into account the impacts of other major committed development schemes in the vicinity of the Proposed Development.

3.13.9. Nonetheless, with regard to our findings in section 3.4 to this report, cumulative construction activity at the Proposed Development would cause considerable adverse landscape and visual effects. This includes significant night-time effects at nearby properties such as Bridge Farm and the Gypsy and Travellers site off Smithy Lane. This cumulative construction activity would take place over a sustained period of time, exacerbating harm, and would be reinforced given noise generating activity that would also take place at this time.

3.13.10. The degree of harm would also be reinforced at the operational stage given the fundamentally transformative nature of the Proposed Development. This would be visually prominent and industrial in nature, eroding the rurality of the main part of the Application Site and its surroundings. Again, such harm would be reinforced by lighting. Cumulative operational landscape effects, in our view, would therefore also be substantially harmful.

3.13.11. It follows that construction and operational activity of the Proposed Development during each of these respective phases, together with that from other developments, would cause additional landscape and visual harm.

3.13.12. Regarding tranquillity, we have also found that the scale of the Proposed Development would be visually apparent from nearby external recreation areas, footpaths and bridleways. The urbanising presence of built form at the Application Site, together with all of the associated activity and disturbance arising from construction and operational phases, would notably diminish the enjoyment of users at these spaces and routes. Consequently, cumulative effects of the physical presence of development and the disturbance associated with its construction and use, would cause substantial harm to tranquillity.

ExA's Conclusions

- 3.13.13. We find that significant cumulative harm would occur at both the construction and operational phases, notably in terms of landscape and visual effects and effects on tranquillity. In line with our findings at section 3.4 on these matters, the Applicant has underplayed potential harm in this regard. This adds to the overall adverse cumulative effects that it has identified. Consequently, we afford additional moderate weight against the Proposed Development from 'cumulative' effects.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

- 4.1.1. This section sets out our analysis and conclusions relevant to the HRA. This will assist the SoS, as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
- 4.1.2. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of 'European site(s)' such that no reasonable scientific doubt remains (CJEU Case C-127/02, September 2004).
- 4.1.3. Policy considerations and the legal obligations under the Habitats Regulations are described in section 2.5 of this Report.
- 4.1.4. We have been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the Competent Authority. We have sought evidence from the Applicant and the relevant IPs, including NE as the Appropriate Nature Conservation Body.
- 4.1.5. The Applicant set out its assessment in ES the sHRA [[APP-199](#)]. The spatial relationship between the Application Site and European sites is shown in Annex 1 of the sHRA [[APP-199](#)].
- 4.1.6. The Applicant did not identify any Likely Significant Effects (LSE) on non-UK European sites in EEA States in its sHRA Report [[APP-199](#)] or within its ES [[APP-109](#)] to [[APP-130](#)]. Only UK European sites are addressed in this Report. No such impacts were raised for discussion by any IPs during the Examination.
- 4.1.7. NE's RR [[RR-0974](#)] stated agreement with the Applicant's conclusions with regard to the European sites assessed and their qualifying features. No other evidence or comment against this was submitted by any other party, and therefore we decided that a Report on the Implications for European Sites compiling HRA-relevant information would not be required.

4.1.8. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

- 4.1.9. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an

'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

4.1.10. The European sites and qualifying features that were considered in the Applicant's assessment of LSE are set out in Table 1.1 of [[APP-199](#)]). These comprise:

- The River Mease SAC (18.1km north-west of the Proposed Development) with the following qualifying features:
 - water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation;
 - spined loach;
 - bullhead;
 - white-clawed crayfish; and
 - otter.
- Ensor's Pool SAC (11km east) with white-clawed crayfish as the sole qualifying feature.

4.1.11. The Applicant's sHRA Report sets out the methodology applied to determining what would constitute a 'significant effect' within its sHRA Report (paragraph 1.22 onwards [[APP-199](#)]).

4.1.12. The Applicant's screening assessment concludes that given the significant distances and lack of hydrological connectivity between the Proposed Development and the European sites, the nature of the Proposed Development, and the existing pressures to the relevant internationally designated sites, there would be no conceivable effect on/ no potential effect pathways to any European site and its qualifying features as a result of the Proposed Development, either alone or in combination with other plans or projects (paragraph 1.60) [[APP-199](#)].

4.1.13. NE's RR [[RR-0974](#)] states that they concur with the sHRA's scope of site search and conclusion that no significant effects are likely to occur to the internationally designated sites as a result of the Proposed Development, both alone and in combination, due to the absence of impact pathways.

4.2. EXA'S CONSIDERATIONS

4.2.1. We are satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination likely significant effects.

4.3. HRA CONCLUSIONS

4.3.1. Taking into account the reasoning set out above, we consider that the Proposed Development is not likely to have a significant effect on the qualifying features of the River Mease SAC and Ensor's Pool SAC when considered alone, or in combination with other plans or projects. This was not disputed by IPs/ NE during the Examination.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This section sets out our reasoning and conclusions on the planning merits of the Proposed Development and whether there is a case for the making of a DCO for the Proposed Development. It does this in the light of the legal and policy context, which is set out in section 2 of this Report and the planning issues that arose from the application and during the Examination set out in section 3. Section 4 addresses HRA considerations.
- 5.1.2. We have taken account of all the Relevant Representations, Written Representations, four Local Impact Reports, Statements of Common Ground, and the responses to our Written Questions, Further Questions, Rule 17 letters and other submissions during the Examination together with the matters raised within the Hearings and the matters we saw during our Site Inspections.
- 5.1.3. Matters in relation to the CA and TP of land and/ or rights and the creation of new rights over land are discussed in section 6, section 7 addresses the implications of the matters arising for the DCO and finally section 8 summarises all relevant considerations and sets out our recommendation as ExA to the SoS.

5.2. THE PLANNING BALANCE

The Weight to be Given to the dNPSNN

- 5.2.1. Under s104 of the PA2008 the National Policy Statement having effect for deciding the Application is the NPSNN dated December 2014 and the determination must be in accordance with that document unless one or more of subsections (4) to (8) applies.
- 5.2.2. Just before the Application was submitted in March 2023 the Government published a draft replacement NPSNN, which we have referred to as the dNPSNN, and during the reporting period this was designated. As we indicate in section 2.2.14 we were able to gain representations from IPs on the dNPSNN but not on the final version.
- 5.2.3. Much of the dNPSNN is similar, if not identical, to the NPSNN, but there have been a number of changes which are material to the consideration of this Application, principally in relation to carbon, and for the Active Travel agenda and sustainable travel modes.
- 5.2.4. Our approach has been to give the NPSNN full weight. However, as the dNPSNN has now been through the full consultation process, comments received, analysed and the Government has responded, it is reasonable for us to give it substantial weight, and this is what we have done. Where there are changes between the NPSNN and dNPSNN then we have

identified them and provide our view based on the individual circumstance.

The Need for the Proposed Development and Alternatives

- 5.2.5. The Government has concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The NPSNN further elaborates that the ExA and the SoS should therefore start their assessment of applications of this type on that basis. This is reiterated in the dNPSNN. We have not found anything to suggest that there is not a compelling need for the Proposed Development in the vicinity of the Application Site and therefore there is no reason to go against the clear direction of policy.
- 5.2.6. We have carefully considered the evidence submitted on alternatives and consider that this has robustly analysed other potential sites in the vicinity.
- 5.2.7. We therefore conclude that that the Need for the Proposed Development, and choice of the site through the site selection process is given substantial positive weight in the overall assessment of the issues considered.

Traffic and Transport

- 5.2.8. We have looked at the effects of Construction Traffic and have concluded that this would not have a material effect on road conditions and is a neutral factor.
- 5.2.9. We consider, however, that the Sustainable Transport Strategy lacks ambition and consequently the Applicant has not maximised opportunities to allow for journeys associated with the development to be undertaken via sustainable modes. As set out, we consider that as submitted this matter should be given substantial weight against the making of the DCO. However, were it to be amended in line with our proposed changes to the DCO in section 7 then we consider it should only have little adverse weight.
- 5.2.10. Similarly, we consider the Heavy Goods Vehicle Management Plan and Route Strategy as submitted is not fit-for-purpose, principally because it does not appropriately consider enforcement or deal with mitigation. We give this substantial adverse weight against the Proposed Development, but if amended in line with our proposed changes to the DCO in section 7 then we consider it would be of neutral weight.
- 5.2.11. In our view, and importantly, the Proposed Development would lead to an unacceptable highway safety risk in the village of Sapcote, which could not be mitigated within the terms of the Application. Both the NPSNN and the dNPSNN indicate that the SoS should not grant development consent unless they are satisfied that all reasonable steps

have been taken to minimise that risk. In our view, this has not occurred.

5.2.12. We also are of the view that we have insufficient information to show that the effects of the Proposed Development at both M69 J2 and M1 J21/ M69 J3 have been appropriately modelled. This would be particularly important at M1 J21/ M69 J3 as this junction is already operating at overcapacity. This means that the Applicant has not demonstrated that the Proposed Development would minimise the risk of road casualties and contribute to an overall improvement in the safety of the SRN. Again, the NPSNN and the dNPSNN both indicate the SoS should not grant development consent unless they are satisfied that all reasonable steps have been taken. In our view, this has not occurred.

5.2.13. We also consider that as submitted, the Proposed Development would not mitigate its effects at:

- the A5 Cross in Hand junction,
- the A5 Gibbet Hill junction,
- the B581, New Road and Broughton Road, with Sapcote Road and Long Street junction in Stoney Stanton,
- B4114 Coventry Road/ Croft Road junction, southwest of Narborough,
- Narborough generally, in relation to the effects of the railway level crossing, and
- Desford Crossroads.

In line with paragraph 5.214 of the NPSNN and paragraph 5.281 of the dNPSNN we consider that limited (little) weight should therefore be given to each of these harms.

5.2.14. We consider that while there would be benefits in a small number of locations from the effects of re-routing traffic on the overall network, these would be far outweighed by the increases of traffic more widely. Overall, we give this little adverse weight.

5.2.15. We are satisfied that the Proposed Development could be satisfactorily integrated into the railway network both locally and more widely leading to moderate weight in favour of the Proposed Development.

5.2.16. In considering the effects on the Public Rights of Way network, the Proposed Development on the main part of the Application Site would not be mitigated so as to result in severance for pedestrians and equestrians between Elmesthorpe and Burbage Common. We consider this should be given moderate weight against the Proposed Development.

5.2.17. The closure and diversions of the other PRoWs and pedestrian level crossings would be acceptable and are a neutral consideration.

5.2.18. Given the policy presumption in the NPSNN and dNPSNN the SoS should not grant consent unless all reasonable steps have been and will be taken to minimise road casualties and contribute to an overall improvement of the safety of the SRN, in respect of the traffic modelling

and effect of the Proposed Development in Sapcote we give very substantial weight against the making of the DCO.

Landscape and Visual and Design

- 5.2.19. The Proposed Development would result in the loss of a veteran oak tree.
- 5.2.20. There would be significant adverse impacts from the Proposed Development in both landscape and visual terms during construction and operation. This harm would be inevitable given the scale of the Proposed Development and the transformation of the landscape, albeit undesignated, from broadly rural to commercial/ industrial in nature. Such effects would be mitigated to a degree. Nevertheless, we find that substantial residual visual and landscape harm would remain. This weighs substantially against the making of the DCO.
- 5.2.21. There would also be harm to both the nature and function of the Green Wedge between Hinckley, Barwell and Burbage. However, in the context of the consideration of an application for a DCO where the decision should be made primarily against the provisions of an NPS this has only moderate weight.
- 5.2.22. Overall, insufficient regard has been paid to satisfying the criteria of good design, such that the Proposed Development would not be compliant with paragraphs 4.33 and 4.34 of the NPSNN and paragraphs 4.24 to 4.26 of the dNPSNN in this respect.
- 5.2.23. Taking all these matters together we consider that adverse impacts in landscape and visual terms weigh substantially against the making of the DCO.

Noise and Vibration

- 5.2.24. Taking all relevant documents and policies into account, we are satisfied that the mitigation measures for the Proposed Development, together with the controls provided through the requirements in the recommended dDCO, would be adequate to mostly avoid significant adverse impacts on health and quality of life in respect of noise and vibration.
- 5.2.25. Notwithstanding this, as identified above, significant residual adverse effects occurring during construction and operation cannot be ruled out at certain receptors. This is contrary to the objectives of paragraph 5.195 of the NPSNN and paragraph 5.232 of the dNPSNN insofar as they seek to avoid such effects.
- 5.2.26. That said, possible significant residual effects would be to a relatively small number of receptors and typically would occur during worst-case scenarios, where noise is likely to be lower than that predicted. Taking this into account and on the basis of all of the above, we consider that the identified harm and conflict with the NPSNN and dNPSNN carries moderate weight against this Proposed Development.

- 5.2.27. We note the submission of additional information at D8 by Dr Moore and Mr Moore. For the reasons set out in section 3.5.143 to 3.5.149 we have not taken it into account. Due to our overall recommendation this does not need to be taken further.

Socio-Economic Considerations

- 5.2.28. The Proposed Development would result in significant job creation opportunities in the Leicestershire area. The proposed Employment and Skills programme would assist more local people into work. This should be given substantial weight, in our view, in favour of the Proposed Development.
- 5.2.29. There would be a neutral impact on the local housing market.
- 5.2.30. The loss of a small quantity of best and versatile agricultural land and a significant amount of moderate agricultural land results, in our view, in little weight against the Proposed Development.
- 5.2.31. Overall, we consider there would be a little harmful effect from the Proposed Development on health issues.
- 5.2.32. However, the effect of the acoustic fence on the residents of the Aston Firs Travellers site would result, in our view, in very significant, visually dominant and oppressive effect, to the considerable detriment of the living conditions and the potential mental health of a small number of existing residents resulting in a loss of outlook. As we say in section 3.6.76 this "*would typically result in the refusal of a planning application*". In the context of an application for a DCO we consider this results in very substantial weight against the consent being granted.

Air Quality and Emissions

- 5.2.33. We are satisfied that during construction air quality effects of the Proposed Development can be satisfactorily dealt with by the CEMP.
- 5.2.34. If operational, we consider the Proposed Development would have negligible impact on annual NO₂, PM₁₀ and PM_{2.5} concentrations at most receptors, and at the two locations where effects have been identified they would be 'not significant'.
- 5.2.35. In our view, the Proposed Development would not result in an unduly harmful effect on any AQMA, and the emissions from rail and the CHP would be negligible. This would also be the case as regards cumulative effects. Overall, we give the air quality aspects little weight against the Proposed Development.
- 5.2.36. As regards GHG emissions, we consider the Proposed Development would not affect the SoS's ability to meet carbon budgets and, ultimately, net zero. The road mile saving from road to rail would be beneficial, but because emissions need to be assessed on a UK-wide basis, we consider this should be given moderate weight.

Biodiversity

- 5.2.37. Although if unmitigated the Proposed Development would be significantly harmful to biodiversity, we are satisfied that with the mitigation secured through the DCO would negate these effects and provide a small benefit. The commitment to BNG is welcomed, but as part of this would be provided off-site this has lesser weight than had it been provided on-site. Overall, we give the biodiversity aspects little weight in favour of the making of the DCO.

Cultural Heritage

- 5.2.38. There would be no direct effects on designated heritage assets. However, there would be effects on the settings of one Scheduled Monument, one Grade I listed building, two Grade II* listed buildings, four Grade II listed buildings and one conservation area. In each case this would represent less than substantial harm to the significance of each asset.
- 5.2.39. As detailed surveys have not been completed, at this stage it is not possible to be certain as to the effect on unidentified archaeology. However, we consider that there is adequate information and appropriate mitigation would be in place to ensure any such archaeology is properly considered. For all other heritage assets identified we are satisfied that they would be preserved both in that there would be no direct effects and in respect of their settings. Therefore, the significances of these assets would be unaffected.
- 5.2.40. For the designated heritage assets, the NPSNN and dNPSNN indicate that where less than substantial harm is found, this harm should be weighed against the public benefits of the proposal, including securing optimum viable use. For non-designated heritage assets, the Framework indicates that the effect on significance should be taken into account. We will consider this later in this section.

Water And Flood Risk

- 5.2.41. While the main part of the Application Site would be partially within FZ2 and FZ3, the design solution is the only one suggested as being appropriate to allow connection to the Hinckley to Leicester railway line. The design of development on the main part of the Application Site would pass the Exception test. The Proposed A47 Link Road and the proposed slip roads to and from the M69 J2 would comply with the Sequential and Exception tests for essential infrastructure. We give this aspect little harmful weight.
- 5.2.42. We are content the new water environment being created on site means that the Proposed Development would not be susceptible to surface water flooding and would not result in higher flood risk off-site. Further, the Proposed Development would be acceptable in terms of groundwater and would have no effect either on or from coastal flooding, canals, reservoirs and similar waterbodies.

- 5.2.43. We are satisfied that appropriate arrangements can be made for potable water supplies and foul water disposal.
- 5.2.44. In our view, the Proposed Development would be WFD compliant, and it would be likely to result in a small betterment to the overall condition and value of the potentially affected waterbodies. We give this little beneficial weight.
- 5.2.45. Overall, in terms of the water environment, given the benefits and harms set out, we consider that this aspect should be considered neutral in the final planning balance.

Energy

- 5.2.46. We have considered the energy production elements of the Proposed Development and note that they are restricted by the terms of the dDCO so that they would not be able to be considered as an NSIP. We consider this to be a lost opportunity since this means that the Proposed Development could have been a net exporter of energy, when it is more likely to be a net importer.
- 5.2.47. In light of this we give the energy production elements of the Proposed Development little beneficial weight.

Geology and Soils

- 5.2.48. We are satisfied that the Applicant has undertaken appropriate surveys to ensure that the soils would be sufficiently clear of contamination to be able to support the Proposed Development, with an appropriate requirement dealing with these matters.
- 5.2.49. In terms of the overall consideration of the Proposed Development we consider that this would be of neutral weight.

Cumulative Effects

- 5.2.50. We consider that significant cumulative harm would occur at both the construction and operational phases, notably in terms of landscape and visual effects and effects on tranquillity. Consequently, we afford additional moderate weight against the Proposed Development from 'in combination' effects on top of the assessment already made.

5.3. HABITATS REGULATIONS ASSESSMENT

- 5.3.1. Taking into account the reasoning set out above in section 4, we consider that the Proposed Development is not likely to have a significant effect on the qualifying features of the River Mease SAC and Ensor's Pool SAC when considered alone, or in combination with other plans or projects. Consequently, we are of the view that the Proposed Development can proceed without the need for an Appropriate Assessment being undertaken by the SoS.

5.4. EQUALITY ACT 2010

- 5.4.1. The original application was not accompanied by an Equality Impact or similar assessment. An Equalities Impact Assessment Statement (EqIAS) was submitted in response to s51 advice [[AS-001](#)], but upon appointment we declined to accept it into the Examination as it did not make its assessment against the defined protected characteristics set out in the Equality Act.
- 5.4.2. Further versions were submitted at D1, D3 and a final version at D5 [[REP5-007](#)] which were accepted into the Examination.
- 5.4.3. In the EqIAS there are two tables that sets out the Applicant's assessment of the level of impact during construction and operation. Rather than identifying them by protected characteristics, the Applicant undertook its assessment by theme. The Applicant found that there were no themes whereby the Proposed Development would have an effect on those with specific characteristics.
- 5.4.4. The Equality Act established a duty, the PSED, to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share the defined protected characteristics and persons who do not. The PSED is applicable us as ExA as a public body in the conduct of this Examination and reporting, and to the SoST in decision making.
- 5.4.5. The PSED is designed to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share the protected characteristics and persons who do not.
- 5.4.6. The final consideration of the PSED is for the decision-maker, in this case the SoST. However, to assist the SoST in making their determination we make the following comments.
- 5.4.7. We are satisfied that the Proposed Development would have no positive or negative effects for those with the protected characteristics of gender reassignment, marriage and civil partnership, religion or belief and sexual orientation when compared with any other grouping. However, for other groups, in our view, this would not be the case.
- 5.4.8. In relation to 'Age', in our view the Proposed Development would not advance equality of opportunity for those who are below the age of employment or have retired. This would be because they would not be employed at the site or employed in associated jobs off-site. The Proposed Development would therefore not-advance equality of opportunity.
- 5.4.9. In relation to 'Disability', as originally submitted we were not convinced that the Proposed Development would facilitate access, particularly in relation to the Outwoods level crossing replacement. However, with inclusion of a ramped bridge, as shown in [[REP5-006](#)] this would facilitate the use by those with ambulatory issues. The remaining elements of the Proposed Development, with the exception of the effects

at Narborough set out below, insofar as they would need to comply with other legislation, such as the Building Regulations, would have a neutral effect for those with the protected characteristic of disability.

- 5.4.10. The additional delays at Narborough would, to our mind, not advance equality of opportunity for those with the protected characteristics of age or disability. This is because the effects of the additional delays are most likely to be on those who would be less able to cross the existing bridge, that is those with ambulatory issues. This applies to those who are disabled, and for the youngest and the oldest in society, the protected characteristic of age.
- 5.4.11. Turning to 'Race' we believe that as proposed the Proposed Development would result in discrimination in respect of the acoustic barriers to located around the Aston Firs Gypsy and Travellers Site near M69 J2. The two fences would be 6.0m and 4.0m high. While their presence would have the same effects as if the site was occupied by the settled community, the fact is that this is a Gypsy and Traveller site and would harm the living conditions of the occupiers. Furthermore, in our view, the erection of the fences would not foster good relations between the Gypsy and Traveller Community and the non-Gypsy and Traveller Communities since it would be seen as a physical dividing barrier between the two.

5.5. THE HERITAGE BALANCE

- 5.5.1. We consider that the need for and benefits of the Proposed Development outlined above would outweigh, in each case, the harm that would be occasioned to the settings of the designated heritage assets. We also conclude that the harm to the undesignated heritage assets would be outweighed by the public benefits of the Proposed Development.
- 5.5.2. Therefore, we are satisfied that the public benefits provide a clear and convincing justification for the harm that would result, both individually and collectively, upon designated and non-designated heritage assets. Overall, we consider that matters concerning the historic environment would accord with the relevant provisions of the NPSNN and the dNPSNN.

5.6. THE OVERALL PLANNING BALANCE

- 5.6.1. Overall, in our view the Proposed Development would not meet relevant Government Policy set out in the NPSNN. As a matter of law (s104(3) of the PA2008) applications for SRFIs must be determined in accordance with the relevant NPS unless a relevant consideration arising from s104(4) to (8) applies.
- 5.6.2. In accordance with our duties under the PA2008, we have had regard to the four submitted LIRs (s104(2)(b)), to prescribed matters (s104(2)(c)) and to all other important and relevant policy (including, but not limited to, the dNPSNN, Development Plans and DfT Circular 01/2022) and to other important and relevant matters identified in this Report (s104(2)(d)).

- 5.6.3. We have also considered whether the determination of this application in accordance with the relevant NPS would lead to the UK being in breach of any of its international obligations (s104(4)), be in breach of any statutory duty (s104(5)), be unlawful (s104(6)) or be contrary to regulations about how decisions are to be taken (s104(8)). We are satisfied that in all respects, this would not be the case.
- 5.6.4. We are also obliged to consider whether the adverse impact of the Proposed Development would outweigh its benefits (s104(7)).
- 5.6.5. We note that there would be substantial benefits from the Proposed Development in respect of meeting the need for SRFIs and substantial benefits from the jobs that would be created.
- 5.6.6. However, in our view there are three fundamental matters where we consider that the Proposed Development would fail to comply with the policy requirements of the NPSNN and, insofar as it is important and relevant, the dNPSNN:
- the unacceptable highway safety risk at Sapcote from the re-routing of HGV traffic which could not be mitigated within the terms of the Application;
 - the failure to adequately assess the effects of the Proposed Development at the M69 J2 and M1 J21/ M69 J3; and
 - the severely harmful effect on the living conditions of the occupiers of the Aston Firs Travellers Site from the proposed acoustic barrier.
- 5.6.7. We have also noted a number of other issues where there would be harm from the Proposed Development:
- Traffic and Transport (where not identified above) –
 - in respect of identified junctions – little weight;
 - in respect of the overall increase in traffic on the networks – little weight;
 - in respect of the STS (if amended in line with the rDCO) – little weight;
 - in respect of Public Rights of Way (severance) – moderate weight;
 - Landscape and Visual – substantial weight;
 - Noise and Vibration – moderate weight;
 - Loss of Best and Most Versatile Agricultural Land – little weight;
 - Health Issues – little weight;
 - Air Quality – little weight;
 - Heritage – less than substantial harm to specific heritage assets; and
 - Cumulative effects - moderate weight.
- 5.6.8. There would be benefits in addition to those noted above in the following issues:
- Rail aspects – moderate weight;
 - BNG – little weight;
 - Emissions (GHGs) – moderate weight;
 - Water – little weight; and

- Energy – little weight.

5.6.9. There are a number of issues which would be neutral:

- in respect of other Public Rights of Way;
- HGVRP (if amended in line with the rDCO);
- Effect on housing market;
- Biodiversity (non BNG); and
- Geology and Soils.

5.6.10. If not amended as set out in in line with the rDCO then we consider that both the STS and HGVRP weigh substantially against the DCO being made.

5.6.11. The final consideration of the PSED is for the SoS, but we consider that the Proposed Development:

- would not advance equality of opportunity for those who are below the age of employment or have retired (the protected characteristic of 'Age');
- would not advance equality of opportunity for with the protected characteristics of Age or Disability at the Narborough level crossing; and
- would not foster good relations between the Gypsy and Traveller Community and the non-Gypsy and Traveller Communities (the protected characteristic of 'Race').

5.6.12. Taking all the above factors into account, in our view, having regard to all important and relevant matters, we conclude that each of the three matters set out in paragraph 5.6.6 would, both individually and cumulatively, mean that the DCO should not be made. We also consider that the remaining issues relating to Traffic and Transport add to this harm. In our view, it would not be possible to disaggregate the 'remaining' Traffic and Transport harms from the first two points due to the need to properly model the effects of development on the highway network, both strategic and local.

5.6.13. Due to these fundamental issues relating to Traffic and Transport and the effects on the living conditions of the occupiers of the Aston Firs Travellers site, our overall conclusion is that Development Consent should be withheld.

5.7. CONCLUSIONS

5.7.1. On the basis of all the above considerations, we conclude that the Proposed Development would not comply, overall, with the NPSNN and, furthermore, that the harms would outweigh the benefits of the Proposed Development and the DCO should not be made.

6. LAND RIGHTS AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The application subject to the Examination included proposals for the CA and TP of land and for the acquisition or imposition of Permanent Rights over land (CAR).

6.1.2. From our conclusion in section 5 that a DCO should not be made, it is clear that we do not consider that a compelling case in the public interest has been made so that CA or TP should be granted. However, should the SoS disagree with us on the planning merits of the Proposed Development, this section goes on to consider whether CA, TP or CAR would be justified.

6.2. THE REQUEST FOR CA AND TP POWERS

6.2.1. The request for CA and TP powers is made through the inclusion of Part 5 Powers of Acquisition and Possession in the Applicant's final dDCO [[REP7-011](#)] (the preferred DCO). These seek to:

- acquire land permanently within the Order Limits;
- temporarily possess land within the Order Limits;
- acquire existing rights and restrictive covenants over some of the land within the Order Limits;
- extinguish existing rights and restrictive covenants over some of the land within the Order Limits;
- create new rights and restrictive covenants over some of the land within the Order Limits; and
- temporarily suspend existing rights and restrictive covenants over some of the land within the Order Limits;

in order to construct, operate and maintain the Proposed Development or to facilitate it, or is incidental to it.

6.2.2. The Applicant's case for the grant of CA powers is set out in the final Examination Statement of Reasons (SoR) [[REP4-033](#)]. The SoR explains that it forms part of a suite of documents accompanying the application and should be read alongside those documents. These include:

- Document Index [[REP8-002](#)];
- Land Plans [[APP-057](#)], [[REP2-007](#)], [[REP7-009](#)], [[APP-060](#)] to [[APP-065](#)];
- Works Plan [[APP-007](#)], [[REP7-004](#)], [[AS-004](#)], [[APP-010](#)], [[REP4-003](#)], [[APP-012](#)] to [[APP-015](#)];
- dDCO [[REP7-011](#)];
- EM [[REP7-013](#)];
- Funding Statement [[REP8-003](#)];
- Book of Reference (BoR) [[REP8-005](#)]; and
- Planning Statement [[REP4-086](#)].

6.2.3. Reference to "Plots" are those set out in the BoR and identified on the Land Plans.

Compulsory Acquisition

- 6.2.4. The CA powers sought under Article 25 are for the acquisition of land within the Order lands where it is required to carry out or facilitate the Proposed Development. Article 28 provides for the extinguishment of easements and similar rights over land that is subject to compulsory acquisition under the Order except for those belonging to statutory undertakers for the purpose of carrying out their undertaking. The implementation of Article 30 would extinguish private rights and restrictions over the land subject to CA.

Temporary Possession and Rights Acquired Permanently

- 6.2.5. In addition to the CA of land Article 27(1) provides for the Compulsory Acquisition of rights and the imposition of restrictive covenants. Article 27(2) provides that in the case of Schedule 11 land only new rights may be acquired, rather than the land itself. It also allows for the imposition of such restrictive covenants, as may be required for the purposes set out in Schedule 11. Article 27(3) provides that where the undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.
- 6.2.6. Under Article 34(1)(a)(ii) the undertaker may enter any Order land not only required for TP of which no notice of entry has been served and no declaration made and, under Article 34(1)(c) construct any permanent or temporary works (including the provision of means of access), haul roads, fencing and other means of enclosure, bridges, structures and buildings on that land as are mentioned in Schedule 11 . As the works in Schedule 11 are also mentioned in Schedule 1, this allows the undertaker to take TP of the land set out in Schedule 10 and then construct the works in question. In other words, as it says in the key on the Land Plans, for example [[REP7-007](#)], "*Land to be used temporarily and rights to be acquired permanently*" (this is the land coloured blue).

Temporary Possession

- 6.2.7. Article 34 provides for the temporary use of land for carrying out the authorised development. As set out in the previous paragraph it also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired. Article 34(1)(c) permits the construction of temporary works and sub-paragraph (d) provides for the construction of permanent works specified in Schedule 10, or any other mitigation works in connection with the authorised development. Article 34(4) sets out the time limits for remaining in possession of land under Article 34, unless the undertaker has the agreement of the owners. Article 34(5) makes provision for the restoration of the land and 34(7) sets out the provision for compensation.
- 6.2.8. As drafted Article 34(11) prevents the undertaker from Compulsorily Acquiring land set out in Article 34(1)(a)(i), that is land taken under TP.

- 6.2.9. Article 30(4) provides that all private rights over land which the undertaker takes TP of under the Order would be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.
- 6.2.10. Article 35 allows the undertaker to take TP of land within the Order Limits, at any time within a period of five years from the date on which that part of the authorised development is first occupied for commercial use or becomes operational.

The Applicant's Overall Approach

- 6.2.11. The Applicant's overall approach to the acquisition of rights has been to minimise them in line with the 'Guidance related to procedures for the compulsory acquisition of land' (CA Guidance) published by the former Department for Communities and Local Government (DCLG). This has led to an approach which has certain risks; risks which the Applicant has indicated it is content to take (discussion at CAH1 [[EV4-001](#)] from 00:44:02:06 to 00:48:19:25).
- 6.2.12. This relates to the main body of the Application Site where the Applicant is only seeking Temporary Possession with the Acquisition of Rights. This is because it has entered into negotiations with the freeholders and has options in this land for those freeholds. The request is to extinguish all other interests in the land. The risk is that the contracts are not adhered to by a party, meaning that not all the land in question can be secured. This is discussed further in section 7.4.82 to 7.4.93.

The Purposes for which Land is Required

- 6.2.13. The Application is for development consent for the construction, operation and maintenance of a SRFI consisting of warehousing and associated infrastructure, with associated alterations to existing rail and road infrastructure. The purposes for which CA and TP powers are required are set out in the final submitted BoR [[REP8-005](#)] and SoR [[REP4-033](#)].
- 6.2.14. The Applicant states that it requires powers of CA and TP to ensure that the Proposed Development can be built, operated and maintained. This includes land for the mitigation of the effects of the Proposed Development.
- 6.2.15. The Applicant has sought to acquire land by voluntary agreement, and it takes the view that it has effectively achieved this over the main part of the Application Site.
- 6.2.16. It indicates it considers the compelling case in the public interest is to meet the "*compelling need for an expanded network of new SRFIs*" (paragraph 2.56 of the NPSNN). This is discussed further in sections 3.2 and 5. It takes the view that "*the significant public benefits of the Project will, therefore, outweigh the private loss that would be suffered by those whose land or rights are proposed to be compulsorily acquired*" (paragraph 6.16 of SoR).

6.2.17. The Applicant has sought to enter into voluntary agreements with those with relevant interests in land and has done so for most of the main part of the Application Site. However, it takes the view in order to construct and operate the Proposed Development should those negotiations not be successful for those parts where it does not have option agreements there would be no alternatives to the compulsory acquisition of land. It suggests that to deliver a SRFI in any location the use of CA, TP and CAR powers would be inevitable as in no location would it be possible to deliver a SRFI through negotiation alone.

6.2.18. The BoR identifies all the Plots of land affected and these are also shown on the Land Plans comprising an overview and eight sheets. Two of the Land Plans (Sheets 1 and 2) submitted by the Applicant were revised and amended as the Examination proceeded to accommodate a clarification in land ownership and to confirm the rights sought (see below).

The Compulsory Acquisition and Temporary Possession Powers Sought

6.2.19. It is also appropriate to note that there are significant areas of land within the Order limits where the Applicant is seeking no rights. These are not coloured, and thus left white, on the Land Plans. These relate to areas of existing public highway. The PPs would be used to give the undertaker access to the public highway for works (under the terms of those PPs) and the DCO would give the undertaker the consent to carry out the works which would otherwise be subject to agreements under s38 and s278 of the Highways Act 1980.

6.2.20. The Applicant has effectively identified four different scenarios where it seeks to interfere with land rights.

- Compulsory Acquisition (CA), where the Applicant is seeking all rights in the land to obtain 'clean title' (coloured pink on the Land Plans [[APP-057](#)], [[REP2-007](#)], [[REP7-009](#)], [[APP-060](#)] to [[APP-065](#)]);
- Compulsory Acquisition by imposing Rights, where the Applicant is seeking rights on land it does not have control over to allow for the construction, operation and maintenance of the Proposed Development set out in Schedule 11 of the dDCO and coloured blue on the Land Plans (this is to allow rights for drainage into Plot 64, and relating to unregistered mines and minerals in Plot 74);
- Compulsory Acquisition by extinguishing Rights, where the Applicant is seeking 'clean title' in combination with the voluntary agreements referred to above (coloured green on the Land Plans);
- Temporary Possession (TP), where the Applicant is seeking temporarily control of the land to allow it to construct the Proposed Development set out in Schedule 10 of the dDCO and coloured yellow on the Land Plans.

6.2.21. We are using the acronym 'CAR' for both Compulsory Acquisition by imposing Rights and Compulsory Acquisition by extinguishing Rights.

Changes to the Application

- 6.2.22. During the Examination there was a substantive change to the rights sought in relation to Plot 22a where the Applicant advised that NR had identified rights in land. Effectively Plot 22a was 'carved out' of Plot 22 with the request changed from Compulsory Acquisition by extinguishing Rights to outright CA. The only additional land rights holder affected by the change was NR and it indicated [[AS-033](#)] that it had no objection to its rights being compulsorily acquired. We accepted this change on 28 November 2023 [[PD-010](#)].
- 6.2.23. In relation to Plot 27 as originally shown on Sheet 2 of the Land Plans [[APP-059](#)] this appeared not to be coloured, and thus no rights would be sought. However, in the BoR it appeared that the Compulsory Acquisition of all rights with the exception of those held by certain individuals was sought. In our Rule 17 letter of 20 February 2024 [[PD-015](#)] we queried this with the Applicant.
- 6.2.24. The Applicant responded at D7 [[REP7-001](#)] where the Applicant indicated that the colouring on the Land Plan was incorrect and the BoR was correct. It continued:

"The plot is to be subject to the acquisition of rights. This is simply to deal with the third party rights which are Hinckley and Bosworth Borough Council, Leicestershire County Council, National Grid Electricity Transmission [(NGET)], Openreach Limited and the Applicant. All of these parties are aware of the DCO and save for Openreach, have been actively involved in the DCO Application. NGET and Openreach have the benefit of protective provisions. The Applicant therefore does not consider there are any implications under the Human Rights Act 1998 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 as a result of this error on one of the land plan sheets."

- 6.2.25. The Applicant also submitted a revised version of Sheet 2 of the Land Plans [[REP7-009](#)] changing the colouring of this Plot.
- 6.2.26. While it is clearly undesirable that this issue was not identified until late in the Examination, given that the third-party rights are for the benefit of those identified and they have either been involved in the Examination or would be the subject of PPs, we are satisfied that that none would be prejudiced by this clarification.

6.3. LEGISLATIVE REQUIREMENTS AND GUIDANCE PA2008

- 6.3.1. Section 122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the SoS is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or is incidental to it.

- 6.3.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, the CA Guidance indicates the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 6.3.3. Section 123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:
- that the application for the order included a request for CA of (rights over) the land to be authorised - s123(2); or
 - that all persons with an interest in the land consent to the inclusion of the provision – s123(3); or
 - that the prescribed procedure has been followed in relation to the land - s123(4).
- 6.3.4. The Application included a request for CA of the land to be authorised. As such, we are satisfied that the condition set out in s123(2) of the PA2008 has been met.
- 6.3.5. S127 of the PA2008 applies to Statutory Undertakers (SU) land. S127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking. Similarly, s127(5) and (6) of the PA2008 provide that an order granting development consent may only include provision authorising the CAR belonging to SUs to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. A number of SUs have land interests within the Order Limits. These are set out in the BoR.
- 6.3.6. S138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the Proposed Development, this section of the PA2008 is relevant to SUs with land and equipment interests within the Order Limits.
- 6.3.7. TP powers are also capable of being within the scope of a DCO by virtue of paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole and only capable of proceeding if the primary development is justified.

6.3.8. We have taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this section.

Neighbourhood Planning Act 2017

6.3.9. The Neighbourhood Planning Act 2017 includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions have not been brought into force and are described as technical changes in the explanatory notes that accompany the Act. Article 29(2) of the dDCO disapplies the provisions of the Act insofar as they relate to TP of land under articles 34 (TP of land for carrying out the authorised development) and 35 (TP of land for maintaining the authorised development) to cover the position if the provisions were brought into force after consent.

The CA Guidance

6.3.10. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also need to be addressed. Namely that:

- all reasonable alternatives to CA must have been explored;
- the Applicant must have a clear idea of how it intends to use the land subject to CA powers;
- the Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.3.11. We have taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this chapter.

6.4. EXAMINATION OF THE CA AND TP CASE

The Examination Process

6.4.1. Our approach to the question of whether, in the event that the SoS was minded to grant the DCO, CA powers should be granted and if so, what it should recommend to the SoS to grant has been to seek to apply the relevant sections of the PA2008; notably s122 and s123, the CA Guidance and the Human Rights Act 1998. In addition, in light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

6.4.2. In examining the Application, we have considered all written material in respect of CA and TP and asked written questions regarding justification

of the need for the CA/ TP in our ExQ1 [[PD-011](#)], the ExQ2 [[PD-013](#)], and various Rule 17 letters.

Alternatives

- 6.4.3. The Applicant has set out its consideration of what it describes as "*reasonable alternatives*" in the SoR [[REP4-033](#)].
- 6.4.4. The Applicant explains how it identified the site for the Proposed Development, and the alternative locations identified. It took into account feedback following consultation, and the policy guidance of the NPSNN (paragraphs 4.83 to 4.89) relating to function, locational requirements, scale and design. As a result of this, the Applicant identified the Application Site as the most suitable.
- 6.4.5. From this, the Applicant indicates it assessed a range of technology, design and layout options testing masterplan layouts for commercial, road and rail access arrangements, the likely effect on the local environment and the ability to deliver appropriate mitigation.
- 6.4.6. We have considered this in section 3.2 and concluded that in general terms there is both a need for a SRFI in this general area and that other, alternative, sites would not be appropriate.
- 6.4.7. The Applicant maintains that any practical location for a proposal of this type would require the acquisition and use of third party land, meaning that CA/ CAR/ TP could not be avoided. However, it has set out its attempts to acquire the relevant land by negotiation, so as to avoid compulsion.
- 6.4.8. It points out that it has secured voluntary agreements with the owners of "*the vast majority of the main Order Limits*" (paragraph 6.25 of the SoR). The Applicant considers that that interference, in each case, is the minimum necessary for the purposes of the Proposed Development and there the proposed interference with private rights with those with an interest in the land is both necessary and proportionate.
- 6.4.9. For those where initial agreement has not been possible, the Applicant has consulted the owners of interests and rights; this is set out in the Consultation Report [[APP-091](#)] to [[APP-107](#)] and was in accordance with ss 42 and 48 of the PA2008.
- 6.4.10. The Applicant has engaged with all but one of the landowners. The exception being in relation to Plot 40, where the Applicant has not been able to contact the landowner (see section 6.4.86 to 6.4.89 of this Report).
- 6.4.11. Negotiations have taken place and continued throughout the Examination period but did not prove successful in all cases. The Applicant considers the interference with each of the rights identified is the minimum necessary to deliver the Proposed Development in the public interest.

ExA's Conclusions

- 6.4.12. In the event that the SoS is minded to grant a DCO we would agree with the Applicant's conclusions on the generality of the case, including its approach to dealing with alternatives in respect of land interests and ensuring that there are no outstanding interests that have not been previously identified in land that the Applicant already owns. We would also agree that in order to ensure delivery of the Proposed Development is not delayed by negotiations, that some powers to provide for CA, CAR or TP would be appropriate. However, the overarching conclusion on CA and TP cannot be reached until individual objections and all other relevant and important considerations have been addressed.

Crown Land

- 6.4.13. The application was originally accompanied by Crown Land Plans [[APP-075](#)] to [[APP-083](#)]. The original SoR [[APP-088](#)] indicated that this related to two plots with covenants in favour of what is now DEFRA under conveyances from the 1970s, and five plots where land was owned by companies that have subsequently gone into liquidation leaving them as 'bona vacantia' land.
- 6.4.14. The first of the two plots, Plot 36, would be used for structural landscaping to the north of the railway and the second, Plot 53, lies within the highway, would be used for highway purposes and, according to the Applicant, would not contravene the covenants in question.
- 6.4.15. The five other plots, Plots 127, 131, 132, 133 and 135, all relate to highway land where the defunct company owned the frontage. In all cases the Proposed Development only relates to highway works proposed under the dDCO.
- 6.4.16. Following discussions at CAH1, the Applicant engaged with DEFRA in relation to Plots 36 and 53. DEFRA advised that "*There are no records available ... that indicates a Crown interest in any of the land identified in the Development Consent Order*" [[REP1-025](#)]. The Applicant therefore took the view that neither of these Plots represented 'Crown land' for the purposes of the PA2008.
- 6.4.17. The other five Plots are held under three different titles at the Land Registry. In each case, following the Applicant's discussions with the Treasury Solicitor, the Treasury Solicitor has issued three Notices of Disclaimer, each dated 28 April 2023. These can be found in [[REP1-025](#)]. As such the relevant freehold interest has been extinguished and the land became subject to escheat to the Crown Estate.
- 6.4.18. The Crown Estate has also confirmed [[REP1-025](#)]:

"No act of management has been undertaken by The Crown Estate in relation to any part of these properties and accordingly, they do not form part of The Crown Estate.

"It follows that no part of the properties can be deemed to be Crown land (as part of The Crown Estate) for the purposes of the 2008 Act, nor do the Crown Estate Commissioners have remit under the 2008 Act to consent to the acquisition of any interest in land within the proposed DCO."

- 6.4.19. The Applicant amended the BoR to remove any Crown interests. Instead, it indicated that the subsoil interests belonged to "unknown". The Applicant also indicated that the Crown Land Plans no longer form part of the application documents and deleted references to Crown Land in the dDCO and associated documents.

ExA's Conclusions

- 6.4.20. We specifically queried at CAH2 [[EV10-002](#)] whether any party considered any of the Order land to be Crown Land for the purposes of the PA2008 and no party indicated that it considered that to be the case and we have received no representations that it might be the case. We are therefore satisfied that no part of the Application Site represents Crown Land for the purposes of the PA2008.

Special Category Land

- 6.4.21. PA2008 s131, which provides that where land is (amongst other categories) Common Land (CL) or Open Space and is subject to CA, the making of an Order is subject to Special Parliamentary Procedure (SPP) unless one of three exceptions applies. If SPP is required, under s131(3) the SoST may not make the Order containing the relevant CA power until SPP has been carried out. One of the exceptions from the need to use SPP is set out in subsection (5):

(5) This subsection applies if—

- a. the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and*
- b. the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.*

- 6.4.22. Burbage Common is an area of approximately 30ha located, predominantly, to the west of the Application Site. It is Common Land. Some 950m² of this, Plots 120 and 121 [[APP-060](#)], is located to the east of Wood House Farm and falls within the Order land.

- 6.4.23. The Proposed Development includes provision of a permanent bridleway connection for which land would be subject to CA. The Applicant states that no more than 200m² of CL would be required and this would be controlled through Article 25 of the dDCO [[REP7-011](#)].

- 6.4.24. We asked questions in CAH1 as to whether the Applicant could provide precedent provisions from made DCOs and none were provided. Given the drafting of such a provision is a matter of law, and thus for the SoS

and eventually the Courts, we also asked in CAH1 whether the Applicant was content to take as a risk that the SoS may not agree with it at law meaning that SPP would apply. The Applicant confirmed this [EV4-003] (00:01:06:01 to 00:10:34:15) and see also [REP1-017].

6.4.25. As a result of discussions, at ISH5 [EV11-002] the Applicant confirmed that the 200m² maximum area related to both the land subject to CA and TP (see Article 25(2) of the dDCO [REP7-011]).

6.4.26. The Applicant also provided a drawing to show the relevant link could be provided in an area of less than 200m² [REP1-023]. The Applicant made clear that this is only one potential approach with the final solution being subject to detailed design under Req 4 in the event that the DCO was granted.

ExA's Conclusions

6.4.27. Our understanding is that the drafting of Article 25(2) is novel, but we are content that it would only permit the CA and TP of a maximum of 200m² of Special Category Land. That being the case there is no need to follow the Special Parliamentary Procedure. This is also referenced in the preamble to the dDCO.

6.4.28. Clearly if the SoS were to disagree with us in law that is a matter for them. That being the case we consider that there would be no need to revert to the Applicant on this as this has been put to it in Examination and the Applicant has indicated that it is content for SPP to be followed.

Statutory Undertakers

6.4.29. SUs' land and Electronic Communications Code Operators' land is extensively involved within the Order land and CA powers are sought to acquire land, interfere with interests, override interests and remove apparatus. All the land involved is included in Part 1 and Part 3 of the BoR.

6.4.30. Article 36 allows the undertaker, subject to the PPs in Schedule 13, to acquire compulsorily, or acquire new rights over any Order land belonging to SUs, construct the Proposed Development to cross underneath or over apparatus belonging to SUs, and to extinguish the rights of, remove, relocate or reposition apparatus belonging to SUs. Article 36(2) provides that the power in relation to apparatus does not apply if the streets in question are to be stopped up as part of the authorised development. In that situation then the provisions of Article 37 would apply.

6.4.31. Article 37 governs what happens to SUs' apparatus (pipes, cables etc.) under streets that are stopped up by the Order. Under Article 37(2) the Applicant may require a Statutory undertaker to remove and relocate the apparatus (or apparatus provided in substitution) elsewhere.

6.4.32. Schedule 9 to the preferred DCO has Protected Provisions for the following undertakers:

- Part 1 — For the Protection of Railway Interests
- Part 2 — For the Protection of National Highways Limited
- Part 3 — For the Protection of as Leicestershire County Council as Highway Authority
- Part 4 — For the Protection of Warwickshire County Council as Highway Authority
- Part 5 — For the Protection of Cadent Gas Limited as Gas Undertaker
- Part 6 — For the Protection of Severn Trent Water Limited
- Part 7 — For the Protection of Electricity Undertakers
- Part 8 — For the Protection of Operators of Electronic Communications Code Networks
- Part 9 — For the Protection of National Grid Electricity Distribution (East Midlands) plc
- Part 10 — For the Protection of National Grid Electricity Transmission Plc as Electricity Undertaker

6.4.33. Specific Objections have been received from the following SUs:

- NH;
- LCC; and
- NGED

6.4.34. These are considered below within the context of Section 127 of the PA2008.

Consideration of Individual Objections to CA or TP

6.4.35. Representations on different topics of the Proposed Development are considered within the relevant sections. This section deals with land rights issues only. Please note that the land rights only refer to those Plots where the Applicant is seeking CA, CAR or TP, and not to those Plots where 'No compulsory acquisition powers sought'.

National Highways

Location:	1. M69 and its environs 2. Section of B4668 (Leicester Road) in vicinity of junction with Burbage Common Road.
Interests:	CA of Plots: 4, 5, 6, 8, 10, 11, 12, 54, 65, 66, 67, 68, 69, 84, 101a, 102, 103, 104 CAR of Plots: 39, 71 TP of Plots: 61, 101 Under paragraph 20(4) of Part 3 of the PPs in the preferred DCO the Applicant agrees not to exercise powers of compulsory acquisition in respect of NH's interests only in land parcels 84, 101, 101a, 102, 103 and 104.
Status Summary:	No objections in relation to Plots 4, 5, 6, 8, 10, 11, 12 and 61 (all Category 1) Objections in relation to Plots: 65, 66, 68, 69 (all Category 1)

Objection in relation to Plots: 39, 54, 67, 71, 84, 101, 101a, 102, 103 and 104 (all Category 2)

Objector's case:

[\[REP3-137\]](#) [\[REP7-088\]](#), [\[REP8-039\]](#)

Note: NH objection in [\[REP3-137\]](#) refers to Plot 98. According to the BoR NH does not have an interest in this Plot but does in Plot 68. The Applicant considers the reference to be to 68 and the reference to Plot 98 to be a typographic error. In [\[REP7-088\]](#) NH refers to Plot 68 and it is clear that reference should be Plot 68.

- Plots 65 and 69 (CA): were acquired by NH for the purpose of its statutory undertaking for drainage purposes to ensure safety on the carriageway. There is no compelling case in the public interest but would welcome entering into suitable agreements. In addition, Plot 65 forms part of the highway drainage system and may need to be replaced. Willing to grant the Applicant rights to access the Proposed Development for maintenance purposes.
- Plots 66 and 68 (CA): NH has riparian interest critical for safe operation of the SRN. There is no compelling case in the public interest but would welcome entering into suitable agreements.
- Plots 54, 67, 84, 101a, 102, 103 and 104 (CA) 39, 71 (CAR), 101 (TP): NH benefits from rights of access and maintenance rights. These are set out in [\[REP7-088\]](#). These are necessary to allow NH to carry out its undertaking. Loss would result in serious detriment.
- Plots 54, 84, 101, 101a, 103 and 104: objects for effect on drainage purposes to ensure safety on the carriageway which may need to be maintained/ replaced. Drainage rights need to remain.
- Plots 67 and 102: objects to effect on drainage ditches. NH relies on Highways Act 1980 for inspection/ maintenance/ replacement for safe operation of SRN.
- Plots 39, 71: objects on the basis of loss of access to maintain other assets.

Applicant's response:

[\[REP5-045\]](#), [\[REP6-022\]](#), [\[REP8-016\]](#)

- Plot 39: would expunge access route. Alternative access routes being discussed;
- Plot 54: seeking to clarify if the ditch or headwall would actually be affected. In any event NH could obtain access from SRN;

- Plot 61: existing private access used by third parties to access Thorney Fields which is required to close the level crossing and diversion works;
- Plots 65, 66, 67, 68 and 69: encompass a reach of an ordinary watercourse to be realigned upstream to join existing course at Plot 69;
- Plots 65 and 69 are not part of SRN or adopted highway. They may have been purchased for such purposes but are not used as such. Therefore, the Applicant does not consider them to be part of NH's 'statutory undertaking';
- Plots 65 and 69 are required to deliver the provision of hard and soft landscaping works along the boundary of the Order limits as it meets the M69. The works would not be 'street works' under the dDCO and would form part of the main site for longer-term maintenance. In the absence of these rights or an agreement this would prevent the works being delivered. They would have no effect on the SRN;
- Plots 66 and 68 are an unregistered ditch with NH a joint riparian owner;
- Plot 67: Plot is unregistered and part of main site. The Proposed Development cannot be amended to remove the need for the acquisition of this right;
- Plot 71: access would be physically altered so access no longer available and required for clean title;
- Plots 84, 101, 101a, 102, 103, 104: the Applicant accepts that it could bring forward the Proposed Development without acquiring NH's interests in these Plots and dDCO excludes CA of these interests;
- Precedent provision has been provided in the Northampton Gateway Rail Freight Order 2019; and
- If SoS disagrees, or minded to reject or limit, then the Applicant has set out a potential requirement.

ExA's Reasoning and Conclusion:

- 6.4.36. This analysis will only deal with those plots where there is an effective dispute. The drafting of paragraph 20(4) of Part 3 of the PPs resolves, to our minds, the objections to Plots 84, 101, 101a, 102, 103 and 104.
- 6.4.37. This means that remaining objections relate to the following Plots 39, 54, 65, 66, 67, 68, 69 and 71.

- 6.4.38. Plots 39 and 71 (Land Plan Sheet 2 and 4): Plot 39 lies to the south-east of Burbage Common Road and extends close to the M69. NH has the benefit of a right of entry for excavation and right to maintain boundary fences, hedges and walls as contained in a conveyance for the benefit of the M69. Although the right pertains to the whole of this large plot, the reality is that this is only to provide access across this land to the boundary to Plots 65, 66, 67, 68 and 69.
- 6.4.39. Plot 71 lies to the north of M69 J2 and effectively encompasses the area of Hobbs Hayes Farm. NH has the benefit of a right of entry for excavation and maintenance of boundary fences, hedges and walls as contained in a conveyance for the benefit of the M69. This right is to allow maintenance from the western side of the M69 boundary.
- 6.4.40. Given the size of the plot, were the Application Site to be developed, both plots would have to form an integral part of the whole.
- 6.4.41. Plots 65, 66, 67, 68 and 69 (Land Plan Sheets 2 and 4 (shown in Inset 9)): These relate to a continuous piece of land immediately to the west of the M69. The Applicant is seeking CA of all the plots with the exception of Plot 67 where it is only seeking CAR. These plots include an ordinary watercourse which is proposed to be realigned.
- 6.4.42. In order to implement the Proposed Development this ordinary watercourse would need to be relocated. Conversely, drainage of the SRN is required to ensure highway safety. Providing drainage for the SRN, in our view, forms part overall statutory undertaking of NH, and failing to secure this would result in serious detriment to the carrying out of the undertaking. Requiring the drainage scheme to allow for the drainage of the SRN by amending Req 14 would resolve this issue.
- 6.4.43. Plot 54 (Land Plan Sheet 2): This plot lies immediately to the north of the Hinckley to Leicester railway line and is sought to facilitate the diversion of a PRoW as a result of the closure of the Thorney Fields level crossing. NH's interest relates to rights relating to a boundary ditch and headwall as contained in a Transfer dated 6 January 1999 for the benefit of adjoining land.
- 6.4.44. NH's view is that it needs to continue to benefit from this right in order to ensure that the SRN is not adversely affected. For Plot 54, in our view, it should be possible to construct the Proposed Development without affecting NH's interests. Consequently, we consider that this could be resolved by including Plot 54 into the exceptions set out in paragraph 20(4) of the PPs.
- 6.4.45. For the remainder of the Plots, we consider that there is merit on both NH's and the Applicant's positions. We consider that it is necessary for the Applicant to want to move the watercourse to allow for the Proposed Development, but also necessary for NH to, both during and post-development, to drain the SRN into a watercourse in order not to have a potentially serious adverse effect. We use 'a watercourse' because until the detailed design has been completed (Req 4) it would not be known

where the outfall(s) would be. Similarly, it is necessary for NH to have access from the west, that is through the main part of the Application Site, or probably more pragmatically along the proposed bridleway, to maintain its assets, but until the detailed design has been completed the exact location(s) would remain unknown.

- 6.4.46. We have looked at three alternative approaches to facilitating this.
- 6.4.47. Firstly, new private agreement(s) in the form of a licence or easement. However, NH's position remains that CA is not necessary at least in relation to some of the plots in question as it is prepared to enter into "a suitably worded licence and/or easement granting the applicant access over the [relevant] Plots for future maintenance purposes". Obviously, the reverse could also be a possibility, CA being granted and the Applicant then entering into a licence and/ or easement to give NH the necessary rights of drainage and access. Given this is not in front of us this option has to be ruled out as a realistic possibility at this stage.
- 6.4.48. Secondly, limiting the Applicant's CA powers within DCO so that NH would have the right to drain surface water from the M69 and to access the drainage channels. This would be an unusual approach given that CA powers are normally either granted or they are not. However, any right granted to some entity other than an applicant in a DCO would need to be certain and precise both in terms of what the rights are and which plots they apply to (preferably by reference to plans and the BoR). In this case, it is clear what rights NH would need to have (rights of drainage and of access) but not where they would apply in the order land as the exact location of the new watercourse is unknown; it is not possible to impose new rights for a third party on unknown plots.
- 6.4.49. Thirdly, through amended PPs. There are already PPs for the protection of NH in Part 2 of Schedule 13 to the dDCO. Deadlock has been reached on a number of paragraphs and this is discussed further in section 7.4.152ff.
- 6.4.50. We consider that it would be possible to effectively exclude the Applicant's ability to CA or CAR the relevant plots without the prior consent of NH. Such consent would allow NH to continue to drain the SRN and access it from the west for excavation and maintenance of boundary fences, hedges and walls.
- 6.4.51. Case law effectively means that where an objection has been considered as part of an appeal process and the decision is contrary to the objection, then a statutory party no longer can prevent development by use of complementary powers. In our view, similar considerations would apply in relation to an application for a DCO. We therefore consider that using the PP in this way would not, of itself, prevent the Proposed Development taking place were the SoS minded to grant the DCO.
- 6.4.52. In our view, the PPs as recommended satisfactorily ensure an appropriate balance. We conclude that the plots in question are required for the development, should the SoST be minded to grant the DCO. If

this were to be the case there would be a compelling case in the public interest for the CA, TP and CAR and there would not be 'serious detriment' to the statutory undertaker. The tests in ss122 and 127 of the PA2008 would have been met in relation to those plots over which CA is sought.

Leicestershire County Council

Location:

1. Section of B4668 (Leicester Road) in vicinity of junction with Burbage Common Road.
2. Land to north of Dunton Cottages, Burbage Common Road
3. Burbage Common Road and bridge
4. Land north of railway line south of Thorney Fields Farm
5. Vicinity of Outwoods railway crossing

Interests:

CA of Plots: 4, 5, 6, 8, 10, 11, 12, 15, 17, 17b, 17c, 18, 18a, 19, 20, 21, 21a, 22a, 23, 27a, 54, 115, 116, 120

CA with rights of Plots: 15a, 22, 24, 25, 26, 27, 28, 32, 33, 34, 37, 38, 71, 73

TP of Plots: 44, 45, 46, 47, 49, 50, 77, 112, 113, 115a, 116a, 117, 118, 119

Status Summary: The Applicant is currently seeking PPs to secure LCC's interests.

Objector's case:

- LCC does not have any objections to the use of these powers provided that appropriate PPs are place.

Applicant's response:

- Appropriate PPs can be found in the dDCO.

ExA's Reasoning and Conclusion:

6.4.53. There is a dispute over the wording of some elements of the PPs; this is considered in section 7.4.166 to 7.4.172.

6.4.54. In our view, the PPs as set out in our rDCO would satisfactorily ensure an appropriate balance. The plots in question are required for the development should the SoST be minded to grant the DCO. If this were to be the case there would be a compelling case in the public interest for the CA, TP and CAR and there would not be 'serious detriment' to the carrying out of the Authority's activities as a statutory undertaker. The tests in ss122 and 127 of the PA2008 would have been met in relation to those plots over which CA is sought.

National Grid Electricity Distribution (East Midlands) plc

Location: Various locations including:

1. In vicinity of Woodhouse Farm.
2. Adjacent to proposed north-bound off slip-road.

3. In vicinity of Outwoods level crossing.

Interests:

CA of Plots: 101a (Category 1), 7, 15, 35 (Category 2)
CAR of Plots: 27, 28, 33, 34, 71, 73, (Category 1), 13, 15a (exclusion) (Category 2), 74 (imposition) (Category 2)
TP of Plots: 44, 101 (Category 1), 50, 112, 117, 118, 119 (Category 2)

Status Summary:

Agreement on PPs sought

Objector's case:

[[RR-0971](#)], [[REP8-038](#)]

- Objection until an asset protection arrangement is made between the Applicant and objector

Applicant's response:

[[REP1-028](#)]

- The Applicant is working with this objector to agree PPs.

ExA's Reasoning and Conclusion:

- 6.4.55. The wording of the PPs is agreed as is the physical extent of the interference of apparatus.
- 6.4.56. We note that paragraph 4 of Part 9 of Schedule 13 (Protective Provisions) states "*Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement*". Consequently, NGED's rights are protected.
- 6.4.57. In our view, the PPs as recommended satisfactorily ensure an appropriate balance. We conclude that the plots in question are required for the development, should the SoST be minded to grant the DCO. If this were to be the case there would be a compelling case in the public interest for the CA, TP and CAR and there would not be 'serious detriment' to the statutory undertaker. The tests in ss122 and 127 of the PA2008 would have been met in relation to those plots over which CA is sought.

Hinckley and Bosworth Borough Council

Location:

1. Part of stream north-west of Bridge Farm
2. Parts of Smithy Lane
3. Part of Burbage Common Road
4. Part of Woodhouse Farm

Interests:

CA of Plots: 14, 120, 121 (Category 1) 29, 30 (Category 2)
CA with rights of Plots: 26, 27, 37 (Category 2)

Status Summary:

Discussions continuing in relation to Category 1 rights.

Objector's case: [\[EV10-002\]](#) 35'13" to 37'47"
• The quantum of land subject to CA and TP in relation to Plots 120 and 121 should be reduced to 200m².

Applicant's response: [\[EV10-002\]](#) 35'13" to 37'47"
• The plan submitted [\[REP1-023\]](#) was to demonstrate that the bridleway connection works, both permanent and temporary works, could be and would be delivered within less than 200m², however the precise location has yet to be fixed.

ExA's Reasoning and Conclusion:

- 6.4.58. This objection relates to two plots of land on Burbage Common where a proposed bridleway would connect with an existing PRow.
- 6.4.59. HBBC considers that the extent of Plots 120 and 121 should be limited to 200m², rather than the 950m² which is the total area of the two plots.
- 6.4.60. This issue relates to the drafting of the DCO in relation to Common Land and is considered in section 6.4.21 to 6.4.28. Giving rights over a greater area would allow some flexibility in the detailed design. As can be seen we are content with the drafting of the dDCO and we conclude that the plots in question are required for the development, should the SoST be minded to grant the DCO. If this were to be the case, there would be a compelling case in the public interest for the CA and CAR. The tests in s122 and s131 of the PA2008 would have been met in relation to those plots over which CA is sought.

Barwood Development Securities Limited, Parker Strategic Land Limited and Ms Jennifer Taylor

Location: Land to west of junction of Stanton Lane/
Hinckley Road (B4669,) Sapcote

Interests: Category 1 and 2 Rights.
TP of Plot: 122

Status Summary: Applicant seeking an agreement for temporary licence. Applicant believes terms agreed.

- Objectors' case:** [\[RR-1028\]](#), [\[REP1-217\]](#), [\[REP3-144\]](#), [\[REP4-200\]](#), [\[REP8-056\]](#)
- inadequate justification;
 - excessive land take;
 - isolates remainder of landowner's interest;
 - lack of consideration of alternatives, this could include land forming the verge to west of junction;
 - have only provided little information about CA process and made minimal effort to acquire by agreement; and
 - the objectors indicate that the land is required in the timeframe of any TP and thus the interference would affect their proposed use of the land as part of a strategic housing site.

- Applicant's response:** SoR [\[REP4-033\]](#), [\[REP1-027\]](#), [\[REP4-124\]](#), [\[REP4-141\]](#)
- the BoR indicates that the land is required for as Construction compound and lay-down area, including parking, in connection with Work 10 for alteration of this junction and with connection with alterations at the junction of Station Road/ New Road/ Hinckley Road, Stoney Stanton (Work 11);
 - the Applicant indicates that it has provided the same approach as other landowners as to level of detail;
 - this plot is the closest and most suitable location for works;
 - plot shape is to avoid hedgerow removal and utilise existing tracks, providing sufficient circulation;
 - aim would not be to take exclusive possession and thus allow use of remainder of landholding. Accepts that this is not provided in the dDCO but could be in any voluntary arrangement;
 - opposite verge not suitable as within footprint of works and utility diversions; and
 - needed for a maximum of 18 months early in development scheme and would not interfere with any development proposals.

ExA's Reasoning and Conclusion:

- 6.4.61. This land parcel would be required to facilitate a work compound for the proposed highway works at the junction of B4669 with Hinckley Road (Work 10) and for the construction works at the junction of Station Road/ New Road/ Hinckley Road, Stoney Stanton (Work 11).

- 6.4.62. By utilising the perimeter of the land parcel, the TP would effectively prevent the beneficial use of the centre of the land parcel for the duration of the works. However, in our view this effectively would be a matter relating to compensation and thus does not fall within our, or the SoS's, consideration at this stage.
- 6.4.63. The objectors have suggested the use of the verges between the B4669 and the objection land and the Garden Centre on the east side of the junction of the B4669 and Hinckley Road for the compounds. However, we agree with the Applicant that this would conflict with the works themselves. We also have no indication that the Applicant's assertion about this area being within the area for utility diversions is incorrect. Given that verges are often used for this we consider it to be likely. Due to the need to protect statutory undertakers' apparatus in the public interest, we consider that avoiding works in this area would be an appropriate approach.
- 6.4.64. We consider that creating a temporary works compound within the main body of the Application Site to the west of M69 J2 would result in additional and undesirable traffic movements across the junction.
- 6.4.65. The objectors also indicate that the TP of this area may prejudice their longer-term ambitions for the development of this area. However, this site is not allocated for development in an adopted local plan, and at this stage of the local plan process this is very uncertain. We give this little weight.
- 6.4.66. As the request is for TP rather than CA in our view the justification does not need to necessarily be as robust as if it were for CA.
- 6.4.67. Overall, in the event that the SoS is minded to grant the DCO, we conclude that there would be a compelling case in the public interest for the TP of the Plot 122 to allow the construction of the Proposed Development.

Residents of 6 Wortley Cottages, Elmhursthorpe

Location:	Footpath (T89/1) to west of Wortley Cottages, Elmhursthorpe
Interests:	Category 2 rights TP of Plot 49, 50 and 51
Status Summary:	Applicant seeking an agreement for temporary licence.
Objectors' case:	<p>[RR-1113], [REP1-190], [REP3-140], [REP5-093]</p> <ul style="list-style-type: none"> • the Applicant has not been notified of the potential interference with land rights; • the letters sent were generic; and • due to lack of notification has been denied opportunity to fully research the effect on

objector and make any appropriate representations.

Applicant's response: [\[REP4-141\]](#), [\[REP4-143\]](#), [\[REP6-027\]](#)

- The owners have been notified with section 42 and section 56 letters, the latter with proof of delivery and signature.

ExA's Reasoning and Conclusion:

- 6.4.68. It is clearly the case that before land rights of any person are affected, they should be aware of the nature of the interference and should be able to make representations about it.
- 6.4.69. The areas which would be affected comprise woodland and adopted public highway (being a PRow). The rights are required to deliver the footpath diversion works as part of the closure of the Elmesthorpe level crossing.
- 6.4.70. We are satisfied that communication provided to the AP, namely letters dated 7 January 2022, 4 February 2022 and 4 May 2023 (copies provided at [\[REP4-143\]](#)) would have provided the AP with sufficient information to enable them to research what the effects of the Proposed Development their land interests would be.
- 6.4.71. The plots in question would facilitate the diversion of the PRow from the Elmesthorpe level crossing in the vicinity of Bostock Close. This would be required to ensure public safety in the event that the DCO was implemented.
- 6.4.72. The objectors' representations on the planning merits of the Proposed Development are considered in other sections of this Report.
- 6.4.73. Overall, in the event that the SoS is minded to grant the DCO, we conclude that there would be a compelling case in the public interest for the TP of the Plots 49, 50 and 51.

Richard Vanags

Location:	Land to north of Dunton Cottages, Burbage Common Road
Interests:	CA of Plots: 16 and 17 (category 1) and 15 (category 2),
Status Summary:	Plots 15 and 16: Discussions over reputed ownership, but unable to resolve, CA required for delivery of the Proposed Development. Plot 17: CA required for delivery of Proposed Development <u>Note</u> Under the final Compulsory Acquisition Schedule (CAS) [REP8-008] the Applicant indicates that it has reached voluntary agreement with the freeholder of Plot 15.

Objector's case:

[\[RR-1139\]](#), [\[REP1-197\]](#)

- This area contains a sewage system and septic tank pipes for the properties opposite. The landowner is refusing to allow those whose properties discharge to this system to inspect, repair, renew or replace this system as is stated on our deeds. Any part of the Proposed Development must avoid damage and allow the adjoining beneficiaries to drain and allow access when needed at all times;
- EA requirements require flow to be increased but current landowner is preventing this;
- Considers inconsistencies and issues with communication and responses from the Applicant;
- No option of mains sewerage due to location; and
- Note this relates to three of the four properties to the south of these plots.

Applicant's response:

[\[REP1-032\]](#), [\[REP3-073\]](#), [\[REP7-001\]](#)

- The Applicant is aware of the problem and would ensure drainage is delivered;
- Discharge from septic tank on Plot 16 is to Plot 15. Plot 15 is required to facilitate the delivery of the Proposed Development and resolve any pollutant issues;
- The Applicant has included a section (paragraphs 5.7 to 5.9) in the SDS [\[REP7-037\]](#). This indicates that Plot 16 is currently unregistered and is included for CA to resolve this (if not resolved in the meantime). If this plot is registered before, then the Applicant would only seek to resolve discharge concerns rather than acquire the plot. If CA is needed, then they would offer the land to the owners of the properties opposite. If they do not wish for it, then the Applicant would liaise with the occupiers of the properties opposite to formally grant drainage rights;
- The Applicant makes clear in the SDS (paragraph 5.8 of [\[REP7-037\]](#)) that it would not interfere with any foul drainage from these properties; and
- Req 13 in the dDCO [\[REP7-011\]](#) secures this.

ExA's Reasoning and Conclusion:

- 6.4.74. These plots lie on the north side of Burbage Common Road. Plot 15 is required as part of the mitigation of the Proposed Development. Plots 16 and 17 are small areas and would be used for soft landscaping.
- 6.4.75. It is clearly imperative that the occupiers of the properties to the south of Burbage Common Road continue to have foul drainage to allow them to be occupied without which their rights to their homes would not be respected. We are satisfied that the SDS [[REP7-037](#)], together with Req 13, would ensure that this would occur.
- 6.4.76. We conclude that the plots in question are required for the development, should the SoST be minded to grant the DCO. If this were to be the case, there would be a compelling case in the public interest for the CA. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

Christine Margaret Leigh, Darren Mark Leigh, Lorraine Michelle Spicer Leigh, Rodney Leigh

Location: Land to north of Hinckley to Leicester railway line, south of Billington Rough

Interests: CA of Plots: 35 (category 1), 36 (category 2)

Status Summary: Seeking to arrange agreement

Objectors' cases: [[RR-0216](#)], [[RR-0269](#)], [[RR-0270](#)], [[RR-0767](#)], [[RR-1171](#)]

- The objections relate principally to the planning merits;
- Note land sought

Applicant's response: [[REP1-027](#)]

- Land is required for earthworks and landscaping immediately north of the railway.

ExA's Reasoning and Conclusion:

- 6.4.77. This objection relates to a strip of land immediately north of the Hinckley to Leicester railway line between the Application Site and the Billington Rough area of Elmesthorpe. In the event that the DCO were to be granted this area would be used for earthworks and landscaping.
- 6.4.78. There are no realistic alternatives to the use of this area to provide appropriate mitigation for and within the Proposed Development. We therefore conclude that the plots in question are required for the development, should the SoST be minded to grant the DCO. If this were to be the case, there would be a compelling case in the public interest for the CA. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

Francis George Gent, Julie Margaret Gent

- Location:**
1. Part of ordinary watercourse to of west of M69.
 2. Area to south of Hinckley to Leicester railway line and south of Thorney Fields Farm, together with land from B581.
 3. North of B581 east of M69 bridge.
- Interests:**
- CA of Plots: 57a, 67 (Category 1)
 CAR of Plots: 64 (Category 1)
 TP of Plots: 57, 60 (Category 1)
- Status Summary:** Seeking agreement with the objector.
- Objector's case:** [[RR-0387](#)], [[REP3-115](#)]
- Effect on drainage from east to west side of M69; and
 - Replacement of Thorney Fields level crossing should be a new bridge rather than re-routing across existing, with conflict with farm traffic.
- Applicant's response:** [[REP1-027](#)]
- Drainage on site would be throttled to the equivalent of 'greenfield annual average runoff rate', which should reduce discharge in peaks. The drainage would be maintained;
 - Closure of Thorney Fields level crossing was requested by NR. The diversion across the existing bridge is considered to be proportionate; a new bridge would not be proportionate;
 - Plots 57, 57a and 60 are required for the closure of the Thorney Fields level crossing. This includes use of the land for temporary access and temporary construction compounds (Work No. 21) as well as dedication of the diverted right of way; and
 - Parcel 67 is required for earthworks works and the creation and improvements to the public footpath/ bridleway network (Work No. 6).

ExA's Reasoning and Conclusion:

- 6.4.79. This objection relates to three separate areas.
- 6.4.80. Plots 64 and 67, which are parts of an ordinary watercourse, with Plot 64 downstream of Plots 65 to 69 which are considered in relation to the objection of NH above (section 6.4.36ff). Here CAR relating to drainage rights is requested. The objectors have riparian rights.
- 6.4.81. As with the area where CA is sought from NH we consider that to implement the Proposed Development this ordinary watercourse would

need to be relocated. This area connects to a watercourse flowing under the M69. In our view, provided NH's rights of drainage are secured, then the issue raised by the objector would also be resolved. On this basis CA and CAR would be justified.

- 6.4.82. Secondly, Plot 57a, which lies on the on the south side of the Hinckley to Leicester railway line south of Thorney Fields Farm where the existing bridge lands and which would provide a diversion to the PRow where a pedestrian level crossing would be stopped.
- 6.4.83. As considered in section 3.3.611 we consider that this would improve safety as it would negate the need to cross the railway line. There is the possibility that PRow users would coincide with farm traffic using the accommodation bridge, but we consider that this would not be a frequent occurrence and thus the objectors' proposal of a new bridge would not be proportionate.
- 6.4.84. Finally, Plots 57 and 60 to the west and south of the second area where TP is sought to facilitate the construction of the PRow diversion. This would be the most appropriate way of accessing these works and we consider that its TP would be appropriate.
- 6.4.85. We therefore conclude that the plots in question are required for the development, should the SoST be minded to grant the DCO. If this were to be the case there would be a compelling case in the public interest for the CA, CAR and TP. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

Samuel Salvatore Zumbe

Location:	South of Hinckley to Leicester railway line, south-west of bridge on B581
Interests:	CA of Plots: 40 (Category 1)
Status Summary:	The Applicant has been unable to make contact with the registered owner
Objector's case:	N/A
Applicant's response:	[REP4-141] <ul style="list-style-type: none">• Land is required for construction of new railway track and associated infrastructure, and a revised PRow;• The owner has been sent with section 42 letters at the address noted in HM Land Registry, which were returned marked "Return to Sender" advising "Addressee gone away";• Local enquiry revealed that the owner had not been in the area for several years, but a business address in London provided;

- Letter to business address in London, but no response. Telephone enquiry did not reveal knowledge of Mr Zumbé; and
- Communication summary:
 - Section 42 Letter 7 January 2022
 - Section 42 Letter 4 February 2022
 - Unknown Landowner site notice September 2022
 - Letter to registered landowner 2 February 2023
 - Section 56 Letter 4 May 2023
 - Letter to registered landowner 25 May 2023
 - Letter to registered landowner 16 August 2023
 - Letter to registered landowner 15 December 2023

ExA’s Reasoning and Conclusion:

- 6.4.86. This plot is located in the north of the main Application Site and is a triangular area of approximately 805m². Because the Applicant has been unable to effect service of the relevant notices, we have looked in detail as to the justification for CA of this land. The plot would be required for delivery of the rail infrastructure (Work 1).
- 6.4.87. In ExQ1.3.1 [[PD-011](#)] we asked the Applicant to set out evidence of the approaches made. The Applicant [[REP4-141](#)] sets out what had done and provided in Appendix A copies of the letters sent. We consider that, in all the circumstances, the Applicant has done all that could be reasonably be expected of it to ensure the landowner was aware of the Proposed Development.
- 6.4.88. We are satisfied that the land would be necessary to ensure the delivery of the Proposed Development.
- 6.4.89. We therefore conclude that the plot in question is required for the development, should the SoST be minded to grant the DCO. If this were to be the case, there would be a compelling case in the public interest for the CA. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

Interested Parties with Land Interests who made RRs, but did not make comment on land issues

- 6.4.90. Table 8 sets out those IPs who have been identified by the Applicant in the CAS as having land interests which would be affected and having made representations to the Examination, together with the category (Cat.) of their land right. The representations, however, relate to planning matters rather than land right issues.

Table 8: Affected persons making non-land right representations

Name of IP	Representation	Plot No(s).	Cat.	Right sought
Brenda Ann Grant	[RR-0940]	49, 50	2	TP
Anthony John Smith	[RR-0100]	49, 50	2	TP
Michelle Victoria Auger	[RR-0899]	50	2	TP
Steven Bass	[RR-0935] [REP1-222]	50	2	TP
Edward John Chapman	[RR-1118]	50	2	TP
Dawn Louise Kidd	[RR-0314]	50	2	TP
Peter Jones	[RR-1077]	73	2	CAR
Tracey Lyn Edwards	[RR-1385]	116a, 117, 118, 119	2	TP
Louise Taylor	[RR-0775]	116a, 117, 118, 119	2	TP
Shell U.K. Limited	[RR-1245]	140	2	CA

ExA’s Reasoning and Conclusion:

6.4.91. We are satisfied that the objections above do not relate to land issues. Consequently, should the SoST be minded to grant the DCO in each case we therefore conclude that the plots in question are required for the development. If this were to be the case there would be a compelling case in the public interest for the CA, TP and CAR of the plots in question. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

Land to which no objection has been received

6.4.92. There are a number of other Category 1 landowners in the Order lands whose land would be subject to CA, CAR or TP who have not raised objections to the Proposed Development.

6.4.93. In all cases we conclude that, should the SoST be minded to grant the DCO, the land is required for the development to which the development consent would relate, or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The same considerations apply to that land, which is sought to be acquired for TP, whether or not with Permanent Rights thereafter and this includes those with ‘Category 3’ interests.

Overall Recommendation on the Granting of Compulsory Acquisition Powers

- 6.4.94. Our approach to the question as to whether and what CA powers we should recommend to the SoST to grant in the event that they are minded to grant the DCO has been to seek to apply the relevant sections of the PA2008, notably s122 and s123, the DCLG Guidance, and the Human Rights Act 1998, and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 6.4.95. The preferred DCO [[REP7-011](#)] deals with both the Proposed Development itself and CA powers. We conclude above that when the adverse effects of the Proposed Development are weighed against its public benefits the DCO should not be granted. The consideration of the CA issues must be consistent with that view. Without an approved development there is no need to interfere with land rights and consequently, in our view there is no compelling case in the public interest to that effect.
- 6.4.96. However, if the SoST were to take a contrary view, so that development consent was to be granted, then we are satisfied that as set out there would be a need to acquire the rights and interests in the CA land. On this basis with the recommended amendments to the dDCO the Proposed Development would comply with s122.
- 6.4.97. We are also satisfied that the Applicant has sought to acquire land by negotiation and that all reasonable alternatives to CA have been explored.

6.5. FUNDING

- 6.5.1. The Applicant submitted a Funding Statement [[APP-089](#)] as part of the application and this was subsequently updated throughout the Examination as we asked questions for further clarification and confirmation, with the final Funding Statement submitted at D8 [[REP8-003](#)].
- 6.5.2. The Applicant is part of the Tritax Big Box Group (the Group), a FTSE 250 business and the Applicant states that it is the *"UK's largest listed specialist investor in logistics assets. The ultimate parent of TSH is Tritax Big Box REIT Plc."* (paragraph 4.2).
- 6.5.3. The Applicant goes on to state at Paragraph 4.3, that *"The Group's purpose is to be the leading Real Estate Investment Trust ("REIT") focused on high quality UK logistics real estate assets and to deliver sustainable, long-term income and value growth for shareholders. Through its development arm, Tritax Symmetry, the model is to secure land for logistics development, develop new logistics assets and subsequently hold onto and manage the developed assets over the long term. The Group owns the UK's largest portfolio of logistics investment*

assets and the largest logistics-focused development land platform, with a portfolio value of £5.05 billion as at 30 June 2023.”

- 6.5.4. The Group is funded via a Tritax Big Box REIT plc, Tritax Symmetry Holdings Ltd, db Symmetry Group Ltd, db Symmetry Ltd 04537090, Tritax Symmetry (Hinckley) Ltd & combination of debt financing, equity, asset sales and development income. We explored the Applicant’s Funding position, primarily with a view to confirming that it had sufficient funds in order to acquire the interests it was proposing as part of the CA schedule. However, the wider position was also explored to ascertain that sufficient funding was in place to implement the proposal as a whole.
- 6.5.5. At the conclusion of the Examination, the Applicant had costed the whole scheme, including acquisition at £804 million. This was an increase of £54 million since the Application was submitted. This was due, in main, to external economic factors such as inflationary pressures on the construction industry and the cost of borrowing increasing. Land values were also subject to increases.
- 6.5.6. At Paragraph 4.4 of the Funding Statement [[REP8-003](#)] the Applicant outlined that they had the following borrowings available to them:
- £750m in unsecured bank finance across two revolving credit facilities.
 - £900m in unsecured Public Bonds and Private Loan Notes.
 - £250m in unsecured Green Bonds.
 - £212.9m in secured debt across three separate facilities.
- 6.5.7. We also note that the Applicant [[REP8-003](#)], paragraph 4.5, included details of a new share issue in 2021, which generated in excess of £300m, demonstrating other potential funding sources.
- 6.5.8. The Applicant has also included Article 40 in its final DCO which ensures that no compulsory acquisition can be pursued until appropriate security for the liability to pay compensation in respect of that acquisition has been provided. This provides additional protection in respect of interests being acquired and has become relatively commonplace in DCOs.

ExA’s Conclusions on Funding

- 6.5.9. Notwithstanding the increases cited, the Applicant has demonstrated that it has the financial resources to cover the cost of acquisition and the delivery of the Proposed Development, meaning that the scheme has a realistic chance of being delivered within the timeframes set out by the Applicant during the course of the Examination.
- 6.5.10. We note that in section 3.3.503 and 7.5.23 we consider that the sums set out in the Planning Obligations would not secure the necessary highway works. However, within a scheme of this size, the deficiencies are not material in considering whether the Applicant has, overall, sufficient funds at its disposal to complete the Proposed Development.

- 6.5.11. We are satisfied from the Funding Statement, and the responses to our questions, that the Applicant has the financial resources to meet any compensation arising from the acquisition of rights over the areas of land subject to compulsory acquisition powers. We also note that the Funding Statement indicates that in practice the Applicant has sufficient funds at its disposal to bring forward the scheme should it be consented. We are therefore satisfied on the funding situation and of the Applicant's financial position.

6.6. HUMAN RIGHTS ACT

- 6.6.1. The Applicant acknowledges in the SoR [\[REP4-033\]](#) that the DCO engages a number of the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as brought into UK Law by the Human Rights Act but submits that such interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.
- 6.6.2. It would affect Article 1 of the First Protocol (rights of those whose property is to be Compulsorily Acquired and those whose peaceful enjoyment of their property is to be interfered with).
- 6.6.3. Article 6 entitles those affected by CA powers sought for the project to a fair and public Hearing of their objections. The provision of two CAHs [\[EV4-001\]](#) to [\[EV4-004\]](#) and [\[EV10-001\]](#) to [\[EV10-003\]](#) enabled any AP who wished to be heard to be heard fully, fairly and in public. The Applicant states that all owners and occupiers of land affected by the Proposed Development have been contacted and that representations could be made in response to the notice under s56 PA2008 or at any CAH advertised or held in public by us as ExA.
- 6.6.4. As noted above, Samuel Salvatore Zumbe is the owner or reputed owner of Plot 40. Here the Applicant has been unable to make contact so that he would not have been aware of the hearings. However, we consider that the Applicant made proportionate enquiries so that interference would be justified.
- 6.6.5. Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.
- 6.6.6. The Applicant provided [\[REP1-022\]](#) a schedule of the number of dwellings and caravans which would need to be demolished or removed. This indicates that as a result of the Proposed Development five dwellings, all of which were occupied at the time, and five caravans, but only one of which was occupied, would be lost. We will go through each plot in turn.
- 6.6.7. As can be seen below, it would appear that there is potentially a further Plot, Plot 72, where a building is occupied as a home, where the Applicant is seeking CAR. This is also addressed.

Plot 26

6.6.8. The development of Plot 26 would result in the loss of two dwellings. In the BoR [[REP8-005](#)] the rights sought exclude the interests of three named individuals who are cited as occupiers (and owners). The only other occupiers are corporate or local authority interests. By excluding from compulsory acquisition the rights of the human occupiers, there would be no compulsion for their loss of their homes. Consequently, there would be no compulsory interference with their human rights.

Plot 28

6.6.9. The development of Plot 28 would result in the loss of one dwelling. There are no people either owning or occupying this Plot. Consequently, there would be no implications of the Proposed Development in relation to Article 8.

Plot 34

6.6.10. The development of Plot 34 would result in the loss of one dwelling. The rights sought exclude the interests of two named individuals who are cited as occupiers (and owners). The only other occupiers are corporate or local authority interests. By excluding from compulsory acquisition the rights of the human occupiers, there would be no compulsion for their loss of their homes. Consequently, there would be no compulsory interference with their human rights.

Plots 71 and 72

6.6.11. The development of Plot 71 would result in the loss of one dwelling. The rights sought exclude the interests of one named individual. This person is identified as the owner or reputed owner, along with the personal representative of a deceased individual and the Public Trustee. In addition to various corporate and local authority interests there are two other named individuals with Category 2 interests. These have rights of access across the land.

6.6.12. These two individuals are owners or reputed owners of Plot 72. The Applicant is not seeking their interests in Plot 72. Provided the site is developed comprehensively, then this would protect their interests since they would not be deprived of the peaceful enjoyment of the possessions, in this case their homes, through the loss of a right of access. Securing this is considered further in section 7.4.82 to 7.4.93. If this were to be the case, then there would be no compulsory interference with their human rights.

Plot 73

6.6.13. The single occupied caravan is in Plot 73. The rights sought exclude the interests of the owner or reputed owner. Apart from corporate, local authority and the Public Trustee interests, there are three other named interests with Category 2 rights. One has a reputed charge, which therefore would not affect their home. Two others have rights relating to service media and drainage and right of entry relating to maintenance for

the benefit of adjoining land. Provided the site is developed comprehensively, then this would protect their interests.

6.6.14. As discussed further in section 7.4.82 we are also concerned that if the site were not developed comprehensively then the construction of adjoining phases would have harmful effects on occupiers who have yet to move out which would be contrary to the peaceful enjoyment of their homes. We do not have details of the option arrangements, and whether the occupiers can trigger the sale of their own properties, and thus we consider that to protect their human rights the Applicant should show that it has control of all the relevant parcels.

6.6.15. In each of these cases while Rights would be interfered with, we consider that if the SoST is minded to grant the DCO then the interference would be proportionate and justified in the public interest, and consequently the CA, CAR and TP would be compatible with the Human Rights Act and the ECHR.

6.7. CONCLUSIONS

6.7.1. As we are of the view that as the balance does not lie with the granting of the DCO, a compelling case in the public interest for the granting of compulsory acquisition and similar powers has not been made out.

6.7.2. However, if the SoST is minded to grant the DCO taking all relevant documents and policies into account, we conclude as follows, that subject to the matters identified and amendments to the dDCO set out in the rDCO at Annex C in respect of Land Rights and related matters:

- the CA powers sought would accord with Sections 122(2) and (3) and 123 of the PA2008;
- we are satisfied that in all cases relating to individual objections and issues that CA, TP with Permanent Rights and TP is justified to enable implementation of the Proposed Development and a compelling case in the public interest would have been made out;
- in relation to SUs, subject to appropriate PPs being in place (see section 7.4.149ff) that there would be no serious detriment occasioned by the Proposed Development ;
- there are appropriate arrangements in place, which would be secured by the dDCO, to ensure adequate funding in place for the Proposed Development;
- the Proposed Development would be compatible with the Human Rights Act in terms of being a proportionate interference with property, including homes, and family life;

6.7.3. Overall, the SoST can be satisfied:

- the tests in s122(2)(a) and (b), s122(3) and s127 of the PA2008 are met and, if the SoS is minded to grant the DCO would be able to recommend acceptance of the CA, CAR and TP powers proposed in the DCO;
- that the conditions in s123(2) and s123(4) PA2008 would be met;

- the Proposed Development could be undertaken without 'serious detriment' to any statutory undertaker.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. The accepted application included a dDCO [[APP-085](#)] and associated EM [[APP-086](#)]. The application dDCO and subsequent iterations are in the form of a Statutory Instrument as required by section s117(4) of the PA2008.
- 7.1.2. In our Rule 6 letter [[PD-005](#)] we made a procedural decision to hold an ISH on the dDCO on the day after the PM (assuming the PM was closed); this occurred on 13 September 2023. The Rule 6 letter included both an agenda for the ISH (in Annex F) and the ExA's Initial Observations on Drafting of the dDCO (Annex F(i)).
- 7.1.3. These Initial Observations related both to minor matters, such as typographic corrections and clarity, but also matters with more substance.
- 7.1.4. Prior to the ISH the Applicant submitted Draft Responses to the ExA's Initial Observations on the dDCO (Annex B to the Applicant's Response to the Rule 6 Letter [[PDA-021](#)]), a revised dDCO in both 'clean' [[AS-008](#)] and 'tracked change' [[AS-009](#)] versions, together with a DCO Amendments Tracker [[AS-010](#)]. These were discussed at ISH1 [[EV3-001](#)] and [[EV3-003](#)].
- 7.1.5. Following the ISH, the Applicant submitted revised versions of both the dDCO [[REP2-003](#)] and EM [[REP2-012](#)]. The 'tracked change' version of both documents, [[REP2-011](#)] and [[REP2-013](#)] respectively, referred back to the versions submitted with the original application. Subsequent 'clean' versions of these documents only had 'tracked change' from the previous iteration.
- 7.1.6. The dDCO and supporting EM, were updated several times during the course of the Examination. This section provides an overview of the changes made to the dDCO during the Examination process, between the application dDCO [[APP-085](#)] and the final dDCO [[REP7-011](#)], submitted at D7.
- 7.1.7. Notwithstanding our overall recommendation that the SoS does not make the DCO, this section is to assist the SoS should they be minded to grant it. We would wish to explicitly state that the changes set out below would not, to our minds, overcome the reasons behind our recommendation, rather to seek to resolve other outstanding matters where possible.
- 7.1.8. Our rDCO, which can be found in Annex C, incorporates the changes made during the Examination and additionally those which we consider should be made as a result of our findings on the matters discussed within this Report. These latter changes are set out in Table 11 below.

- 7.1.9. We do not report on every change made in the updated versions. This is because, during the course of the Examination, amendments were made as a result of typographical or referencing errors, slight revisions of the wording following either discussion between the Applicant and relevant IPs or from their written submissions, or as a result of changes following the Rule 6 letter, ExQ1 [[PD-011](#)], ExQ2 [[PD-013](#)], Rule 17 letters [[PD-015](#)] or discussions at the various ISHs.
- 7.1.10. On 19 January 2024 we issued our Proposed Changes to the dDCO [[PD-014](#)] at the same time as ExQ2. These did not include all matters that were in dispute, but only those matters where we considered we had sufficient information at that date to allow us to provisionally come to a conclusion. The Applicant and other IPs were given the opportunity to make comments on these at D6 (20 February 2024).
- 7.1.11. We report on the substantive changes made during the Examination, even when they were agreed between the Applicant and IPs so that the SoS is appraised of the reasons for them. We are, however, satisfied that the changes do not alter the overall substance of the Proposed Development.
- 7.1.12. The Applicant submitted two Planning Obligations under s106 of the TCPA dated 8 March 2024 [[EEAS-001](#)] and [[EEAS-002](#)]. One by way of Agreement with BDC and HBBC and one by Unilateral Undertaking to LCC. These will be discussed in more detail in section 7.5 of this Report.
- 7.1.13. The structure of this section is as follows:
- structure and functions of the dDCO as applied for;
 - examination of the dDCO and its iterations during the Examination;
 - a discussion of the main points in content at the end of the Examination and those of particular interest;
 - recommended changes leading to the rDCO; and
 - other consents and legal agreements .

7.2. THE ORDER AS APPLIED FOR

- 7.2.1. While the number of Articles and Schedules, including PP in the dDCO changed during the Examination, its overall structure remained. The final version of the dDCO submitted at D7 [[REP7-011](#)], henceforth referred to as the “preferred DCO” is briefly described here with a fuller explanation, as given by the Applicant, in the final version of the EM [[REP7-013](#)].
- Part 1 (Preliminary): Articles 1 and 2 set out how the DCO may be cited, when it would come into force and the meaning of various terms used in the Order;
 - Part 2 (Principal Powers): Articles 5 to 8 provide development consent for the Proposed Development, set its parameters, allow it to be carried out, used and maintained. Articles 7 and 8 set out who has the benefit of the Order and how that benefit can be transferred;
 - Part 3 (Streets): Articles 9 to 20 provide powers in relation to street works. These include the ability for the undertaker to construct and maintain new, altered or diverted streets and other structures,

permanently stop up streets and temporarily close them, deal with public rights of way, including the creation, substitution, stopping up and closure of level crossings, private accesses, provides for the classification of roads, speed limits, traffic regulation, clearways and no waiting and agreements with highway authorities;

- Part 4 (Supplemental Powers): Articles 21 to 24 relate to discharge of water, protective works to buildings and authority to survey and investigate land, and the removal of human remains;
- Part 5 (Powers of Acquisition): Articles 25 to 41 provide powers in relation to the CA and TP of land, including Special Category Land, along with powers in relation to Statutory Undertakers;
- Part 6 (Miscellaneous and General): Articles 42 to 52 relate to the operation and use of railways, operational land, charges, defences in respect of statutory nuisances, works to trees and hedgerows, PPs, governance of requirements and PPs relating to highways, disapplication, application of and modification of legislative provisions, certification of plans and documents, service of notices and arbitration.

7.2.2. There are 15 schedules to the dDCO which would provide for:

- Schedule 1: The Authorised development;
- Schedule 2: The requirements applying to it, and procedures thereto;
- Schedule 3: Streets subject to street works;
- Schedule 4: Permanent stopping up of streets for which no substitute is provided;
- Schedule 5: Public Rights of Way;
- Schedule 6: Private means of access;
- Schedule 7: Classification of highways;
- Schedule 8: Speed limits;
- Schedule 9: Clearways and no waiting;
- Schedule 10: TP;
- Schedule 11: Land in which new rights may be created;
- Schedule 12: Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants;
- Schedule 13: PPs;
- Schedule 14: Miscellaneous controls; and
- Schedule 15: Certification of plans and documents.

7.3. EXAMINATION OF THE DDCO

7.3.1. We examined the dDCO in two ISHs (ISH1 [[EV3-001](#)] and [[EV3-003](#)] and ISH5 [[EV11-002](#)]) as well as through our Initial Comments (Annex F(i) to the Rule 6 letter [[PD-005](#)]), and ExQ1 [[PD-011](#)] and ExQ2 [[PD-013](#)] and our Rule 17 letter [[PD-016](#)].

7.3.2. The Applicant's response was set out in various documents; both following to the above events and as a response to representations made by IPs.

Iterations

- 7.3.3. During the Examination the Applicant sought to make various changes to the dDCO. At each iteration of the dDCO the Applicant submitted a 'clean' and 'tracked change' version of the dDCO. There were five versions of the dDCO up to the close of the Examination. Table 9 sets out the version number, dates of the submission and Examination event, along with the EL numbers of the clean and tracked change versions.

Table 9: History of dDCOs

Date	Version	Event	'Clean' version EL reference	'Tracked Change' version EL reference
March 2023	02	As originally submitted	[APP-085]	
September 2023	03	In response to Rule 6 letter	[AS-008]	[AS-009]
October 2023	04	D2	[REP2-010]	[REP2-011] (tracked from version 02)
January 2024	05	D4	[REP4-027]	[REP4-028]
February 2024	06	D7	[REP7-011]	[REP7-012]

- 7.3.4. There were also versions of the EM, provided both in clean and tracked change, and a Schedule of Changes (SoC) to the dDCO. These are shown in Table 10.

Table 10: History of EM and SoC

Date	Event	EM		SoC to dDCO	
		'Clean' version EL reference	'Tracked Change' version EL reference	'Clean' version EL reference	'Tracked Change' version EL reference
March 2023	As originally submitted	[APP-086]			
September 2023	In response to Rule 6 letter			[AS-010]	
October 2023	D2	[REP2-012]	[REP2-013]	[REP2-014]	[REP2-015]
January 2024	D4	[REP4-029]	[REP4-030]	[REP4-031]	[REP4-032]
February 2024	D7	[REP7-013]	[REP7-014]	[REP7-015]	[REP7-016]

7.4. MATTERS IN CONTENTION AND OF INTEREST

- 7.4.1. This section deals with those matters which remain in contention at the end of the Examination. It also deals with novel provisions and matters which where we consider are of particular relevance in the drafting of a final DCO should the SoS be minded to grant consent. Towards the end of this section is Table 11 which references all the recommended changes to the preferred DCO as discussed in this Report.
- 7.4.2. At the end of the Examination there was considerable distance between the Applicant and NH in relation to several provisions. NH's final position is set out in [[REP8-039](#)] with the Applicant's position at [[REP5-038](#)].
- 7.4.3. Although there are some matters which are discrete, there is a high degree of overlap as to NH's concerns with it seeking amendments to both the Articles and PPs which effectively covering a single issue. In our view, out of preference these matters should be covered in PPs and therefore, where appropriate, the matter will be dealt with in section 7.4.149ff of this Report.
- 7.4.4. For example, in [[REP8-039](#)] NH requests that Articles 6 and 9 should be amended so that the Applicant is unable to maintain those parts of the Proposed Development that fall within the SRN without the prior consent of NH. However, paragraph 19 of Part 2 of Schedule 13 (PPs in favour of NH) does just that. In our view, there is no need for duplication.
- 7.4.5. NH also wishes any provisions for no 'deemed consent' provisions to apply to the SRN. Deemed consent provisions only apply if, in this case, NH does not respond within the specified period. If NH were to refuse consent, then the works could not take place. It would appear from the evidence submitted that NH's concerns relate to its internal arrangements to allow it to respond. Given the national importance of an NSIP, we consider NH should make appropriate internal arrangements.

Articles

Article 2 – Interpretation

- 7.4.6. There is no definition of the word 'complete' (or its derivatives) in this Article. This was not challenged by any IP. We are content with this as its ordinary meaning includes 'available for use'. As with any development, even if completed, there is nothing that can require it to be used. We consider the drafting to be satisfactory.

Article 3 – Development consent granted by the Order

- 7.4.7. The original draft DCO [[APP-085](#)] included a requirement, No. 17, that the Proposed Development must not generate more than 49.9MW of electricity. This was made up of 42.4MW from the solar array on the buildings, and 5MW from the on-site energy centre and an unspecified quantum from the battery storage system(s). We are satisfied that as 'generating stations' all three would represent 'associated development', rather our query related to whether as 'associated development' a

generating limit was required either as a matter of law or policy. There would also be energy potentially produced by air or ground source heat pumps.

- 7.4.8. Following discussion at ISH1, the Applicant submitted a 'Post hearing submission ISH1 and CAH1 [Appendix B Energy Note]' [\[REP1-019\]](#). It then removed the requirement and instead added sub-paragraph (2) to Article 3. Sub-paragraph (2) prevents the construction of a generating station within the meaning of section 14(1)(a) of the PA2008.
- 7.4.9. As discussed in section 3.11 the photovoltaic array on the roofs of the buildings, battery storage systems and the Energy Centre would produce electricity. While these would not, on the Applicant's estimations (see response to ExQ1.0.6 [\[REP4-141\]](#)), reach the 50MW threshold set out in s15(2) of the PA2008, this is based on current technology and the estimate does not include generation from the battery storage system(s).
- 7.4.10. The estimation for the photovoltaic array also does not differentiate what is the generating capacity and whether it is based on 'The Combined-Panels Method' or 'The Combined-Inverters Method' (see *Galloway, R (on the Application of) v Durham County Council* [2024] EWHC 367 (Admin)). It is also not clear to us whether the PA2008 threshold is based on generating capacity or export to the National Grid capacity (see footnote 92 of NPS EN-3) or whether generation of greater than 50MW could be considered to be 'associated development'. BDC also considers that this site would be eminently suitable for the use of ground source heat pumps given the amount of earth movement required to create the plateaus for the construction of the buildings and railway terminal. If implemented this would increase the amount of energy produced on site.
- 7.4.11. As Table 1 of the Energy Strategy [\[APP-217\]](#) makes clear the site would use considerable amounts of energy, and if used for charging electric vehicles (see also Req 4(2)) would exceed the on-site energy production.
- 7.4.12. We consider sub-paragraph (2) neatly avoids these issues and allows the Proposed Development to maximise its energy production depending on how the above definitions are clarified in law or should there be a change in the definition of the threshold in law.

Article 4 – Parameters of authorised development

- 7.4.13. In response to ExQ1.5.4 [\[PD-011\]](#) LCC [\[REP4-181\]](#) indicated that it was not content with the drafting if any deviation of highway works did not meet LCC's adopted design standards. This would also apply to any permitted deviation of the railway works which would affect the highway.
- 7.4.14. The Applicant responded in [\[REP5-042\]](#) that under the relevant PPs (Part 3 of Schedule 13 of the preferred DCO [\[REP7-011\]](#)) the design, carrying out and maintenance of the highways needs to be approved by LCC and thus LCC's concerns would be assuaged.
- 7.4.15. LCC did not respond on this point at D6, and it is not referred to in the relevant SoCG [\[REP8-022\]](#). WCC made no response to ExQ1.5.4 and we

therefore conclude that both LCC and WCC are content, as are we, and no further drafting amendments are required.

Article 5 – Authorisation of use and Article 42 - Operation and use of railways

7.4.16. BDC in [\[REP3-096\]](#) and [\[REP5-054\]](#) indicates 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.

"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, [BDC suggests] 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."

7.4.17. The Applicant [\[REP6-018\]](#) disagrees, indicating that the general wording authorising Work Nos 1 and 7 is constrained by the remainder of the preferred DCO, including Article 42, which applies since Article 5 commences with the phrase *"Subject to the provisions of this Order"*. The Applicant cites precedent provisions in the East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (East Midlands DCO) and the Northampton Gateway Rail Freight Interchange Order 2019 (the Northampton Gateway DCO).

7.4.18. We consider, given the caveat and the precedent set in the cited DCOs, that the Applicant's drafting is acceptable and there is no need for a change in this regard.

7.4.19. However, given the drafting of Article 49(3) (see section 3.2.86) to ensure that the Proposed Development would only be a SRFI and could not change use through the operation of permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), we consider that the word "only" should be inserted after the phrase *"rail freight terminal and warehousing"*. This would continue to allow other specific permitted development rights, for example for statutory undertakers, but would ensure that the Proposed Development continued to meet the definition for an NSIP as set out in s14 of the PA2008 and meet the need for such developments.

Article 7 – Benefit of the Order, Article 8 – Transfer of benefit of certain provisions of the Order, Article 22 – Protective works to buildings and structures and Article 23 – Authority to survey and investigate the land

- 7.4.20. BDC in [REP3-096] considers that powers of entry onto private land, under Articles 22 and 23, should not be given to a person whose identity is not known. The Applicant in [REP4-120] responded citing the example of the rail freight terminal operator needing to exercise powers under Articles 22 and 23 in an emergency. It notes that compensation would be payable.
- 7.4.21. BDC then responded [REP5-054] that it is unknown if the authorised parties would have the financial capacity to pay this compensation if required and considers the Applicant has not provided ample justification. This was based on the ability for the rail freight terminal operator to notify the undertaker of this the need for works and for the agents of the undertaker to undertake the work themselves.
- 7.4.22. The Applicant [REP6-018] indicates that the effect of the provision being revised "*would be to frustrate parties expressly stated to benefit from the Order from realising those benefits*" and goes on to cite the Sizewell C (Nuclear Generating Station) Order 2022 (Sizewell DCO).
- 7.4.23. In the Sizewell DCO powers are given to specific named companies and this, in our view, is a different situation.
- 7.4.24. On balance, we consider that BDC's criticism is well placed. Therefore, to ensure compensation would be available Article 7(a) should be amended by additionally limiting the benefit of Articles 22 and 23 to the Applicant.
- 7.4.25. BDC goes on to query why Article 22 should apply outside the Order limits. The Applicant responds by indicating that it may be possible that a building or structure which is adjacent to the Order limits or near the works being undertaken could be "*affected by the authorised development*".
- 7.4.26. We concur with the Applicant that works within the Application Site may have unintended consequences outside it, and consequently this power should allow works beyond the Order limits.
- 7.4.27. NH's concerns in relation to Article 22 relate to the time period, except in an emergency, in which the Applicant must give notice. NH seeks 28 days rather than the 14 days set in the preferred DCO, with the counter notice being served within 21 days rather than 10 days as set in the preferred DCO. NH also seeks the ability to impose conditions as to any protective works.
- 7.4.28. This request for an extended period seems to relate only to NH's ability to respond. In our view, if the DCO were to be granted we consider that NH should make appropriate internal arrangements to respond within a short time frame. However, in the interests of highway safety for the SRN only, we consider that NH should be able to impose conditions as to

how the works are undertaken. Therefore, we recommend a change to this effect.

Article 9 – Street Works

- 7.4.29. This Article has been through several iterations during the Examination in response to representations received. With the exception of sub-paragraph 9(1)(e) and the comments of NH this is now agreed.
- 7.4.30. BDC requests that sub-paragraph 9(1)(e) is deleted on the basis that 'bridges and tunnels do not fall within the definition of 'street works' in the New Roads and Street Works Act 1991 (as amended) (see [[REP3-096](#)] for this legislation).
- 7.4.31. BDC states:
- "The Applicant's drafting goes well beyond this and seeks to provide a statutory right to undertake works outside the scope of 'street works' covered by the 1991 Act. This creates uncertainty as to whether article 9 is intended to confer an express authorisation to carry out works such as the construction of bridges and tunnels which may or may not be included with the scope of the authorised development described in Schedule 1 to the dDCO.*
- "The fact that equivalent drafting may have been included in previous DCOs is not a reason for perpetuating this misunderstanding.*
- "The deletion does not affect the scope of works authorised by the DCO or the powers conferred in relation to alterations to streets."*
- 7.4.32. The Applicant disagrees with this and notes [[REP4-120](#)] that the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 (Keadby 3 DCO) includes the ability to construct a bridge over a street and in [[REP6-018](#)] additionally refers to provisions in the Northampton Gateway DCO and the East Midlands DCO.
- 7.4.33. In the Keadby 3 DCO, the list of streets upon which works is permitted is limited to widening and improvement works to two accesses on the A18, while in this case the list is extensive representing some 20 streets including the M69 and A5. In both the Northampton Gateway DCO and East Midlands DCOs bridges and tunnels are included, the provision in the latter relates to highways as opposed to streets.
- 7.4.34. It seems to us, therefore, that this provision will be scheme specific. With the exception of the A47 Link Road bridge over the railway line, which is specifically covered in Work No. 2, it has not been demonstrated to us that there is a need to construct either a bridge or a tunnel over or under any of these streets within the Order limits. We therefore consider that sub-paragraph 9(1)(e) should be deleted.
- 7.4.35. We consider that NH's concerns are better dealt with through PPs.

Article 10 – Power to alter layout, etc., of streets, Article 12 – Temporary closure of streets, Article 14 – Accesses, Article 18 – Traffic Regulation, Article 21 – Discharge of water and Article 23 – Authority to survey and investigate the land

- 7.4.36. All of the above provisions have deeming provisions, whereby if the discharging authority does not respond within the relevant period, then the authority is deemed to have granted consent.
- 7.4.37. In the interests of transparency, and light other recently made transport DCOs, we consider that the application made under these provisions should explicitly set out that the deeming provisions apply and the period in question.

Article 15 – Maintenance of highway works

- 7.4.38. As the EM explains [[REP7-013](#)] this Article provides for the dedication and maintenance of the highway works. It refers to the process of certification of commencement of maintenance by the undertaker under the PPs in Parts 2 (for NH), 3 (for LCC) and 4 (for WCC) of Schedule 13 (Protective Provisions) and deals with the dedication of new highway, cross referring to the relevant PPs.
- 7.4.39. This, of itself is not controversial. However, under these provisions LCC would be required to maintain the bridge over the railway line on the A47 Link Road. This is set out in paragraph 5(2) of Part 3 of Schedule 13. LCC makes it clear in its D6 submission [[REP6-033](#)] that it has consistently advised that it *"will not adopt the structure over the live railway line. This is on the basis that LCC have no powers to take possession of a live railway for purposes of inspection, maintenance, and in an emergency situation. LCC have consistently advised that this structure should be adopted by Network Rail consistent with other structures on the line, including the next bridge that carries the public highway at Station Road, Elme Thorpe."*
- 7.4.40. In its response [[REP7-063](#)] the Applicant considers that the local highway authority would be expected to adopt a bridge carrying the adopted highway and cites three bridges over NR infrastructure where LCC owns the relevant bridge. The Applicant goes on to refer to the Northampton Gateway DCO and other situations where local highway authorities have adopted structures over NR's and other infrastructure.
- 7.4.41. We note in NR's Rail Report [[REP5-087](#)] at paragraph 7.8.1 that NR indicates that the current Burbage Common Lane bridge is owned by NR, and that in the Addendum to the SoCG between the Applicant and NR [[REP8-024](#)] NR states: *"If the Examining Authority determines that it is not appropriate for ownership of the A47 link bridge to sit with Leicestershire County Council upon completion, then Network Rail are prepared in principle to assume ownership of the structure to enable the project to proceed"*.
- 7.4.42. The Applicant then set out in [[REP8-028](#)] potential amendments to the relevant PPs to allow this.

- 7.4.43. In our view two principles should hold. Firstly, in the same way a planning obligation cannot unilaterally impose a requirement on a local planning authority to accept land, this should equally well apply to a local highway authority as regards responsibilities imposed under a DCO. Secondly, where possible, following development the ownership situation should remain as at current. This follows the general principle behind the Crichel Down Rules.
- 7.4.44. Sheet 1 of the Highway Plans [[REP7-006](#)] shows the proposed A47 Link Road Bridge would be located slightly to the south of the existing Burbage Common Road bridge. However, it is in a similar location. We do not have the full details of the examples cited by the Applicant and therefore are only able to give them little weight. In our view, following these principles the ownership of the structure should rest with NR. This is a similar situation as at M69 J2 where NH owns and maintains the overbridge structures, but LCC maintains the running course.
- 7.4.45. The drafting of the applicable PPs was only submitted at D8 meaning that LCC was unable to comment upon it. Consequently, if the SoS is minded to grant the DCO, in the interests of natural justice the SoS may wish to consult LCC on the drafting.
- 7.4.46. However, notwithstanding this, we have included the drafting provided by the Applicant in our rDCO (Annex C) as this would appear to resolve this matter satisfactorily.

Article 27 - Compulsory acquisition of rights and Schedule 11 - Land in which new rights may be created)

- 7.4.47. This provision would give the Applicant the ability to compulsorily acquire rights over land by creating them. This relates to two plots, Plots 64 and 74. This should be set out in Schedule 11. However, Schedule 11 only refers to Plot 74.
- 7.4.48. The SoR [[REP4-033](#)] sets out the purpose for which the land/ right may be acquired as "*The provision of hard and soft landscaping works including, earthworks to create screening bunds; soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements, noise attenuation including acoustic fencing or landscape screening along the lengths indicated on the parameters plan (Work No. 6)*"
- 7.4.49. It is clear from Sheet 2 of the Land Plans [[REP7-009](#)] that Plot 64 is shaded blue and thus CAR has been sought. We therefore consider that the affected persons would not be prejudiced by amending Schedule 11 to include Plot 64.

Article 34 - Temporary use of land for carrying out the authorised development and Article 35 - Temporary use of land for maintaining the authorised development

- 7.4.50. BDC [[REP3-096](#)] considers that Articles 34(3) and 35(9) should be deleted. Both powers would allow the undertaker not to serve the normal

14 days notice on the owners and occupiers where it has identified a potential risk to safety of the Proposed Development, the public or the surrounding environment. BDC indicates that it considers that there is a lack of clarity as to what represent such a potential risk and thus gives the undertaker "*complete discretion*".

- 7.4.51. The Applicant responds in [[REP6-018](#)] indicating it considers this to be a standard provision, and that, in any event, it is not possible to define what a risk to safety would be, leading to potentially dangerous situations. In the EM [[REP7-013](#)] the Applicant cites a number of made DCOs as precedent for this provision, in particular the Boston Alternative Energy Facility Order 2023 (Boston DCO).
- 7.4.52. This provision is not included in some of the other DCOs cited by the Applicant but is included in the Boston DCO. It would appear that here this provision was not contested since there is no reference to it being specifically considered in either the ExA's Report or the SoS's decision letter.
- 7.4.53. In our view, these lack of 14 day notice provisions could only be utilised in the situation where there was a risk to safety. Such a situation is likely to be urgent and consequently we are content for the drafting to remain.

Article 39 – No double recovery

- 7.4.54. The preferred DCO includes a provision to prevent double recovery of compensation, in other words compensation under two different provisions of the Order. We recommended in our Proposed Changes [[PD-014](#)] that this be deleted as it was unnecessary.
- 7.4.55. In its response to our Proposed Changes [[REP6-004](#)] the Applicant disagrees. It states it is "*important that the DCO is clear that any compensation payable under it is not to be paid more than once. If the provision is not included, the Applicant considers that there would be potential for disputes and litigation in future.*". The Applicant then goes on to cite four made DCOs as precedent for where this provision has been made.
- 7.4.56. In the A428 Black Cat to Caxton Gibbet DCO the SoST deleted an equivalent provision as the provisions are covered in the Compensation Code, and thus took the view that it does not need to be repeated. It was also omitted from the A47 Wansford to Sutton Dualling DCO in line with the recommendation of the ExA. It therefore appears there is some inconsistency between made Orders.
- 7.4.57. It seems to us that the Compensation Code would deal with this issue and consequently we are recommending this provision be deleted.

Article 40 – Guarantees in respect of payment of compensation

- 7.4.58. NH [[REP8-039](#)] considers that approval under this provision should be extended to include the relevant highway authorities. In our view this is

not necessary as the relevant planning authority can consult where it considers it appropriate.

- 7.4.59. BDC [[REP3-096](#)] considers that this provision should be extended to also encompass works undertaken under Articles 12 (temporary closure of streets), Article 22 (protective works to buildings) and Article 23 (authority to survey and investigate the land) on the basis that they all impose an obligation to pay compensation. The Applicant [[REP4-120](#)] does not accept this, on the basis that compensation could not be quantified until the powers are exercised. It states this provision is to secure compensation where such compensation is capable of being quantified.
- 7.4.60. Given that Article 22 is only likely to be utilised in an unexpected situation, we consider reasonable for this to be excluded from the obligations in Article 40. However, needing to temporarily close streets (Article 12) and survey land outside the Order limits (Article 23) are both reasonably foreseeable and thus should be included.
- 7.4.61. In paragraph 6.5 of the Funding Statement [[REP8-003](#)] the Applicant indicates that an additional sub-paragraph to that set out in the preferred DCO has been agreed with the local authorities. This is that approvals under Article 40(1) must not be unreasonably withheld or delayed.
- 7.4.62. This matter is not referred to in any of the SoCGs with BDC, HBBC, LCC or WCC. We take the view that responsibility lies with the Applicant to submit its preferred DCO in the form that it considers it should be granted.
- 7.4.63. In any event, in our view as public bodies local authorities are required to act reasonably. We therefore conclude that there is no need for this provision within any DCO.

Article 43 – Operational land for the purposes of the 1990 Act

- 7.4.64. In our Annex F(i) to the Rule 6 letter [[PD-005](#)], while understanding why the road and rail elements of the Proposed Development should be 'operational', we queried why the whole of the Order lands should have this designation.
- 7.4.65. In its response [[REP1-025](#)] the Applicant indicated that it considered this provision to be "*prudent*" as all the land within the Order limits would be within the Rochdale envelope and the limits of deviation. It would also allow statutory undertakers to carry out any necessary works within their statutory responsibility. An example being that the spatial extent of the rail related land would not simply relate to the area of the tracks. It did indicate that it would, however, consider whether all the Order Limits should be 'operational land' or just limited to certain land.
- 7.4.66. In [[REP3-096](#)] and [[REP5-054](#)] BDC considered that the drafting was too wide and should only apply to 'operational land' within the definition of s263 of the TCPA. The Applicant in response [[REP4-120](#)] and [[REP6-018](#)] reiterated the point made in the previous paragraph.

- 7.4.67. To qualify as operational land under S236 of the TCPA, land must be used for the purpose of carrying on of a statutory undertaking and in which an interest is held for that purpose. Sub-section (2) goes on to exclude *"land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings"*.
- 7.4.68. Article 7(4) (benefit of the Order) provides works for which consent is granted by this Order *"for the express benefit of owners and occupiers of land, statutory undertakers, operators of the electronic communications code network and other persons affected by the authorised development"*.
- 7.4.69. It seems to us that making the whole of the Order limits as 'operational land' would effectively make for the land it controls the Applicant a statutory undertaker. This cannot be correct as it does not exist as a creature of statute, and it would not be undertaking a statutory function.
- 7.4.70. We have looked at recent SRFI DCOs for equivalent provisions. In the West Midlands Rail Freight Interchange Order 2020 (West Midlands Interchange DCO) and the Northampton Gateway DCO (the most recently made) this provision is restricted solely to those parts of the site upon which highway works are to be carried out.
- 7.4.71. We conclude that this provision should be reduced in extent so that it would only apply to those parts of the site where highway or rail works are to be carried out. This is because the extent of the Order limits includes existing highway and railway operational land. We have not been directed to any other statutory undertakers' operational land within the Order limits that is not to be altered as part of the Proposed Development. Any other statutory undertakers utilising the land following the Proposed Development would benefit from Article 7(4) as with any other land they might occupy.
- 7.4.72. We therefore consider that Article 43 should be amended by limiting the operational land to that part of the Order limits upon which the highway or railway works are to be carried out.

Article 50 - Certification of plans and documents

- 7.4.73. Article 49(3) states that any planning permission granted pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of the DCO shall be disregarded for the purposes of planning enforcement under the PA2008. It goes on that such development or planning permission shall not at any time be construed as preventing the further construction, maintenance or use of the authorised development.
- 7.4.74. This provision effectively means that, in the future, changes to the Proposed Development could be made either through amendments to the DCO or through a planning permission under the TCPA.

- 7.4.75. The Applicant explains in the EM [[REP7-013](#)] that this wording is deemed prudent and necessary following the decision of the Supreme Court in *Hillside Parks Ltd (Appellant) v Snowdonia National Park Authority* [2022] UKSC 30.
- 7.4.76. As later changes to any approved development could be amended through the TCPA, it seemed to us appropriate that it should be possible for the public to readily find the planning history of the Proposed Development. This is normally done by investigating the local planning register held by the local planning register authority (see Article 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015). Therefore, it should be able to identify this DCO along with any other planning permission which relates to the Application Site.
- 7.4.77. In our Proposed Changes to the DCO [[PD-014](#)] we posited that a copy of any made Order, along with approvals thereunder, should be included within the planning register. The Applicant included within sub-paragraph 50(4) provisions to this effect. We consider that this appropriate.

Schedule 1 – Authorised Development

- 7.4.78. As originally submitted this Schedule was in two parts. Part 1 dealing with what was described as the NSIP and Part 2 with Associated Development. However, under that drafting parts of the NSIP were ancillary to parts of the Associated Development. We pointed out in our Rule 6 letter [[PD-005](#)] that this was philosophically inconsistent. The drafting was revised so that it is only in a single part. We consider this to be appropriate.

Schedule 2 – Requirements

Introduction

- 7.4.79. This section will only go through each requirement where it was seen as controversial or where there were substantive issues raised which had not been resolved by the end of the Examination. Except where stated we consider that each requirement as drafted meets the tests for requirements and would be justified.
- 7.4.80. Approvals are generally undertaken by the local planning authority in whose area the works are to take place which we consider to be appropriate. The mechanism for this is set out in Part 2 of Schedule 2 and is discussed below. There are a few exceptions to this, principally where matters relate directly to highway matters where the relevant highway authority (NH, LCC and WCC) can permit variations, or where matters need to be considered on a 'whole development' basis, an example being BNG.
- 7.4.81. As originally drafted, the need to implement details approved under a requirement was included at a single requirement. Following our comments in Annex F(i) of the Rule 6 letter [[PD-005](#)] this was amended so that there was an implementation obligation within each requirement.

Additional Requirement – land assembly

- 7.4.82. As discussed in section 6.2.12, the Applicant's approach for the acquisition of the main body of the site has been to enter into legal agreements with the various freeholders of the main body of the Application Site. It is thus only seeking CA with Rights of this land omitting the existing rights of various named individuals. In order to ensure that the land is comprehensively developed, and all parts of the development are realised, we proposed [PD-014] that a requirement be imposed to ensure that all the land was secured.
- 7.4.83. The Applicant [REP6-004] takes the view that such a requirement would not meet the relevant tests considering it not to be necessary, relevant to planning nor a reasonable requirement.
- 7.4.84. The Applicant considers the planning purpose would be secured through the operation of the provisions in the dDCO which relate to the provision of mitigation, the submission of phasing plans and detailed design and associated restrictions on the use and occupation of the development. Land ownership of itself does not secure any of those things and therefore is both unnecessary and unrelated to planning. *"If the ExA's concern was commonly addressed through the imposition of a condition as proposed by the ExA, then such conditions would be commonplace wherever planning permission is obtained for major development sites where the developer is reliant upon options or conditional contracts to subsequently acquire the land interest. The fact that they are not is indicative that such conditions do not meet the relevant test."*
- 7.4.85. The Applicant takes the view that it is not necessary for it to have freehold ownership of the entire extent identified. The development *"may be delivered in phases and not all the plots may be need to be within the Applicant's freehold ownership before commencement"*.
- 7.4.86. The proposed requirement, for those areas where the Applicant does not have an option agreement, would *"force the Applicant to exercise compulsory acquisition powers when it might not otherwise be necessary – the Applicant may still consider acquisition through voluntary agreements but that might not be possible due to the timing restriction suggested by the ExA"* and for those plots where an option agreement is in place *"force the Applicant to exercise the option before it is needed, simply to demonstrate ownership"*.
- 7.4.87. The Applicant makes the point that no other consented SRFI DCO has imposed such an *"onerous provision"*. It cites four other, made DCOs prepared on a similar basis which do not have such a requirement and considers that it would fail to meet paragraph 25 of the DCLG guidance which indicates that *"authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail"*.
- 7.4.88. The Applicant notes that it has control over:
- plot 13, albeit in a different company name;

- the freehold of plots 22, 24, 25, 26, 27, 31, 32, 33, 34, 37, 39, 71, 72 and 73 with the exception of rights held by LCC where relevant;
- the freehold of plot 22a with the exception of rights held by NR and LCC;
- the freehold of plot 28.

7.4.89. While we acknowledge the Applicant's points, we consider that each case turns on its individual merits depending on the land interests and physical layout. In this case we consider that a requirement should be imposed to ensure that the site is developed comprehensively.

7.4.90. Firstly, we are concerned to ensure that the Proposed Development would meet the criteria for a SRFI as set out in the PA2008. This would only be the case if the site was developed as a whole.

7.4.91. Secondly, as noted in section 6.6.14 there is an issue relating to the ownership of Plot 72 and whether the Human Rights of the occupiers of the caravan there in the event that Plot 71 were to be acquired but not Plot 72. This would also apply to any other occupiers who had not left their homes with development taking place on adjoining land. This requirement would resolve this matter.

7.4.92. We thus consider the requirement to be necessary, related to both planning and the development being permitted, it is clearly precise and enforceable and, in our view, reasonable in all other respects.

7.4.93. We have considered using phased triggers. However, given that any DCO needs to be precise, and the phasing arrangements would be concluded post-consent (Req 3) we do not have sufficient information on certainty to avoid the harms we have identified.

Requirement 3 – Phasing

7.4.94. This requirement sets out the need to ensure that the whole scheme is delivered through a comprehensive phasing strategy. This was not contentious although HBBC did request [[REP3-122](#)] a slight redraft relating to how this was laid out. Phasing plans were set out as part of the Application [[REP4-019](#)] to [[REP4-024](#)]. In addition, in response to discussions at ISH2 a Gantt chart was also submitted [[REP3-048](#)].

7.4.95. However, there are a few situations where the mitigation for effects falls outside the phase where the effects are generated, for example the acoustic barrier to the east of the Aston Firs Travellers site from noise generated during construction of the proposed road into the site from M69 J2. We therefore asked the Applicant to ensure this was resolved (ExQ2.5.5.).

7.4.96. The Applicant responded, [[REP5-036](#)], that it understood these concerns. However, it pointed out that the acoustic barriers were only required to mitigate operational effects. Notwithstanding that, the Applicant amended the requirement to require that any acoustic barriers must be included within the phase generating the noise source for which they are designed to mitigate. Req 27 then requires said acoustic barriers to be

completed prior to the first occupation of that phase and thereafter maintained.

- 7.4.97. As pointed out in section 3.5.123 the unmitigated effect of construction noise is likely to be a temporary, major adverse, at worst for NSRs, based on construction taking place close to NSRs. Bridge Farm (NSR 1), Langton Farm (NSR 9), Aston House Farm (NSR 14), (the Travellers and caravan sites to the west of M69 J2 (NSRs 15 and 17), the areas of publicly accessible open space to the south and south west of the Application Site (NSRs 18, 19, 20), to the south of the B4668 between the A47 Link Road and the A47 (NSR 21) and dwellings in the Billington Road East area (NSRs 24 and 26) would experience predicted noise levels above 65dB level during the worst-case scenario (for locations see [[APP-270](#)]).
- 7.4.98. For NSRs 1, 9, 10 (Langton Farm), 15 to 19 and 24, which are located either within or adjacent to the Main part of the Application Site, there is the potential for a temporary, moderate adverse effect to be experienced should proposed works be undertaken at distances closer than 25m.
- 7.4.99. Req 7 provides for submission of detailed construction environmental management plans for each phase. Within each phase, this must include details of methods to control noise and vibration. We are therefore satisfied that where a construction noise source falls outside the phase effected that this requirement would allow appropriate mitigation to be delivered.

Requirement 4 – Detailed Design Approval

- 7.4.100. This requirement sets out how the detailed design would be approved for each phase, prevents commencement of construction until these matters have been so approved and requires development to take place in accordance with the relevant approved details.
- 7.4.101. This requirement (4)(3)) also ensures that at least 20% of the total number of car parking spaces would be provided with electrical vehicle charging to a minimum rating of 7.4 kilowatt hours and what is described as "*passive provision*" (as defined in Req 1) for the rest. We consider this to be reasonable.

Requirement 5 – Design and phasing of highway works

- 7.4.102. NH requests that this Req 5(3) is amended so that rather than applying to any individual work in Schedule 1 it applies to Work 16 only at the Cross in Hands roundabout. Given that permitting any other work to be amended could result in works that have not been assessed being constructed, we consider that this should be limited to Work 16 alone.

Requirement 8 – Travel plan

- 7.4.103. This requirement would ensure that the Framework Travel Plan [[REP4-055](#)] would be delivered through individual occupier specific travel plans. The Applicant sought that monitoring of each individual occupier specific travel plan would only be for a period of five years. However, in

our Proposed Changes [[PD-015](#)] we indicated that this should be for the whole of the occupation on the basis that changes in personnel within an occupier should help to deliver changes to more sustainable travel.

- 7.4.104. The Applicant agreed to this and amended this requirement in the preferred DCO so that each occupier must comply with their occupier specific travel plan within three months of their first occupation and thereafter for the whole of the occupation, ensuring that the effects are monitored. We consider this to be appropriate.

Requirement 9 – Sustainable transport strategy

- 7.4.105. As set out in section 3.3.425 we consider that the STS does not provide a challenging approach to an operator to encourage the uses of sustainable modes of travel. We consider the initial targets are insufficiently ambitious, being based on the site location rather than where employees would be likely to live, and employees should be given 6 month free bus passes for the DRT as well as public bus provision.
- 7.4.106. If the SoS was minded to take this forward our recommendation would be that the STS should no longer be a certified document under Schedule 15 and Req 9 redrafted so that the STS effectively becomes an outline STS which would then need to be formally re-submitted and approved by the relevant local planning authority. Table 11 includes drafting to resolve two of the issues where we consider there are deficiencies in the drafting.
- 7.4.107. The Design Code, which is also a certified document under Schedule 15 would also need to be amended to remove any reference to decked parking. To deliver this Req 5 would also be required to be amended.
- 7.4.108. We would emphasize that this would not change our overall recommendation.

Requirement 10 – Rail

- 7.4.109. As discussed in section 3.2.84 this requirement prevents more than 105,000m² of floorspace (warehousing and ancillary offices) being provided unless the rail freight terminal has been completed.
- 7.4.110. BDC and HBBC object to this considering that no floorspace should be occupied until the rail infrastructure is provided and available for use and thereafter retained (see paragraph 3.5 of BDC's Written Representations [[REP1-050](#)], and the SoCG between the Applicant and HBBC [[REP8-021](#)]). As set out in section 3.2.85 we have concluded that this is not necessary. However, the Applicant has included within the requirement sub-paragraph (3) a requirement that the rail terminal must be retained, managed and kept available for use throughout the occupation of the warehousing floorspace. We consider that this is appropriate and would ensure that the Proposed Development would continue to comply with the definition as being a SRFI.

- 7.4.111. Within the drafting there is an inconsistency within this requirement as to terminology. In sub-paragraph (1) it is referred to as a 'rail freight terminal', but in sub-paragraph (3) it is referred to as a 'rail terminal'. Neither term is defined within the preferred DCO although it can be inferred to be Work 2 from the drafting in Schedule 1.
- 7.4.112. The term 'rail freight terminal' is also used in Reqs 4 and 6 (and also in our recommended change in respect of Req 18) so we consider that this should be used consistently, and because it is used in more than one requirement should be defined in Req 1.
- 7.4.113. Therefore, we consider that in sub-paragraph (3) 'rail terminal' should be replaced with 'rail freight terminal' both times it occurs and in Req 1, in the relevant alphabetic place the term defined.
- 7.4.114. BDC also requests [[REP5-054](#)] that the undertaker must appoint a rail-freight co-ordinator to report on a quarterly basis detail of the rail freight operations at the site.
- 7.4.115. In our view such a requirement is not necessary and is not relevant to planning as it relates to the operational matters rather than any planning effects. No change to the preferred DCO is therefore required.

Requirement 11 - Container Stack Height

- 7.4.116. During the Examination there was discussion between the Applicant and HBBC and BDC as to height of containers stacked in the open.
- 7.4.117. As a result of the discussions, the Applicant amended the initial drafting of the requirement so that the maximum height of the stacks in the container storage area, as approved as part of the detailed design under requirement 4(2), could increase over the first three years of the area coming into use. Similarly, the height of any stack in the returns area would be limited for the first five years.
- 7.4.118. However, both of these are defined from 'finished floor level' (FFL). These areas would be outside. The definition of "floor" in the Concise Oxford English Dictionary is "*the lower surface of a room ...*". A "room" is defined as "*a part of a building enclosed by walls, floor, ceiling*". Therefore, a floor must be in an enclosed room. Neither of the two areas would be. We put this to the Applicant in ExQ2.5.2 [[PD-013](#)] who responded [[REP5-036](#)] "*it is correct that the container stacks will be located outside, but the 'Equivalent building height relative to FFL' is still pertinent. This relates to the concrete slab that the containers will sit on, in the same way that the FFL for the buildings relate to the internal warehouse concrete floor slab.*" The preferred DCO continues to refer to 'finished floor level'.
- 7.4.119. In our view, this does not satisfactorily resolve this matter. We therefore conclude that 'finished floor level' should be replaced with 'finished level' each time it occurs, and this term appropriately defined within the requirement.

Requirement 16 – Construction hours

- 7.4.120. Req 16 would limit construction hours. Originally, the Applicant sought to limit them to 07:00 hours to 19:00 hours Mondays to Fridays and 07:00 to 15:00 hours on Saturdays (excluding bank and public holidays when no works would be permitted).
- 7.4.121. Following representations from BDC [[RR-0134](#)], the Applicant amended these so that these Saturday construction hours would only apply where earthworks were involved. Elsewhere on Saturdays, working would be limited to 07:00 to 13:00 hours.
- 7.4.122. Notwithstanding this, the requirement allows a number of exceptions. The EM explains these are *"to allow certain element of the projects to be constructed outside of those hours where continuous working is required, or working outside of those hours would mitigate effects (e.g. on the operational rail or highway networks), or where there are no likely significant environmental effects associated with particular works"*. These have been assessed, where appropriate, in the ES.
- 7.4.123. We consider these restrictions to be reasonable to allow the Proposed Development to be completed.

Requirement 18 – HGV route management plan and strategy

- 7.4.124. We set out in section 3.3.435 to 3.3.438 why we consider the HGVRP would not be fit for purpose. In a similar way to the STS (see section 7.4.105) if the SoS was minded to wish to take this forward our recommendation would be that the HGVRP should no longer be a certified document under Schedule 15 and Req 18 redrafted so that it effectively becomes an outline HGVRP which would then need to be formally re-submitted and approved by the relevant local planning authority. The change in Table 11 includes drafting to seek to resolve those areas where we found deficiencies.
- 7.4.125. BDC expressed concern as to the enforcement of breaches of the HGVRP and to what extent a breach would represent an offence under s161 of the PA2008. This is a matter of law, but we are satisfied that with appropriate drafting of and in the HGVRP it would be clear as to what would represent an offence.

Requirement 19 – Landscape and Ecological Management Plan and Requirement 29 – Biodiversity Net Gain

- 7.4.126. HBBC in its SoCG [[REP7-073](#)] considers that Req 19 should be extended to ensure that habitat types lost through the Proposed Development should be re-created in the replacement phase.
- 7.4.127. We consider that on a site of this scale that this is not practical as some phases would have little or no landscaping, for example the rail freight terminal. However, the overall Proposed Development would be subject to the BNG requirement, which is the future direction of legislation.

- 7.4.128. BDC in [\[REP5-054\]](#) expresses concern *"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"*. HBBC in [\[REP5-064\]](#) makes a similar point and suggests revised drafting to clarify this. HBBC in [\[REP5-064\]](#) makes a similar point and suggests revised drafting to clarify this.
- 7.4.129. The Applicant in response to BDC [\[REP6-018\]](#) *"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"*. The response to HBBC [\[REP6-019\]](#) is similar.
- 7.4.130. We agree with the Applicant on this point and note that the BNG approvals would be resolved post-consent.
- 7.4.131. In the SoCG between BDC and the Applicant [\[REP8-020\]](#) indicates BDC wishes the phrase *"and associated remedial matters"* to be added to the Req 19 as part of the preferred DCO. Given the submission would be prior to works commencing is it not possible to say what, if any, landscaping might fail. We therefore consider that such a provision would be unreasonable.

Requirement 28 – Combined heat and power

- 7.4.132. The SoCG between BDC and the Applicant [\[REP8-020\]](#) indicates BDC wishes that the wording of this requirement to be made explicit that the undertaker is required to maintain the report setting out usage of the CHP facility for the lifetime of the Proposed Development. This was agreed post the submission of the preferred DCO. We agree this is appropriate and the requirement needs to be amended as set out.

Part 2 – Procedure for Approvals etc under Requirements

- 7.4.133. This Part sets out the procedure and fees for dealing with approvals and, if necessary, appeals, under Requirements.
- 7.4.134. In the EM the Applicant indicates that this is based on Appendix 1 to the Planning Inspectorate's Advice Note 15. During the Examination, following discussions with various IPs, the period for determining such applications set out in Req 2(2) was increased from 42 days to 56. This is in line with the equivalent provisions for similar approvals under the TCPA.
- 7.4.135. Paragraph 4 deals with appeals. There are two matters that need further discussion.
- 7.4.136. As originally drafted [\[APP-085\]](#), sub-paragraph 4(3) required the appointed person to make a decision within 20 days of the relevant deadline. In our proposed changes to the draft DCO [\[PD-014\]](#) we considered that this should be deleted on the basis that this may result in

a loss of natural justice, for example if an external event occurred during this period which would have required the decision maker to revert to the parties, or there was some other material change in circumstances. We accept that this is not included in the Planning Inspectorate's 'Advice Note Fifteen: Drafting Development Consent Orders'.

- 7.4.137. In response [[REP6-004](#)], the Applicant "*considers it necessary for the inclusion of a timeframe for appeal decisions in order that the delivery of the nationally significant infrastructure project is not delayed. It is not considered unreasonable to impose this obligation. The Applicant notes that other recently made DCOs do impose a timeframe for appeal decisions*". It did, however, extend the period to 30 working days.
- 7.4.138. While appreciating the point made by the Applicant and noting that this provision has been included in other made DCOs, for the reasons set out above it is considered that this provision is inappropriate and should be deleted.
- 7.4.139. Paragraph 5 deals with fees to be paid to the discharging authority. The original drafting had the fee been determined as if under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (the Fee Regulations), rather than a fixed fee as set out in Advice Note Fifteen. It was pointed out (point 33 of Annex F(i) to the Rule 6 letter [[PD-005](#)]) there are no provisions to deal with approvals under DCOs in the Fee Regulations. Discussions between the Applicant and BDC and HBBC agreed that the fee should be "*as though the application were a reserved matters application*".
- 7.4.140. Given the scale of the details to be approved by the local planning authorities in terms of complexity, it is considered that in general terms the detailed design approval under Req 4 should be as if the approval of reserved matters. However, the remaining details pursuant to the remaining requirements are akin to conditions under the TCPA, and calculating a fee for some within the terms of the Fee Regulations as applications for approval of reserved matters would be problematic.
- 7.4.141. BDC also makes the point [[REP5-058](#)] that a post-consent Planning Performance Agreement "*will be necessary to ensure sufficient planning resource is provided before sufficient fees are received*". In response [[REP7-061](#)] the Applicant in response has a positive "*no comment*" considering it inappropriate "*to discuss post consent planning performance agreements at this stage*".
- 7.4.142. Due to the potential problematic nature of sub-paragraph 5(1) we are recommending that this paragraph is amended, so that the last phrase reads "*as though any application pursuant to requirement 4 were an application for approval of reserved matters and any other matter were an application for written confirmation of a condition or conditions attached to a grant of planning permission, is to be paid to that authority.*"

- 7.4.143. Under sub-paragraph 5(2) any fee payable is refundable within 42 days unless the application is rejected as invalidly made or the discharging authority fails to determine the application "*within the decision period as determined under paragraph (1)*".
- 7.4.144. WCC in its response to ExQ2.5.6 [REP5-083] indicates it considers the 42 day period to be too short, particularly where the local planning authority is reliant on responses from consultees who themselves would have 21 days to respond. The Applicant [REP6-021] replied noting that the drafting follows the West Midlands Interchange DCO, it is necessary for this timeframe and is consistent with the Planning Inspectorate's Advice Note Fifteen. WCC then responded [REP7-086] indicating that the Proposed Development is complex involving three highway authorities and two local planning authorities. It continues: "*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 LPAs do not receive consultations back in good time*".
- 7.4.145. Firstly, it would appear to us that WCC has misunderstood what the 'decision period' for requirements actually is (and the Applicant has misinterpreted this misunderstanding). The 'decision period' in the preferred DCO is defined in paragraph 2 of Part 2 of Schedule 2. In essence it is 56 days from when the necessary details are submitted, or longer period as may be agreed in writing between the parties. The 42 day period is thereafter for the discharging authority to refund the fee if it fails to meet this deadline. The misunderstanding has flowed from the approval period in the PPs set out in Part 4 of Schedule 13. This is discussed below.
- 7.4.146. Secondly, in the West Midlands Interchange DCO and Advice Note Fifteen the determination period is 42 days, but in the Northampton Gateway DCO it is 56 days. There is therefore some inconsistency on this.
- 7.4.147. Thirdly, we fully accept the need for certainty and that priority should be given to approvals of details under NSIPs, but this should be balanced with the need to ensure safety, environmental protection and good design.
- 7.4.148. In our view, the drafting of sub-paragraph 5(2) is ambiguous so should be amended so that it is clear that the decision period refers to that set out in paragraph 2(2) of Schedule 2. We also consider that, on balance, given the complexity of the approvals that the 56 days set out in paragraph 2(2) is appropriate. We will discuss what the determination period should be for the PPs below.

Schedule 13 - Protective Provisions

- 7.4.149. The PPs are set out in Schedule 13. They are given force by Article 47 of the preferred DCO. The PPs deal with the following statutory undertakers:

- Part 1 — Railway Interests
- Part 2 — National Highways Limited
- Part 3 — Leicestershire County Council as Highway Authority
- Part 4 — Warwickshire County Council as Highway Authority
- Part 5 — Cadent Gas Limited as Gas Undertaker
- Part 6 — Severn Trent Water Limited
- Part 7 — Electricity Undertakers
- Part 8 — Electronic Communications Code Networks
- Part 9 — National Grid Electricity Distribution (East Midlands) Plc
- Part 10 — National Grid Electricity Transmission Plc as Electricity Undertaker

7.4.150. At ExQ2.5.8 [PD-013] we asked those who would benefit from PPs to set out their current positions. The Applicant set its position in [REP5-038]. Matters have progressed since then, but this provides an overall setting out of the Applicant's position.

Part 1 — Railway Interests

7.4.151. This is agreed between the Applicant and NR (see point 38 in the SoCG between the parties [REP5-053]).

Part 2 — National Highways Limited

7.4.152. NH sets out its final position on PP in [REP8-039] with its preferred PP being set out in full in [REP8-040]. The Applicant's position is most comprehensively set out in [REP5-038].

7.4.153. NH's predominant concerns relates to safety. It indicates there are various provisions which would give the Applicant power to enter, carry out works or otherwise interfere with the SRN. There being different levels of 'protection' under various articles rating from consent, albeit qualified, to only notification.

7.4.154. NH requests that any interference with the SRN should be subject to the explicit consent of NH. Without this NH considers safety issues could occur. While appreciating that the Applicant would not want undue delay, NH's position is that this should not override safety concerns, and the normal approval processes put in place for these reasons.

7.4.155. NH also considers that the 42 day response period to be too short and could leave to refusals due to lack of time. This is partially due to NH's contracts with outsourced consultants, some of which require turnarounds in excess of 42 days.

7.4.156. The Applicant pointed out that NH's latest position resulted from a change from a previously agreed position and from those found in other made DCOs. Notwithstanding this, the Applicant's view shows *"a clear lack of engagement in the DCO drafting by NH as it is simply taking the position that 'template' provision must be included without fully considering the effect and drafting within the DCO"*. The Applicant notes that CA does not relate to the SRN.

- 7.4.157. In our view, because of the need to co-ordinate matters on the SRN in the overall national interest and specifically to ensure highway safety, we consider that NH should be able to limit and restrict the Applicant's ability to work on the SRN. The DCO would give the ability to undertake the work. NH has statutory responsibilities to support economic growth (Paragraphs 4.2h, 4.3 and 5.25a National Highways: Licence April 2015) that is to support developments and as a public body it must act reasonably. We therefore consider that NH's approval would not be an unreasonable restriction on any delivery.
- 7.4.158. We consider that the most effective way to do this would be to amend paragraph 7 of the relevant PP (Part 2 of Schedule 13) to set out those provision where NH must give consent prior to works commencing.
- 7.4.159. For the same reason we consider that paragraph 4 also needs to be amended so that works on the SRN should be at the 'absolute' discretion of NH rather than it be at its 'reasonable' discretion. (There is also a typographic error in this paragraph and a consequent change in what is currently sub-paragraph 7(2).)
- 7.4.160. However, we do not consider extending the 42 day period set out in sub-paragraph 7(4) to 2 months is necessary and NH should be able to ensure it has appropriate resources (amending outsourced arrangements if required) to meet this deadline given the importance of the project as an NSIP.
- 7.4.161. In sub-paragraph 9(4) relating to payments to NH to undertake its assessment, NH is seeking the removal of the phrase "*if the excess is considered by the undertaker to be reasonable and proper*" in the event that NH's original cost estimate, in NH's view, would be insufficient. The Applicant indicates that it is only seeking to ensure that any excess costs are reasonable and proper. NH is also seeking the removal of a similar phrase occurs in paragraph 9(6).
- 7.4.162. In our view, these phrases are unnecessary as sub-paragraph 9(1) includes a requirement that the undertaker would pay *the "costs and expenses which National Highways reasonably and properly incurs"*. If there is a dispute of this, then this can be resolved through the 'Expert determination' provisions in paragraph 21 of this Part. To make this clear, the phrase would be replaced with a reference to paragraph 21.
- 7.4.163. Finally, NH seeks a new provision as paragraph 20(3) which would prevent the Applicant from acquiring any part of the SRN, or land owned by NH, or extinguish any existing rights or interfere with apparatus of NH in respect of any third party property, except with the consent of NH.
- 7.4.164. In our view, for the reasons already stated relating to public safety, we would concur with this in relation to the SRN, but not or any other land owned by NH, as this would not be part of its statutory function (an equivalence to s236(2) of the TCPA (see section 7.4.67 of this Report)). We are therefore recommending a change to the preferred DCO to this effect.

7.4.165. In section 6.4.36 to 6.4.52 we have considered the objections to CA and CAR from NH and concluded that CA and CAR should be granted, but that NH should have the ability to continue to drain the SRN and access it from the west for excavation and maintenance of boundary fences, hedges and walls. We are therefore recommending that a new subparagraph to paragraph 20 so that plots 39, 65, 66, 67, 68, 69 and 71 can only be acquired with NH's consent and that plot 54 be added to those where the Applicant cannot acquire NH's interests.

Part 3 –Leicestershire County Council as Highway Authority

- 7.4.166. LCC's comments on the proposed PPs are set out in [\[REP6-033\]](#). The Applicant's response to this was set out in [\[REP7-063\]](#) and did not address these points.
- 7.4.167. As noted in section 7.4.44 we are recommending changes so that the bridge across the railway line would be owned and maintained by NR, but the carriageway by LCC.
- 7.4.168. As a general comment LCC indicates that all highway works need to be completed before any occupations and that references to 'phase' or 'phasing' cause ambiguity in relation to Req 5.
- 7.4.169. However, in paragraph 2 of this Part it is clear that 'phase' means each of the separate highway works (Works Nos 7 to 17). On that basis we are content with the drafting as submitted.
- 7.4.170. LCC would like 'works fees' to be defined as a set amount of 10% of all the works. In the preferred DCO the Applicant has made this more precise defining specific matters. While we appreciate the simplicity of a fixed per centage, and note that LCC uses this in its agreements under s278 of the Highways Act 1980, we consider that fees should be on a cost recovery basis. We therefore consider the drafting as submitted to be appropriate.
- 7.4.171. In paragraph 3(2) LCC seeks to have explicitly within the provisions that no building can be occupied until all the highway works have been completed. The issue with this that Req 5(2) would allow a third party to have commenced Work No 17, but not completed it, with this outside the Applicant's control and Req 5(3) would allow agreed changes which could include timetabling. We therefore consider the drafting as made to be appropriate.
- 7.4.172. LCC also requests an additional provision to require the Applicant to comply with its Standard Conditions Applying to Highway Works for New Developments. We are advised that this is a standard provision in s278 highways agreements in the Leicestershire area. Given that the PPs are to replace the need for such agreements, we consider that this is appropriate.

Part 4 – Warwickshire County Council as Highway Authority

- 7.4.173. As noted in section 7.4.144 WCC is concerned [[REP8-037](#)] about the 42 day approval period set out in paragraph 13 which it considers too short and which it considers could lead to refusals to meet the deadline. The Applicant is of the view [[REP5-038](#)] that due to the need for certainty on a project of this type, this period is appropriate.
- 7.4.174. In our view, the 42 day period sets an appropriate balance between allowing WCC sufficient time to assess any submission and ensuring appropriate priority. We therefore are not recommending a change of the preferred DCO.
- 7.4.175. WCC is also concerned that there is no provision for commuted sums for trees and landscaping should any be required to be removed. While the Applicant considers that no trees would be required to be removed, WCC considers it appropriate to include a provision noting its obligations under 96A of the Highways Act 1980 (Duty of local highway authorities in England to consult before felling street trees).
- 7.4.176. In our view, while felling of the tree would not be given an exemption under s96A(1)(e) the publicity arrangements for this Application would have sufficiently covered this matter and therefore no additional commuted sum would be necessary beyond that covered in the DCO.

Part 5 – Cadent Gas Limited as Gas Undertaker

- 7.4.177. In [[REP5-084](#)] Cadent Gas Limited confirmed it only had minor drafting points and anticipated that agreement would be reached shortly. Since we have not been provided with these points, we are content with the dDCO as drafted.

Part 6 – Severn Trent Water Limited

- 7.4.178. No representations were made by Severn Trent Water Limited. At [[REP5-038](#)] the Applicant indicates that it had agreed PPs. We have no reason to disagree.

Part 7 – Electricity Undertakers

- 7.4.179. Other than from NGED and NGET, who have specific PPs, no representations were made.

Part 8 – Electronic Communications Code Networks

- 7.4.180. No representations were made.

Part 9 – National Grid Electricity Distribution (East Midlands) plc

- 7.4.181. NGED indicated [[REP8-038](#)] that as of 8 March 2024 its "*holding objection to the Order remains in place at today's date. However, with the legal completion of the asset protection agreement expected shortly, NGED anticipates that it will be able to withdraw its objection shortly also*". As we have not been provided with alternative drafting for the PPs we consider them to be appropriate.

Part 10 – National Grid Electricity Transmission Plc as Electricity Undertaker

7.4.182. The representations made by NGET were withdrawn on 27 February 2024 [[EEAS-004](#)].

7.5. SECTION 106 PLANNING OBLIGATIONS

Policy

7.5.1. Paragraph 4.10 of the NPSNN indicates that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind to the development. These tests are not set out explicitly in the dNPSNN.

7.5.2. The BCS [[REP4-165](#)] in Policies CS11 and CS12 deals with infrastructure to support growth and planning obligations. These policies include the delivery of infrastructure, including for sustainable forms of transport, to meet the needs of the population of Blaby, including those arising from growth.

The Contents of the Planning Obligations

7.5.3. On 8 March 2024 the Applicant made two Planning Obligations under Section 106 of the TCPA. Each was made by the various owners of the land, their mortgagees, and the Applicant. The first, by agreement with BDC and HBBC and the second by unilateral undertaking to LCC. The Planning Obligations can be found at [[EEAS-001](#)] and [[EEAS-002](#)].

7.5.4. The Applicant explained (paragraph 5.5 of [[REP5-037](#)]) that it does not control land or have any land interest in Warwickshire for the purposes of section 106(1) of the TCPA, and entering into a direct planning obligation with WCC is therefore not possible. The Applicant indicates that WCC is holding funds for works to the Gibbet Hill junction from other developers. It therefore covenants to LCC not to occupy the development unless and until this contribution has been paid to WCC or NH.

7.5.5. The Obligations make provision for the following obligations respectively:

LCC

7.5.6. The Applicant agrees to:

- to pay the following financial contributions:
 - £7,315 for Archaeological Monitoring, payable before the archaeology works;
 - £1,440 on an annual basis towards the HGV Route Monitoring meeting;
 - £6,000 for monitoring the Occupier Travel Plan, payable prior to the first occupation of each unit;
 - £1,440 on an annual basis towards the monitoring of the Works and Skills Plan;

- £300 or 0.5% of the Contributions (whichever is the greater) for monitoring purposes, payable prior to first occupation.
- in the event that the Owner requires the making of a TRO within 30 days of a request:
 - £8,756 in respect of traffic restrictions (up to a maximum of three roads); or
 - £9,392 in respect of speed changes.
- a Travel Pack:
 - providing information on non-private car travel options to each occupier for their employees prior to each occupation;
 - £500 for a Travel Pack and Travel Pack Administration Fee.
 - The Travel Pack to be submitted at least 2 months prior to first occupation, and no occupation unless agreed.
- to appoint:
 - a Travel Plan Co-ordinator from first occupation to the fifth anniversary following the occupation of the final unit, and
 - to pay a Travel Plan monitoring fee of £11,337.50 prior to first occupation.
- not to occupy the Proposed Development unless and until the Gibbet Hill Contribution of £344,967.07 has been paid to WCC or NH.

7.5.7. It is not clear to us as to whether the monitoring fee for the Occupier Travel Plan is for the whole site or for each individual occupier. The latter can be inferred as the definition of the 'Occupier Travel Plan' is "*a travel plan specific to a Unit*".

BDC

7.5.8. The Applicant agrees to:

- to implement and comply with the Works and Skills Plan appended to the Planning Obligation;
- £1,440 on an annual basis towards the monitoring of the Works and Skills Plan; and
- overall monitoring fee (£250).

7.5.9. In response BDC covenants:

- to use the fees for the specified purposes; and
- to repay any part of the fees not used by the fifth anniversary.

HBBC

7.5.10. The Applicant agrees to:

- To pay the following financial contributions before first occupation:
 - £10,000 toward a Bike Shelter within Burbage Common;
 - £70,400 towards resurfacing bridleway U51 within Burbage Common (route shown in Appendix 4 of the Planning Obligation);

- £75,000 towards resurfacing the main car park within Burbage Common and Smithy Lane;
- £15,000 towards new directional signs relating to Burbage Common;
- £75,000 towards resurfacing up to 1500m of footpaths within Burbage Common;
- £25,000 towards a new permissive route between the bridleway to be provided on the Proposed Development and Burbage Common Underbridge (route shown in Appendix 5 of the Planning Obligation);
- £90,000 towards refurbishment or replacement of the visitor centre within Burbage Common; and
- £1,440 on an annual basis towards the monitoring of the Works and Skills Plan.

7.5.11. In response HBBC covenants:

- to use the fees for the specified purposes; and
- to repay any part of the fees not used by the seventh anniversary.

7.5.12. The justification for each of the contributions is set out in Applicant's Response to ExA's Further Written Questions [Appendix A - S106 Table] [[REP5-037](#)]. In light of our considerations set out below, the justification for the Gibbet Hill contribution is summarised as follows:

- WCC and LCC request a proportionate contribution to highway works and improvements in Warwickshire and Leicestershire on the A5;
- neither authority has been able to quantify the contribution, so the Planning Obligation includes £344,967.07;
- the Applicant considers a s106 Planning Obligation is the correct mechanism for delivering the contribution and as the obligation relates to highway works and improvements, the obligation best sits with LCC as the local highway authority for the area; and
- because the money would be paid to WCC or NH the Obligation restricts occupation unless and until written evidence has been provided to LCC confirming that the contribution has been paid to WCC or NH.

7.5.13. WCC indicates [[REP7-085](#)] that the "*sum is still to be agreed*" and it would be NH who would be responsible for delivering the works as the Gibbet Hill roundabout is on the A5 which is part of the SRN. WCC takes the view that the sums in question should be paid to NH rather than WCC.

7.5.14. WCC also makes the point that if the NH schemes are not deliverable for some reason, then the fall-back position should be either the delivery of the scheme of works shown to mitigate for the Proposed Development or some other scheme which the Highway Authorities consider would mitigate the effects of the Proposed Development.

The Positions of IPs

- 7.5.15. LCC indicated that it was not prepared to enter into a s106 Planning Obligation by agreement as the Applicant was not willing to make obligations as follows (they are set out in [\[REP5-037\]](#)):
- a contribution of £1,516,322.42 for works at Desford Crossroads. The Applicant considers that this contribution is not justified on the basis that the Proposed Development does not warrant any mitigation at this junction.
 - £5,000 for each of the following junctions to re-validate the phasing of the traffic lights using the MOVA package:
 - Spa Lane/ Leicester Road, Hinckley
 - A47 Clickers Way/ Station Road, Elmesthorpe
 - Park Road/ London Road, Hinckley
 - London Road/ Brookside, Hinckley
 - a contribution to improvements to PRoWs outside the Order limits. The Applicant considers that this is not necessary as necessary works are covered within the Rights of Way Appraisals and Strategy [\[REP5-014\]](#) secured by Req 25.
- 7.5.16. In relation to each of the junction matters the Applicant considers that the Proposed Development would not affect each junction and thus not require works or the phasing to be re-validated.
- 7.5.17. The Applicant has included within paragraph 20(2) of Part 3 of the PPs a provision to ensure that the commuted sums payable under the PP would include a contribution for maintenance of any new surfacing to a PRoW in accordance with LCC's standard requirements should works take place under the DCO.
- 7.5.18. LCC is concerned that both WCC and LCiC are not parties to the Planning Obligation. WCC relating to the works to the Gibbet Hill Roundabout (see section 3.3.493 to 3.3.507) and LCiC which is seeking contributions towards sustainable transport measures within the City boundary.
- 7.5.19. In its WRs LCiC [\[REP1-151\]](#) indicated that at that time the STS had not yet been agreed with stakeholders. It queried how the contribution proposed at that time had been calculated. LCiC indicated that it *"anticipate[d] the need to be signatories to any S106 agreement that includes obligations to deliver, and/or contributions to the cost of delivering, mitigation measures within the City of Leicester"*. It indicated at that time that it had initiated discussions over this, but there had been no response.

Other financial matters

- 7.5.20. There are a number of other financial matters which are within other documents which would form part of either the certified documents under Schedule 15 of the preferred DCO or would be secured through requirements.

- 7.5.21. The HGVRP [[REP7-055](#)] with Appendices at [[REP7-057](#)] includes the sum of £200,000 plus additional financial penalties to be used for mitigation in the event that the HGVRP is not as effective is envisaged (see section 3.3.92).
- 7.5.22. The Rights of Way Appraisals and Strategy [[REP5-014](#)] includes provisions to "*strategically upgrade a number of footpath routes to bridleway status to allow a connection between the bridleway networks north-west, south-west and south-east of the Main HNRFI Site*" (third bullet in paragraph 1.98).

ExA's Considerations

- 7.5.23. For the reasons set out in section 3.3.493 to 3.3.507 we consider that the Planning Obligations would not be sufficient to mitigate the effects of the Proposed Development. It is not intended to reiterate the reasoning here but in short form:
- there is no contribution towards necessary works at:
 - Desford Crossroads; and
 - B4114 Coventry Road/ Croft Road, south-west of Narborough (Junction 6)
 - the contribution secured for works at the Gibbet Hill roundabout would be insufficient.
- 7.5.24. But we are satisfied the drafting in the final s106 Planning Obligation would, of itself, allow the relevant sums to be transferred to a delivery body.
- 7.5.25. It has not been demonstrated to us that the Proposed Development would result in the need to re-validate the phasing of the four junctions referred to in section 7.5.15.
- 7.5.26. The upgrades of footpaths to bridleways would not be secured through the provisions of the preferred DCO. However, we are satisfied that the additional provision for PRoWs as set out in the S106 agreement with BDC and HBBC [[EEAS-001](#)] would satisfactorily resolve this matter and provide appropriate and proportionate mitigation.
- 7.5.27. While we note the comments from LCiC it has not been demonstrated what enhancements to infrastructure would need to be delivered in that area. Consequently, we consider there would be no need for contributions in this regard.
- 7.5.28. Turning to the HGVRP for reasons set out in section 3.3.438 we do not consider that this sum should be taken into account as it is not clear how it was derived.
- 7.5.29. However, should the SoS wish to take this forward, as noted in section 7.4.124, we consider that the most appropriate way would be for the HGVRP to be 'downgraded' in status so that it would no longer be a certified document under Schedule 15 and Req 18 redrafted so that the

HGVRP effectively becomes an outline HGVRP which would then need to formally re-submitted and approved by the relevant local planning authority. To do this, we are providing in Table 11 potential amendments to the preferred DCO. To reiterate, for the reasons set out we consider revisions would not mitigate the harmful effects of the Proposed Development so as to change our recommendation.

7.5.30. We are satisfied that the mechanism of securing the sum through the requirement would be appropriate, although less transparent than through a planning obligation under s106 of the TCPA.

7.6. OTHER CONSENTS

7.6.1. The Applicant's 'Other Consents and Licences Report' [[APP-108](#)] sets out the other consents and permissions that would be required to allow the Proposed Development to be constructed.

7.6.2. These would be:

- Building Regulations Approval.
- Environmental Permits.
- European Protected Species Licence.
- Foul Water Sewer Requisition.
- Health and Safety Legislation.
- Notification of Construction Works.
- Petroleum Storage Licence.

7.6.3. As noted in section 3.8.54 NE has issued two LONIs in respect of potential bat and badger licences which indicates to us that these are likely to be able to be granted.

7.6.4. In its RR the EA [[RR-1356](#)] notes that the Energy Centre may need an Environmental Permit as a Medium Combustion Plant or Specified Generators. It goes on to indicate that it operates a pre-permitting application advice service. The Applicant in its response [[REP1-028](#)] indicates that this would be considered in due course.

7.6.5. The remaining necessary consents are all matters where no IP has raised an issue that would indicate that at consent/ permission would not be forthcoming. We therefore conclude that no additional consent would prevent the implementation of the DCO should it be granted.

7.7. EXA'S RECOMMENDED CHANGES

7.7.1. Table 11 sets out our recommended changes to the preferred DCO from all the various elements set out above.

7.7.2. It should be noted that due to recommended changes there would necessarily be extensive changes to cross-referencing. Except when explicitly stated, references are to the numbering and lettering in the preferred DCO [[REP7-011](#)]. This means that some of the provisions in the 'change' column will have different numbers in Table 11 to those set out in the rDCO in Annex C.

Table 11: DCO Provisions Recommended to be Changed

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
Article 5(3)	To ensure the Proposed Development remains as a SFRI (7.4.19)	After "rail freight terminal and warehousing" insert "only"
Article 7(2)	To ensure compensation is payable for those affected (7.4.24).	<p>Replace text with:</p> <p>"Tritax Symmetry (Hinckley) Limited, has the sole benefit of the provisions of –</p> <p>(a) Part 5 (powers of acquisition);</p> <p>(b) article 22 (protective works to buildings); and</p> <p>(c) article 23 (authority to survey and investigate the land),</p> <p>unless the Secretary of State consents to the transfer of the benefit of those provisions."</p>
Article 9(1)(e)	It has not been demonstrated that this power is necessary (7.4.34).	At end of sub-paragraph (d) add "and" delete sub-paragraph (e), renumber sub-paragraph (f) as (e), and in new sub-paragraph (e) replace "(a) to (e)" with "(a) to (d)".
Article 10	To ensure the recipient is fully aware of the deeming provision (7.4.37).	<p>Add new provision:</p> <p>"(3) An application for consent under paragraph (2) must be accompanied by a letter informing the relevant street authority—</p> <p>(a) of the period mentioned in paragraph (2); and</p>

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
		(b) that if they do not respond before the end of that period, consent will be deemed to have been granted."
Article 12	To ensure the recipient is fully aware of the deeming provision (7.4.37).	Add new provision: “(8) An application for consent under paragraph (4) must be accompanied by a letter informing the relevant street authority— (a) of the period mentioned in paragraph (7); and (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.”
Article 14	To ensure the recipient is fully aware of the deeming provision (7.4.37).	After paragraph (3) insert: “(4) An application for consent under paragraph (1) must be accompanied by a letter informing the relevant highway authority or relevant street authority— (a) of the period mentioned in paragraph (3); and (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.” And renumber thereafter.
Article 18	To ensure the recipient is fully aware of the	Add new provision: “(7) An application for consent under paragraph (3) must be accompanied

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
	deeming provision (7.4.37).	by a letter informing the relevant traffic authority— (a) of the period mentioned in paragraph (6); and (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.”
Article 21	To ensure the recipient is fully aware of the deeming provision (7.4.37).	Add new provision: “(11) An application for consent under paragraphs (3) or (4) or approval under paragraph (5)(a) must be accompanied by a letter informing the person or relevant highway authority— (a) of the period mentioned in paragraph (10); and (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.”
Article 22	To allow NH to impose conditions on the works in the interests of highway safety (7.4.28).	In paragraph (4) replace “paragraphs (5) and (6)” with “paragraphs (5), (6) and (7)”. After paragraph (6) add new provision: “(7) Where the protective works relate to the strategic road network the counter-notice under paragraph (6) may attach conditions to any protective works to be

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
		undertaken under paragraph (1)." And renumber thereafter.
Article 23	To ensure the recipient is fully aware of the deeming provision (7.4.37).	Add new provision: “(7) An application for consent under paragraph (4) must be accompanied by a letter informing the relevant highway authority or relevant street authority— (a) of the period mentioned in paragraph (6); and (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.”
Article 39	It has not been demonstrated that this power is necessary (7.4.57).	Delete this provision and renumber thereafter. <u>Note:</u> As a result of this extensive re-referencing is required. This is not set out in this table but has been included in the recommended DCO.
Article 40	To ensure compensation is payable for those affected (7.4.60).	In sub-paragraph (2) add: “(a) article 12 (temporary closure of streets); (b) article 23 (authority to survey and investigate the land);” and re-alphabetise the remainder.
Article 43	To limit “operational land” with the site to that relating to that pertaining to	After “by this Order” insert “within that part of the Order limits upon which the highway or railway

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
	highway and railway works (7.4.72).	works are to be carried out".
Schedule 2, Part 1, Requirement 1	To resolve issue with HGVRP and to ensure clarity in definition (7.4.124 and 7.4.113).	<p>In the definition of "HGV route management plan and strategy" replace "referred to in Schedule 15 and certified as the framework site wide travel plan by the Secretary of State for the purposes of this Order" with "submitted with the Application".</p> <p>In the relevant place add: "rail freight terminal" means Work No. 2 as set out Schedule 1 of this Order;"</p>
Schedule 2, Part 1	To ensure the site is developed comprehensively (7.4.82).	<p>Add as new requirement as 3.</p> <p>"Securing land</p> <p>3.—No commencement of construction works shall take place until details showing that the freehold ownership, with the exception of rights held by Network Rail and Leicestershire County Council, of Plots 13, 15a, 22, 22a, 24, 25, 26, 27, 28, 31, 32, 33, 34, 37, 39, 71, 72 and 73 as shown on the land plans has been transferred to the undertaker, or to any other undertaker permitted by the Secretary of State pursuant to Articles 7 or 8 of this Order, has been submitted</p>

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
		<p>to and agreed in writing by Blaby District Council.”</p> <p>And renumber thereafter:</p> <p><u>Note:</u> As a result of this extensive re-referencing is required. This is not set out in this table but has been included in the recommended DCO.</p>
Schedule 2, Part 1, Requirement 4	To ensure STS is fit for purpose and to minimise the risk of ‘wheel squeal’ (7.4.106 and 3.5.135).	<p>At end of sub-paragraph (1) add:</p> <p>“The design code shall be deemed to have been amended by replacing the second sentence in the second bullet of paragraph 9.2 with “The parking will be provided at surface level only.””</p> <p>After sub-paragraph (3) insert:</p> <p>“Details of any rail infrastructure submitted under sub-paragraph (2) must include maintenance regimes to reduce noise, including ‘wheel squeal’.”</p> <p>And renumber sub-paragraph (5) as (6).</p>
Schedule 2, Part 1, Requirement 5	To ensure only works assessed are constructed (7.4.102).	In sub-paragraph (3) replace “any individual work specified in sub-paragraph (1)” with “highway works under Work No. 16”.
Schedule 2, Part 1, Requirement 9	To allow for revision of STS (7.4.106).	<p>Replace sub-paragraph (1) with:</p> <p>“(1) No floorspace shall be occupied, until a revised sustainable transport</p>

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
		<p>strategy has been submitted to and approved in writing by the relevant planning authority. The sustainable transport strategy shall be based on that submitted with the Application, but shall include:</p> <p>(a) revised targets based on reducing single car occupancy, with the existing target being set based on data from the Middle Super Output Areas of the Modelled HNFRI Employee Trips set out in Figure 6-3 of the Technical Appendix to the Transport Assessment (document reference 6.2.8.1B Revision: 09);</p> <p>(b) changes to paragraph 7.27 so that the free 6 month bus pass applies to users of both the Demand Response Transport and the public bus service.</p> <p>(2) The approved revised sustainable transport strategy shall be complied with at all times following the first occupation of any warehouse floorspace on the authorised development.”</p>

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
		Renumber sub-paragraph (2) as (3).
Schedule 2, Part 1, Requirement 10	To ensure clarity in definition (7.4.113).	In sub-paragraph (3) replace "rail terminal" with "rail freight terminal" both times it occurs.
Schedule 2, Part 1, Requirement 11	To ensure clarity in definition (7.4.119).	<p>Replace "finished floor level" with "finished level" each time it occurs.</p> <p>Add an additional sub-paragraph:</p> <p>"(3) In this paragraph "finished level" means the site level of the area upon which the containers are to be stored as approved pursuant to requirement 4(2)."</p>
Schedule 2, Part 1, Requirement 14	To ensure the SRN is properly drained (6.4.42).	<p>After sub-paragraph (1) insert:</p> <p>"(2) Where any phase includes works that would affect land parcels 65, 66, 67, 68 and 69 as shown on the land plans, the surface water drainage scheme submitted under sub-paragraph (1) must include provisions to allow for the drainage of the strategic road network."</p> <p>And renumber sub-paragraphs thereafter.</p>
Schedule 2, Part 1, Requirement 18	To allow for revision of HGVRP (7.4.124).	<p>Replace text with:</p> <p>"18.—(1)No floorspace shall be occupied, until a revised HGV route management plan and strategy has been submitted to and approved in writing by the relevant</p>

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
		<p>planning authority. The revised HGV route management plan and strategy shall be based on that submitted with the Application, but shall include:</p> <ul style="list-style-type: none"> (a) triggers based on a proportional approach to the overall floorspace and the use of the rail freight terminal; (b) financial penalties set based on fixed sums; and (c) revised measures to deliver mitigations. <p>(2) The approved revised HGV route management plan and strategy shall be complied with at all times following the first occupation of any warehouse floorspace on the authorised development."</p>
Schedule 2, Part 1, Requirement 28	To allow monitoring of the use of the CHP through its operational life (7.4.132).	Replace "The undertaker must maintain an up-to-date annual usage report for covering a period" with "For the lifetime of the authorised development the undertaker must maintain an up-to-date usage report covering a period"
Schedule 2, Part 2, paragraph 4(3)	To ensure natural justice (7.4.138).	Replace "and in any event within 30 working days of" with "following".
Schedule 2, Part 2, paragraph 5(1)	To ensure clarity and to ensure fees paid are	Replace "as though the application were a reserved matters

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
	proportionate (7.4.140).	application” with “as though any application pursuant to requirement 4 were an application for approval of reserved matters and any other matter were an application for written confirmation of a condition or conditions attached to a grant of planning permission”.
Schedule 2, Part 2, paragraph 5(2)(b)	To ensure clarity (7.4.148).	Replace “under paragraph (1)” with “under paragraph 2 of this Part”
Schedule 11	To allow this plot to have rights compulsorily imposed (7.4.49)	Above the entry for Plot 74 add three columns: District of Blaby 64 Work No. 6
Schedule 13, Part 1, paragraph 2.	To ensure the structure of the bridge on the A47 is owned and maintained by NR with the carriageway maintained by LCC (7.4.44)	In paragraph 2 in the relevant place insert: ““bridge” means the new bridge to be constructed as part of the A47 link road over the Leicester to Hinckley railway line which, for the purposes of this Part of this Schedule, is to include the superstructure of the new bridge including deck, piers, footings, abutments and wingwalls to be provided as part of Work No. 7 but does not include the highway, approach embankments, road approaches/embankments, footpaths, street lighting and all necessary highway related structures and apparatus (which are to be

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
		maintained by the local highway authority);”
Schedule 13, Part 1, paragraph 19	To ensure the structure of the bridge on the A47 is owned and maintained by NR with the carriageway maintained by LCC (7.4.44).	After paragraph 18 insert: “19. Network Rail and the undertaker agree that, following the construction and completion of the bridge and payment of an appropriate commuted sum to Network Rail, Network Rail will take transfer of the bridge and maintain the bridge from the date of such transfer.” And renumber paragraphs thereafter.
Schedule 13, Part 2, paragraph 4	To ensure NH has control over works on, in or above the SRN (7.4.159).	Replace “strategic road unless such works are agreed in writing with National Highways at the reasonable discretion” with “strategic road network unless such works are agreed in writing with National Highways at the absolute discretion”.
Schedule 13, Part 2, paragraph 7	To ensure NH has control over works on, in or above the SRN (7.4.158 and 7.4.159).	Insert new paragraph (2): “(2). The undertaker must not exercise— (a) article 6 (maintenance of authorised development); (b) article 9 (street works); (c) article 10 (power to alter layout etc. of streets); (d) article 12 (temporary closure of streets)

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
		<ul style="list-style-type: none"> (e) article 14 (accesses) article 15 (maintenance of highway works); (f) article 18 (traffic regulation); (g) article 21 (discharge of water); (h) article 23 (authority to survey and investigate the land); (i) article 25 (compulsory acquisition of land); (j) article 27 (compulsory acquisition of rights); (k) article 28 (power to override easements and other rights); (l) article 30 (private rights) (m) article 31 (rights under or over streets); (n) article 34 (temporary use of land for carrying out the authorised development); (o) article 35 temporary use of land for maintaining the authorised development); (p) article 36 (statutory undertakers); or (q) article 46 (felling or lopping trees or removal of hedgerows) of this Order,

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
		<p>over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management as required for National Highways' approval."</p> <p>And renumber thereafter.</p> <p>In new sub-paragraph 7(3) after "specified works" insert "or the exercise of any power referenced in sub-paragraphs (2)" and replace "sub-paragraph (1)" with "sub-paragraphs (1) or (2)".</p>
Schedule 13, Part 2, paragraph 9	To ensure payments to NH are reasonable (7.4.162).	<p>In paragraph 9(4) replace "if the excess is considered by the undertaker to be reasonable and proper," with "subject to paragraph 21,".</p> <p>In paragraph 9(6)(a) replace "subject to such sum being considered to be reasonable and proper by the undertaker" with "subject to paragraph 21,".</p>
Schedule 13, Part 2, paragraph 20	To ensure NH's interests are protected in delivering the Proposed	<p>In sub-paragraph (4) after "land parcels" add "54, "</p> <p>Add new sub-paragraph:</p>

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
	Development (6.4.50).	“(5) The undertaker may only exercise powers of compulsory acquisition in respect of land parcels 39, 65, 66, 67, 68, 69 and 71 identified on the land plans with the written consent of National Highways.”
Schedule 13, Part 3, paragraph 2	To ensure the structure of the bridge on the A47 is owned and maintained by NR with the carriageway maintained by LCC (7.4.44).	Replace the definition of “bridge” with: ““bridge” means the new bridge to be constructed as part of the A47 link road over the Leicester to Hinckley railway line which, for the purposes of this Part of this Schedule, is to include the highway, approach embankments, road approaches/ embankments, footpaths, street lighting and all necessary highway related structures and apparatus but does not include the superstructures of the new bridge including deck, piers, footings, abutments and wingwalls to be provided as part of Work No. 7, and forming part of the highway works;”
Schedule 13, Part 3, paragraph 15	To ensure an appropriate standard of work (7.4.172).	After paragraph 14 add: “Conditions 15. The Developer shall comply with Leicestershire County Council’s Standard Conditions Applying to Highway Works for New Developments.” And renumber paragraphs thereafter.

Provision as cited in preferred DCO	Examination Issue (section in this Report)	Change
Schedule 15	To allow for revision of HGVRP and STS (7.4.124 and 7.4.106).	Delete provisions relating to HGV route management plan and strategy and Sustainable transport strategy.

7.8. EXA'S CONCLUSIONS

- 7.8.1. We have considered all the iterations of the draft DCO submitted by the Applicant set out in Table 9, and have noted the changes made during the Examination made in response to representations made and as set out in our Proposed Changes [[PD-014](#)].
- 7.8.2. Notwithstanding our overall recommendation that consent should not be granted, in the event that the SoS is minded to grant the DCO and, in light of the evidence submitted and heard, we have recommended a number of changes to the Applicant's preferred DCO submitted at Deadline 7 [[REP7-011](#)]. These are set out in Table 11. These are incorporated into the rDCO which is set out in Annex C.
- 7.8.3. We are satisfied that the rDCO (Annex C) would adequately define the scope of any consent being granted and that it would secure the necessary controls and mitigation measures that are consistent with the assessments provided in the ES.
- 7.8.4. We consider that the rDCO (Annex C) only includes requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. On that basis we are of the view that paragraph 4.9 of the NPSNN and paragraph 4.9 of the dNPSNN would be satisfied.
- 7.8.5. If, contrary to our overall recommendation, the SoST is minded to make the DCO, it is made in the form set out in Annex C.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

8.1.1. This section summarizes our conclusions arising from the Report as a whole and sets out our recommendation to the SoS.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. During the Examination we accepted a single change to the Proposed Development. This related to the sub-division to a single plot within the Land Plans (plot 22a) in relation to rights owned by NR. A number of minor amendments were also submitted, principally relating to detailed highway layouts and the provision of an additional way within the Application Site.

8.2.2. None of these changes, either individually or cumulatively, represented a fundamental change to the Proposed Development to the extent that a new application would have been necessary.

8.2.3. We have considered whether the determination of this application in accordance with the relevant NPS, the 2014 NPSNN, would lead the UK to be in breach of any of its international obligations where relevant. We are satisfied this would not be the case, nor would it lead to the SoS being in breach of any duty imposed on the SoS by or under any enactment or be otherwise unlawful by virtue of any enactment.

8.2.4. We have also taken into account the 2023 dNPSNN, the Framework and PPG, the Development Plans and all other important and relevant matters referred to in this Report.

8.2.5. Whilst the SoS is the competent authority under the Habitats Regulations, and will make the definitive assessment under those Regulations, we are satisfied that the Proposed Development would not be likely to have any significant effects on European sites and this finding has been taken into account in reaching our recommendation.

8.2.6. In reaching our recommendation we have considered whether the Proposed Development would be in accordance with the relevant NPS and have had regard to the four submitted LIRs from BDC, HBBC, LCC and WCC, and matters prescribed in relation to the development and other matters that are both important and relevant to the decision, as required by s104(2) of PA2008.

8.2.7. The Proposed Development would deliver substantial benefits which would flow from the development of a strategic rail freight interchange wherever located. These would be meeting the need for such facilities and the job opportunities and wider economic benefits. In addition, there would be a number of benefits which would be specific to this proposal. These relate to meeting the specific need for an SRFI in the southwest

Leicestershire area and the effect on biodiversity, GHG emissions and energy production.

- 8.2.8. However, we conclude that an inadequate analysis has been undertaken of traffic aspects at two junctions, and as set out the Proposed Development would unacceptably increase highway safety risk in Sapcote and lead to a harmful effect on the living conditions of the occupiers of the Aston Firs Travellers site. Furthermore, there would be a number of adverse effects specific to the Proposed Development. These include the other Traffic and Transport effects, the effect on the landscape and visual receptors, from noise and vibration, the loss of a small quantity of the best and most versatile agricultural land and on air quality as well as some cumulative effects.
- 8.2.9. For the reasons set out in section 5 we conclude that the case for the Proposed Development has not been made out. We conclude the Proposed Development would not be in accordance with the NPSNN, and insofar as it is important and relevant, the dNPSNN, and moreover that the disbenefits outweigh the benefits.
- 8.2.10. If the SoS were to take a contrary view and conclude that either the Proposed Development complied with the NPSNN and the dNPSNN and/or the harms set out above did not outweigh the benefits, then there are the following matters that the SoS may wish to resolve prior to such a grant.
- 8.2.11. These are:
- the submissions from Dr Moore and Mr Moore submitted at D8; and
 - the PPs submitted by the Applicant at D8 in relation to the bridge across the Hinckley to Leicester railway line.
- 8.2.12. The conclusion on the case for the CA and TP of land and rights (and the imposition of rights) depends on the SoS's conclusion on the planning merits of the Proposed Development. If the SoS accepts our recommendation to refuse consent, then we do not consider that a compelling case has been made out.
- 8.2.13. However, were the SoS to disagree with us, then we are satisfied that the CA and TP powers sought by the Applicant would be justified and should be granted subject to the amendments set out in our recommended DCO. They would be necessary to enable the Applicant to complete the Proposed Development. The Applicant has a clear idea of how it intends to use the land, and, subject to appropriate approvals through the DCO, funds are available for the implementation of the Proposed Development.
- 8.2.14. In that event, we have had regard to the provisions of the Human Rights Act 1998. We consider that the opportunity for objectors to make their cases through the CA Hearings fully, fairly and in public has ensured compliance with Article 6.

- 8.2.15. In some cases, there could be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998. However, subject to the amendment of the DCO as recommended, in this case the wider public interest would qualify any interference with the human rights of the owners and occupiers affected by CA and TP. The interference with their human rights would be proportionate and justified in the public interest.
- 8.2.16. We have had regard to the PSED. While the final consideration of this is for the SoS, we have concluded that due to the nature of the project there would be no positive or negative effects for those with the protected characteristics of gender reassignment, marriage and civil partnership, religion or belief, sex and sexual orientation in relation to any other grouping.
- 8.2.17. However, we conclude that the Proposed Development would have adverse effects on those with the protected characteristics of age, both young people and older people, disability and race due to the effects of the Proposed Development as submitted in relation to the employment opportunities provided, the effects from the additional closure time at the Narborough Level Crossing and from the proximity of the proposed acoustic barrier adjacent to the Aston Firs Travellers site.
- 8.2.18. Our recommendation takes into account Regulations 3(1) and 7(1) of the Infrastructure Planning (Decisions) Regulations 2010 in respect of the effect on listed buildings, conservation areas and scheduled monuments and biological diversity respectively, as set out in the Report.

8.3. RECOMMENDATION

- 8.3.1. For all the above reasons and in the light of our findings and conclusions on important and relevant matters set out in this Report, we, as Examining Authority under the PA2008, recommend that the Secretary of State for Transport should not make an Order granting development consent for the Proposed Development as applied for.
- 8.3.2. Should the Secretary of State take a contrary view we recommend that the Order should be granted development consent with the modifications to the Applicant's preferred DCO as set out at Annex C only if the following matters have been resolved to the Secretary of State's satisfaction:
- the submissions from Dr Moore and Mr Moore submitted at D8; and
 - the Protective Provisions submitted by the Applicant at D8 in relation to the bridge across the Hinckley to Leicester railway line.

APPENDICES

ANNEX A: ABBREVIATIONS.....	II
ANNEX B: SUPPORTING REFERENCE MATERIAL	III
ANNEX C: RECOMMENDED DCO	IV

ANNEX A: ABBREVIATIONS

ANNEX A: LIST OF ABBREVIATIONS

Abbreviation	Full Reference
AA	Appropriate Assessment
AADT	Annual Average Daily Traffic
AOD	Above Ordnance Datum
AP	Affected Person
APFP Regulations	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Applicant	Tritax Symmetry (Hinckley) Limited
AQMA	Air Quality Management Area
ARSI	Access Required Site Inspection
ASI	Accompanied Site Inspection
BCS	Blaby District Local Plan (Core Strategy) Development Plan Document
BDC	Blaby District Council
BDDPD	Blaby District Local Plan (Delivery) Development Plan Document
BIA	Biodiversity Impact Assessment
BMV	Best and Most Versatile (Agricultural land)
BNG	Biodiversity Net Gain
Boston DCO	Boston Alternative Energy Facility Order 2023
BoR	Book of Reference
BS 4142+A1:2019	British Standard reference: BS 4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound'
BS 5228	British Standard reference: BS 5228- 1:2009+A1:2014 'Code of practice for noise and vibration control on construction and open sites – Part 1: Noise'
CA	Compulsory Acquisition
CA Guidance	Guidance related to procedures for the compulsory acquisition of land' published by the former DCLG
CAH	Compulsory Acquisition Hearing
CAR	Compulsory Acquisition/ Imposition of Rights
CAS	Compulsory Acquisition Schedule
Cat.	Category (of land right)

(A:1)

Abbreviation	Full Reference
CB	Carbon Budget
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
CIL	Community Infrastructure Levy
CL	Common Land
cLWS	Candidate Local Wildlife Site
CO ₂	Carbon Dioxide
CTMP	Construction Traffic Management Plan
D	Deadline
DAS	Design and Access Statement
dB	decibel
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
Decisions Regulations	Infrastructure Planning (Decisions) Regulations 2010
dDCO	Draft Development Consent Order
DEFRA	Department for the Environment, Food and Rural Affairs
DfT	Department for Transport
DIRFT	Daventry International Rail Freight Terminal
DMRB	Design Manual for Roads and Bridges
dNPSNN	Draft National Policy Statement for National Networks (March 2023)
DoS	Degree of Saturation
DRT	Demand Responsive Transport
EA	Environment Agency
East Midlands DCO	East Midlands Gateway Rail Freight Interchange and Highway Order 2016
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EEA	European Economic Area
EHGV	Electrically powered HGV
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Abbreviation	Full Reference
EM	Explanatory Memorandum
EMMP	Ecological Mitigation and Management Plan
EN-1	Overarching National Policy Statement for Energy (EN-1)
EN-3	National Policy Statement for renewable energy infrastructure (EN-3)
EPUK	Environmental Protection UK
EqIAS	Equalities Impact Assessment Statement
ES	Environmental Statement
EV	Electric Vehicles
ExA	Examining Authority
ExQ1	ExA's Written Questions
ExQ2	ExA's Further Written Questions
Fee Regulations	Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012
FFL	Finished floor level
FONS	Friends of Narborough Station
FTE	Full Time Equivalent
FRA	Flood Risk Assessment
Framework	National Planning Policy Framework
FSWTP	Framework Site Wide Travel Plan
FZ	Flood Zone
G	Ground absorption coefficient
GBRTT	Great British Railways Transition Team
GCN	Great crested newt
GHG	Greenhouse Gas
GLVIA3	Guidelines for Landscape and Visual Impact Assessment (Third Edition)
GVA	Gross Value Added
Habitats Regulations	Conservation of Habitats and Species Regulations 2017
ha	hectare
HBBC	Hinckley and Bosworth Borough Council
HBCS	Hinckley and Bosworth Borough Council Core Strategy

(A:3)

Abbreviation	Full Reference
HBDPD	Hinkley and Bosworth Site Allocations and Development Management Policies Development Plan Document
HDC	Harborough District Council
HE	Historic England
HEDNA	Housing Economic Demand and Needs Assessment
HGV	Heavy Goods Vehicle
HGVRP	HGV Management Plan and Route Strategy
HNRFI	Hinckley National Rail Freight Interchange
HRA	Habitats Regulations Assessment
I&L	Industrial and Logistics
IAQM	Institute of Air Quality Management
IEMA	Institute of Environmental Management and Assessment
IP	Interested Party
ISH	Issue Specific Hearing
JHWS	Leicestershire 2022 - 2032 Joint Health and Wellbeing Strategy
Keadby 3 DCO	Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022
km	kilometre
ktCO ₂ e	kilotonnes CO ₂ equivalent
LCA	Landscape Character Area
LCC	Leicestershire County Council
LCiC	Leicester City Council
LDSA	Logistics and Demand Supply Assessment
LEMP	Landscape and Ecological Management Plan
LIR	Local Impact Report
LLFA	Local Lead Flood Authority
LNR	Local Nature Reserve
LOAEL	Lowest Observed Adverse Effect Level
LRN	Local Road Network
LSE	Likely Significant Effects
LUE	Lutterworth Urban Extension
LVIA	Landscape and Visual Impact Assessment

Abbreviation	Full Reference
LWS	Local Wildlife Site
m	metre
m ²	square metre
MATU	Muti-Agency Traveller Unit
Mm ²	Million square metres
Mm ³	Million cubic metres
MML	Midlands Main Line
mm/s	millimetres per second
MNA	Market Needs Assessment
MOVA	Microprocessor Optimised Vehicle Actuation
MSOA	Middle Super Output Area
MW	megawatt
MWh	megawatt hour
NCA	National Character Area
NDC	National Distribution Centre
NE	Natural England
NGED	National Grid Electricity Distribution (East Midlands) plc
NGET	National Grid Transmission plc
NH	National Highways
NMP	Noise Monitoring Position
NO ₂	Nitrogen dioxide
Noise Update Note	Noise Assessment Update Note
Northampton Gateway DCO	Northampton Gateway Rail Freight Interchange Order 2019
NPS	National Policy Statement
NPSNN	National Policy Statement for National Networks
NSR	Noise Sensitive Receptor
NR	Network Rail Infrastructure Limited
NSIP	Nationally Significant Infrastructure Project
OFH	Open Floor Hearing
ORR	Office of Road and Rail
PA2008	Planning Act 2008
PCU	Passenger Car Unit

(A:5)

Abbreviation	Full Reference
pLWS	Potential Local Wildlife Site
PM	Preliminary Meeting
PMA	Property Market Area
PP	Protective Provisions
PPG	Planning Practice Guidance
PRTM	Pan-Regional Transport Model
PSED	Public Sector Equality Duty
PV	Photovoltaic
PWFDA	Preliminary Water Framework Directive Assessment
RBC	Rubby Borough Council
RDC	Regional Distribution Centre
rDCO	Recommended DCO
REIT	Real Estate Investment Trust
Req	Requirement
RFC	Ratio of Flow to Capacity
RIS	Road Investment Strategy
RSA	Road Safety Audit
RR	Relevant Representation
s	Section
SAC	Special Area of Conservation
SATURN	Simulation and Assignment of Traffic to Urban Road Network
SDS	Sustainable Drainage Statement
sHRA	Shadow Habitats Regulations Assessment
SOAEL	Significant Observed Adverse Effect Level
SoC	Schedule of Changes (to the dDCO)
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoST	Secretary of State for Transport
SPP	Special Parliamentary Procedure
SRFI	Strategic Rail Freight Interchange
SRN	Strategic Road Network

(A:6)

Abbreviation	Full Reference
SSSI	Site of Special Scientific Interest
STS	Sustainable Transport Strategy
SuDS	Sustainable Drainage System
SUE	Sustainable Urban Extension
SWMMP	Site Waste and Materials Management Plan
TA	Transport Assessment
TCPA	Town and County Planning Act 1990
TP	Temporary Possession
TWG	Transport Working Group
UK	United Kingdom
UOW	Unnamed Ordinary Watercourse
USI	Unaccompanied Site Inspection
VDV	Vibration Dose Value
VoC	Volume over Capacity
WCC	Warwickshire County Council
WCML	West Coast Main Line
WD	With Development
West Midlands Interchange DCO	West Midlands Rail Freight Interchange Order 2020
WFD	Water Framework Directive
WHO	World Health Organisation
WoD	Without Development
WR	Written Representation
µg/m ³	microgrammes per cubic metre

ANNEX B: SUPPORTING REFERENCE MATERIAL

APPENDIX B: SUPPORTING REFERENCE MATERIAL

Contents

B1	Statements of Common Ground
B2	Summary of Legislation Relevant to the Proposed Development
B3	Summary of Other National Policies Relevant to the Proposed Development
B4	Made Orders
B5	Relevant Development Plan and Supplementary Planning Document Policies

Appendix B1: Statements of Common Ground

The table below is an alphabetical list of final Statements of Common Ground between the Applicant and Interested Parties at the end of the Examination with Examination Library references.

Interested Party	Examination Library Reference
Blaby District Council	[REP8-020]
Environment Agency	[REP2-085]
Harborough District Council	[REP3-081]
Hinckley and Bosworth Borough Council	[REP8-021]
Historic England	[REP2-087]
Leicestershire County Council	[REP8-022]
National Highways	[REP8-023]
Natural England	[REP4-139]
Network Rail Infrastructure Limited	[REP5-053]
Network Rail Infrastructure Limited (Addendum)	[REP8-024]
Rugby Borough Council	[REP7-071]
Warwickshire County Council	[REP7-072]

Appendix B2: Summary of Legislation Relevant to the Proposed Development

Primary Legislation

- Ancient Monuments and Archaeological Areas Act 1979
- Climate Change Act 2008
- Control of Pollution Act 1974
- Countryside and Rights of Way Act 2000
- The EU (Withdrawal) Act 2018
- Environment Act 2021
- Environmental Protection Act 1990
- Equality Act 2010
- Flood and Water Management Act 2010
- Highways Act 1980
- Human Rights Act 1998
- Land Drainage Act 1991.
- Levelling Up and Regeneration Act 2023
- New Roads and Street Works Act 1991
- Planning Act 2008
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Pollution Prevention and Control Act 1999
- Protection of Badgers Act 1992
- Town and Country Planning Act 1990
- Water Act 2003
- Water Act 2014
- Water Resources Act 1991
- Wildlife and Countryside Act 1981

Secondary Legislation

- Air Quality Standards Regulations 2010
- Environmental Targets (Fine Particulate Matter) (England) Regulations 2023
- Hedgerow Regulations 1997
- Infrastructure Planning (Decisions) Regulations 2010
- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- Infrastructure Planning (Examination Procedure) Rules 2010
- Noise Insulation Regulations 1975
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

International Agreements and Assimilated Legislation

- Air Quality Directive
- Environmental Noise Directives
- European Landscape Convention 2000
- Groundwater Daughter Directive
- United Nations Environmental Programme Convention on Biological Diversity

(B:3)

Appendix B3: Summary of other National Policies Relevant to the Proposed Development

The National Planning Policy Framework and Planning Practice Guidance

The National Planning Policy Framework (the Framework), December 2023, and the accompanying Planning Practice Guidance contain the Government's planning policies and guidance for England. The Framework sets out how these policies are expected to be applied for the purposes of making Development Plans and determining applications for planning permission under the Town and Country Planning Act 1990 (as amended).

Transport Decarbonisation Plan

The Transport Decarbonisation Plan sets out the Government's commitments and actions needed to decarbonise the entire transport system in the UK. Amongst other things, it outlines a pathway to net zero transport, illustrates the wider benefits net zero transport can deliver and shows the principles that underpin the Government's approach to delivering net zero transport.

Net Zero: The UK's Contribution to Stopping Global Warming Emissions

The Committee on Climate Change produced Net Zero: The UK's contribution to Stopping Global Warming. This recommended a new emissions target for the UK of net-zero greenhouse gases by the year 2050.

Ten Point Plan for a Green Industrial Revolution

In November 2020, the Government published 'The Ten Point Plan for a Green Industrial Revolution' (HM Government, 2020). The plan seeks to ensure that the UK's recovery from the coronavirus pandemic "*will be green, generate jobs and bolster the economy, whilst continuing to drive down emissions both now and in the future*" (p.30).

Planning Policy for Travellers Sites

In December 2023 the Government updated the Planning Policy for Travellers Sites policy paper. It sets out the Government's planning policy for traveller sites. The government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.

Department of Transport and Great British Railways Transition Team 'Developing Options for a Rail Freight Growth Target to 2050'

In December 2023 the DfT and Great British Railways Transition Team (GBRTT) published a report titled 'Developing Options for a Rail Freight Growth Target to 2050' evidence pack: a summary of the approach and evidence gathered.

The Report refers to the policy publications (Plan for Rail and the Transport Decarbonisation Plan) recognising the 'critical role that rail freight plays in improving supply chain resilience, and helping to secure economic, social and environmental benefits across the Country'.

(B:4)

Developing Options for a Rail Freight Growth Target to 2050

The Policy Paper states that 'rail freight is a vital part of our transport system' and 'it is vital to everyday life in our country... Rail freight delivers major economic and environmental benefits...' so rail freight is crucial to achieving the Prime Minister's priority of growing the economy and creating opportunity, right across the country. It also improves our environment – a tonne of freight moved by rail produces around a quarter of the carbon emissions it would if it were moved by road.

Department of Transport 'Policy and Rail Freight Growth Target'

In December 2023 the DfT set out the rail freight growth target – for at least 75% growth in freight carried by rail by 2050 in net freight kilometres.

GBRTT Rail Freight Growth Target call for evidence (July 2022)

Following the call for evidence, GBRTT designed a programme of work to develop a rail freight growth target. It concluded that an option that provided for growth of around 65% to 85%, by prioritising rail freight and ensuring a strong role for the industry in driving growth, was optimal – delivering significant benefits, while also delivering significant value for money.

The Government considers that this analysis provides a strong basis for the setting of an ambitious yet realistic target. The Government, after consideration of the GBRTT analysis, has established a rail freight growth target of at least 75% in freight moved.

Appendix B4: Made Orders

The following made Development Consent Orders have been referred to by the Applicant and other Interested Parties in relation to the dDCO:

- Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014
- M4 Motorway (Junctions 3 to 12), (Smart Motorway) Order 2016
- National Grid (Hinkley Point C Connection Project) Order 2016
- York Potash Harbour Facilities Order 2016
- Triton Knoll Electrical System Order 2016
- East Midlands Gateway Rail Freight Interchange and Highway Order 2016
- M20 Junction 10a Order 2017
- Northampton Gateway Rail Freight Interchange Order 2019
- Drax Power (Generating Stations) Order 2019
- West Midlands Rail Freight Interchange Order 2020
- Southampton to London Pipeline Order 2020
- The Riverside Energy Park Order 2020
- Hornsea Three Offshore Wind Farm Order 2020
- A1 Birtley to Coal House Development Consent Order 2021
- M25 Junction 28 Development Consent Order 2022
- Norfolk Vanguard Offshore Wind Farm Order 2022
- Little Crow Solar Park Order 2022
- A57 Link Roads Development Consent Order 2022
- Little Crow Solar Park Order 2022
- A428 Black Cat to Caxton Gibbet Development Consent Order 2022
- Portishead Branch Line (MetroWest Phase 1) Order 2022
- The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022
- The Sizewell C (Nuclear Generating Station) Order 2022
- Boston Alternative Energy Facility Order 2023
- A303 (Amesbury to Berwick Down) Development Consent Order 2023
- A47 Wansford to Sutton Development Consent 2023
- Longfield Solar Farm Order 2023
- The Awel y Môr Offshore Wind Farm Order 2023
- The Slough Multifuel Extension Order 2023
- A12 Chelmsford to A120 Widening Development Consent Order 2024

(B:6)

Appendix B5: Relevant Development Plan and Supplementary Planning Document Policies

The LIRs identify the following adopted Local Plans and Supplementary Planning Document policies as being of relevance to the decision in respect of the Proposed Development. We additionally set out Neighbourhood Plan policies to which we have been referred and the position, as we have been advised, on emerging Local Plans.

Adopted Local Plans

Plan	Identified Relevant Policies
<p>Blaby District Council Local Plan and Core Strategy [REP4-165]</p>	<ul style="list-style-type: none"> • Policy CS1: Strategy for locating new development • Policy CS2: Design of new development • Policy CS6: Employment • Policy CS10: Transport infrastructure • Policy CS11: Infrastructure, services and facilities to support growth • Policy CS12: Planning obligations and developer contributions • Policy CS14: Green infrastructure • Revised Policy CS15: Open space, sport and recreation • Policy CS18: Countryside • Policy CS19: Biodiversity and geo-diversity • Policy CS20: Historic environment and culture • Policy CS21: Climate Change • Policy CS22: Flood Risk Management
<p>Blaby District Council Local Plan (Delivery) Development Plan Document [REP4-165]</p>	<ul style="list-style-type: none"> • Policy DM2: Development in the Countryside • Policy DM3: Employment Development on Unallocated Sites • Policy DM4: Connection to Digital Infrastructure • Policy DM7: Related facilities for HGVs • Policy DM8: Local Parking and Highway Design Standards • Policy DM9: A47 High Load Route • Policy DM12: Designated and Non-Designated Heritage Assets • Policy DM13: Land Contamination and Pollution

Plan	Identified Relevant Policies
Hinckley and Bosworth Borough Council Core Strategy [REP4-178]	<ul style="list-style-type: none"> • Policy 1: Development in Hinckley • Policy 2: Development in Earl Shilton • Policy 3: Development in Barwell • Policy 4: Development in Burbage • Policy 5: Transport Infrastructure in the Sub-regional Centre • Policy 6: Hinckley/Barwell/Earl Shilton/Burbage Green Wedge • Policy 20: Green Infrastructure
Hinckley and Bosworth Borough Council Site Allocations Development Plan [REP4-177]	<ul style="list-style-type: none"> • DM3: Infrastructure and Delivery • DM4: Safeguarding the Countryside and Settlement Separation • DM6: Enhancement of Biodiversity and Geological Interest • DM7: Preventing Pollution and Flooding • DM9: Safeguarding Natural and Semi-Natural Open Spaces • DM10: Development and Design • DM17: Highways and Transportation
Hinckley and Bosworth Policies Map [REP4-175]	
Leicestershire Minerals and Waste Plan [REP5-076]	<ul style="list-style-type: none"> • M11: Safeguarding of Mineral Resources • M12: Safeguarding of Existing Mineral Sites and Associated Minerals Infrastructure

Made Neighbourhood Plans

Plan	Identified Documents and/or Relevant Policies
Fosse Villages Neighbourhood Plan [REP4-165]	<ul style="list-style-type: none"> • The Policy maps identify 'limits to Built Development, Areas of Separation and Green Wedges' for, <i>inter alia</i>, Sapcote and Stoney Stanton. The settlement sections of the Plan indicate that "<i>outside these limits land will be designated as Countryside where development will be restricted</i>".
Burbage Neighbourhood Plan 2015 – 2026 [REP4-174]	<ul style="list-style-type: none"> • Policy 1: Settlement Boundary • Section 36: Burbage Common – natural and semi-natural open space

Supplementary Planning Document

Plan	Identified Documents and/or Relevant Policies
Hinckley and Bosworth Borough Council Good Design Guide Supplementary Planning Document	<ul style="list-style-type: none">• Section 1 (Planning and Design Process)• Section 2 (Design Objectives)• Section 7 (Commercial Development)

Emerging Local Plans

BDC indicates in paragraph 6.34 its LIR [[REP1-055](#)] that it is preparing a review of its Local Plan. There have been two Regulation 18 consultations in Spring 2019 and early 2021. The latest Local Development Scheme (approved July 2023) indicates that the proposed submission plan will be published for consultation in Autumn 2024.

ANNEX C: RECOMMENDED DCO

2021 No.

INFRASTRUCTURE PLANNING

The Hinckley Rail Freight Interchange Order 202[]

Made - - - - - ***

Laid before Parliament ***

Coming into force ***

CONTENTS

PART 1

PRELIMINARY

1. Citation and Commencement
2. Interpretation

PART 2

PRINCIPAL POWERS

3. Development consent granted by the Order
4. Parameters of authorised development
5. Authorisation of use
6. Maintenance of authorised development
7. Benefit of Order
8. Transfer of the benefit of certain provisions of the Order

PART 3

STREETS

9. Street works
10. Power to alter layout, etc., of streets
11. Permanent stopping up of streets
12. Temporary closure of streets
13. Public rights of way - creation, substitution, stopping up and closure of level crossings
14. Accesses
15. Maintenance of highway works
16. Classification of highways
17. Speed limits
18. Traffic regulation

19. Clearways and no waiting
20. Agreements with highway authorities

PART 4 SUPPLEMENTAL POWERS

21. Discharge of water
22. Protective works to buildings and structures
23. Authority to survey and investigate the land
24. Removal of human remains

PART 5 POWERS OF ACQUISITION

25. Compulsory acquisition of land
26. Compulsory acquisition of land - minerals
27. Compulsory acquisition of rights
28. Power to override easements and other rights
29. Time limit for exercise of authority to acquire land and rights compulsorily
30. Rights under or over streets
31. Application and modification of the 1981 Act
32. Modification of Part 1 of the 1965 Act
33. Temporary use of land for carrying out the authorised development
34. Temporary use of land for maintaining the authorised development
35. Statutory undertakers
36. Apparatus and rights of statutory undertakers in stopped up streets
37. Recovery of costs of new connections
38. Guarantees in respect of payment of compensation
39. Special category land

PART 6 MISCELLANEOUS AND GENERAL

40. Operation and use of railways
 41. Operational land for the purposes of the 1990 Act
 42. Charges
 43. Defence to proceedings in respect of statutory nuisance
 44. Felling or lopping of trees and removal of hedgerows
 45. Protective provisions
 46. Governance of requirements and governance of protective provisions relating to highway works
 47. Disapplication, application and modification of legislative provisions
 48. Certification of plans and documents
 49. Service of notices
 50. Arbitration
-

SCHEDULES

- SCHEDULE 1 — AUTHORISED DEVELOPMENT
- SCHEDULE 2 — REQUIREMENTS
 - PART 1 — REQUIREMENTS
 - PART 2 — PROCEDURE FOR APPROVALS ETC UNDER REQUIREMENTS
- SCHEDULE 3 — STREETS SUBJECT TO STREET WORKS
- SCHEDULE 4 — STREETS TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
- SCHEDULE 5 — PUBLIC RIGHTS OF WAY
 - PART 1 — PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
 - PART 2 — PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
 - PART 3 — NEW PUBLIC RIGHTS OF WAY TO BE CREATED
- SCHEDULE 6 — PRIVATE MEANS OF ACCESS
 - PART 1 — PRIVATE MEANS OF ACCESS TO BE REPLACED
 - PART 2 — PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
 - PART 3 — NEW PRIVATE MEANS OF ACCESS CREATED
- SCHEDULE 7 — CLASSIFICATION OF HIGHWAYS
 - PART 1 — NEW HIGHWAYS
- SCHEDULE 8 — SPEED LIMITS
 - PART 1 — EXISTING ORDERS
 - PART 2 — HIGHWAYS SUBJECT TO 40 MPH SPEED LIMIT
 - PART 3 — DERESTRICTED HIGHWAYS
- SCHEDULE 9 — CLEARWAYS AND NO WAITING
 - PART 1 — CLEARWAYS
 - PART 2 — NO WAITING AT ANY TIME
- SCHEDULE 10 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 11 — LAND IN WHICH NEW RIGHTS MAY BE CREATED
- SCHEDULE 12 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
- SCHEDULE 13 — PROTECTIVE PROVISIONS
 - PART 1 — FOR THE PROTECTION OF RAILWAY INTERESTS
 - PART 2 — FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED
 - PART 3 — FOR THE PROTECTION OF LEICESTERSHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY
 - PART 4 — FOR THE PROTECTION OF WARWICKSHIRE COUNTY COUNCIL - AS HIGHWAY AUTHORITY
 - PART 5 — FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER
 - PART 6 — FOR THE PROTECTION OF SEVERN TRENT WATER LIMITED
 - PART 7 — FOR THE PROTECTION OF ELECTRICITY UNDERTAKERS

- PART 8 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
- PART 9 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC
- PART 10 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
- SCHEDULE 14 — MISCELLANEOUS CONTROLS
- SCHEDULE 15 — CERTIFICATION OF PLANS AND DOCUMENTS

An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an order granting development consent.

The application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c) by a Panel of three members (the Panel) appointed by the Secretary of State in accordance with Chapter 2 of Part 6 of the 2008 Act.

The Panel, having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section 74 of the 2008 Act has reported to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn and the report of the Panel has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application].

The Secretary of State is satisfied that, pursuant to article 25(2), the acquisition of common land comprised within the Order land (as identified in the book of reference) does not exceed 200 square metres, and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public, and, accordingly, section 131(5) of the 2008 Act applies.

The Secretary of State in exercise of the powers conferred by sections 114(d), 115(e), 117(f), 120(g) and 122(h) of, and Part 1 of Schedule 5(i) to, the 2008 Act, makes the following Order—

-
- (a) 2008 c. 29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Section 37 was amended by sections 128(2) and 137 of, and paragraphs 1 and 5 of Part 1 of Schedule 13 to, the Localism Act 2011 (c. 20).
 - (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732 and S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378, S.I. 2019/734, S.I. 2020/764, S.I. 2020/1534 and S.I. 2021/978. There are other amendments to the Regulations which are not relevant to this Order.
 - (c) S.I. 2010/103, amended by S.I. 2012/635.
 - (d) Section 114 was amended by paragraph 55 of Part 1 of Schedule 3 to the Localism Act 2011 (c.20).
 - (e) Section 115 was amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
 - (f) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
 - (g) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
 - (h) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
 - (i) Part 1 of Schedule 5 was amended by paragraph 4 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23), paragraph 71 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Schedule 6 to the Wales Act 2017.

PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Hinckley National Rail Freight Interchange Order 202[X] and comes into force on [] 202[].

Interpretation

2. In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1980 Act” means the Highways Act 1980(c);
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(e);
- “the 1990 Act” means the Town and Country Planning Act 1990(f);
- “the 1991 Act” means the New Roads and Street Works Act 1991(g);
- “the 2003 Act” means the Communications Act 2003(h);
- “the 2008 Act” means the Planning Act 2008(i);
- “the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010(j);
- “the 2017 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(k);
- “A47 link road” means the new road to be constructed as part of the authorised development between junction two of the M69 motorway and the B4668 Leicester Road being Works No. 7;
- “access and rights of way plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;
- “address” includes any number or address used for the purposes of electronic transmission;
- “apparatus” for the purposes of article 9 (street works) and article 37 (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;
- “authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act, and any works carried out under the requirements;
- “book of reference” means the document of that description referred to in Schedule 15 and certified as the book of reference by the Secretary of State for the purposes of this Order;
- “bridleway” has the same meaning as in the 1980 Act;

-
- (a) 1961 c.33.
 - (b) 1965 c.56.
 - (c) 1980 c.66.
 - (d) 1981 c.66.
 - (e) 1984 c.27.
 - (f) 1990 c.8.
 - (g) 1991 c.22.
 - (h) 2003 c.21
 - (i) 2008 c. 29.
 - (j) S.I. 2010/948, amended by S.I. 2011/987, S.I. 2012/635, S.I. 2012/2975, S.I. 2013/982, S.I. 2014/385, S.I. 2015/377, S.I. 2015/644, S.I. 2015/836, S.I. 2018/172, S.I. 2019/1103 and S.I. 2020/1226.
 - (k) S.I. 2017/572, amended by S.I. 2017/1012.

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“chief officer of police” means the chief constable for the relevant area or any successor in function;

“commence” or “commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), as part of the authorised development unless the context indicates otherwise;

“common land” means those parts of land forming part of Burbage Common and Woods and identified as parcels 120 and 121 on the land plans;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(a);

“electronic communications code” has the same meaning as in section 106 of the 2003 Act(b);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide.

“environmental statement” means the document of that description referred to in Schedule 15 and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“hedgerow” includes hedgerows to which the Hedgerow Regulations 1997 apply(c);

“HGV” means any vehicle with an operational weight capable of exceeding 7.5 tonnes;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“highway classification plans” means the plans of that description referred to in Schedule 15 and certified as the highway classification plans by the Secretary of State for the purposes of this Order;

“highway plans” means the plans of that description referred to in Schedule 15 and certified as the highway plans by the Secretary of State for the purposes of this Order;

“highway works” means the works comprised in Work Nos. 7 to 17;

“land plans” means the plans of that description referred to in Schedule 15 and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means Leicestershire County Council or any successor in function as lead local flood authority or equivalent body;

“level crossings” means the level crossings shown on the access and rights of way plans and on the level crossings plan;

“level crossings plan” means the plan of that description referred to in Schedule 15 (certification of plans and documents) and certified as the level crossings plan by the Secretary of State for the purposes of this Order;

“maintain” includes inspect, repair, adjust, alter, clear, refurbish or improve and any derivative of “maintain” is to be construed accordingly;

“main site” means that part of the land within the Order limits comprising the areas shown on the works plans as Work Nos. 1 to 7;

(a) 1980 c. 66. The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) 2003 c. 21. Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

(c) S.I. 1997/1160.

“National Highways” means National Highways Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015(a) or any successor in function;

“Network Rail” means Network Rail Infrastructure Limited and any associate company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;

“Order limits” means the limits shown on the works plans represented by a red line within which the authorised development may be carried out;

“owner” in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(b);

“parameters plans” means the plans of that description referred to in Schedule 15 and certified as the parameters plans by the Secretary of State for the purposes of this Order;

“public communications code provider” has the meaning given in section 151(1) (interpretation of Chapter 1) of the 2003 Act;

“public sewer or drain” means a sewer or drain which belongs to a relevant highway authority or a sewerage undertaker;

“railway” has the same meaning as in the 2008 Act;

“railway plans” means the plans of that description referred to in Schedule 15 and certified as railway plans by the Secretary of State for the purposes of this Order;

“relevant highway authority” means in any provision of this Order the highway authority for any area of land to which that provision relates;

“relevant planning authority” means as regards the operation or enforcement of any provision of this Order the district planning authority within whose administrative boundary that part of the authorised development relevant to the operation or enforcement of the provision in question is situated;

“relevant street authority” means in any provision of this Order the street authority for any area of land to which that provision relates;

“relevant traffic authority” means in any provision of this Order the traffic authority for any area of land to which that provision relates;

“relocation works” means works executed, or apparatus provided, under paragraph (2) of article 37 (apparatus and rights of statutory undertakers in stopped up streets);

“requirements” means the requirements set out in Part 1 of Schedule 2 (requirements);

“speed limit plans” means the plans of that description referred to in Schedule 15 and certified as the speed limit plans by the Secretary of State for the purposes of this Order;

“statutory undertaker” means a statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“strategic road network” means that part of the highway network comprising trunk roads and motorways;

(a) S.I 2015/376

(b) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act(a), together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act(b);

“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(c);

“traffic regulation plans” means the plans of that description referred to in Schedule 15 and certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“tree preservation order” has the meaning given in section 198 of the 1990 Act(d);

“trunk road” means a highway which is a trunk road by virtue of—

(c) section 10 or 19(1) of the 1980 Act(e); or

(d) an order or direction under section 10 of the 1980 Act; or

(e) this Order; or

(f) any other enactment;

“the undertaker” means—

(g) Tritax Symmetry (Hinckley) Limited (company number 10885167) whose registered office is at Unit B, Grange Park Court, Roman Way, Northampton, NN1 5EA; and

(h) in respect of the main site only, any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person but does not include any such person until such time as the authorised development is commenced on land owned by that person;

“verge” means any part of the street which is not a carriageway;

“water authority” means Severn Trent Water Limited (company number 02366686) registered at Severn Trent Centre, 2 St John’s Street, Coventry, CV1 2LZ and any successor in function;

“warehousing” means the warehousing constructed as part of the authorised development;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“working day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holiday) of the Banking and Financial Dealings Act 1971(f) and any derivative of “working day” is to be construed accordingly; and

“the works plans” means the plans of that description referred to in Schedule 15 and certified as the works plans by the Secretary of State for the purposes of this Order.

-
- (a) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26).
- (b) 1984 c. 27. Section 121A was inserted by section 168(1) of, and paragraph 70 of Part II of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22), and amended by section 1(6) of, and paragraphs 70 and 95(1) and (3) of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). There are other amendments to schedule 121A of the Act which are not relevant to this Order.
- (c) 2004 c. 18.
- (d) 1990 c. 8. Section 198 was amended by sections 192(1), (2)(a), (b) and (c), and section 238 of, and paragraphs 7 and 8 of Schedule 8, and Schedule 13 to, the Planning Act 2008 (c. 29), sections 31, 32, and 84 of, and paragraph 20 of Schedule 6, paragraph 34 of Schedule 7 and Schedule 19, and Parts I and II of, the Planning and Compensation Act 1991 (c. 34) and section 42(3) of the Planning and Compulsory Purchase Act 2004 (c. 5).
- (e) 1980 c. 66. Section 10 was amended by section 22(2) of the New Roads and Street Works Act 1991 (c. 22), paragraph 22 of Schedule 2 to the Planning Act 2008 (c. 29) and section 1(6) of, and paragraph 10 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). Section 19(1) was amended by section 1(6) of, and paragraphs 1 and 15 of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).
- (f) 1971 c. 80.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and where applicable distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development) and references to numbered requirements are to the requirements as numbered in Part 1 of Schedule 2 (requirements).

(5) For the purposes of this Order all areas described in square metres in the book of reference are approximate.

(6) Where the term approximate precedes a figure of measurement or quantum then the flexibility accorded by that word is limited by the parameters and the limits of deviation as described in article 4 and does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement.

(7) Where in this Order a document or a plan is referred to by reference to a document number, the reference is to the document or plan of that number referred to in Schedule 15.

PART 2

PRINCIPAL POWERS

Development consent granted by the Order

3. Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out and used within the Order limits.

(1) Nothing in this Order grants development consent for the construction of a generating station within the meaning of section 14(1)(a) of the 2008 Act.

Parameters of authorised development

4. The authorised development so far as shown on the parameters plans is to be carried out within the parameters shown and described on the parameters plans.

(1) In carrying out the authorised development the undertaker may—

- (a) in respect of Works Nos. 4 and 7, deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of the highway works deviate vertically from the levels shown on the highway plans to a maximum of 1.5 metres upwards or downwards; and
- (c) in respect of the railway works comprised in Work Nos. 1 and 3 deviate vertically from the levels shown on the railway plans to a maximum of 1.5 metres upwards and 3 metres downwards,

except that the maximum limits described in paragraphs 2(a) to 2(c) do not apply to constrain the authorised development when it is demonstrated by the undertaker, on application, to the relevant planning authority's satisfaction, and the relevant planning authority certifies accordingly, that a deviation in excess of these limits would not be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(2) Any Work No. shown on the works plans as having a boundary with Work Nos. 4 or 7 may be carried out so that it adjoins those works in the line or situation they are constructed pursuant to the power to deviate conferred by sub-paragraph (2)(a) above.

Authorisation of use

5. 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 only, any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes.

Maintenance of authorised development

6. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(1) Paragraph (1) does not apply to the highway works the maintenance of which is governed by article 15 (maintenance of highway works) and Parts 2, 3 and 4 of Schedule 13 (protective provisions).

(2) Paragraph (1) does not extend to any maintenance works which would be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

Benefit of Order

7. Subject to paragraphs (2), (3) and (4) of this article and to article 8 (transfer of the benefit of certain provisions of the Order) the undertaker shall have the benefit of the Order.

(1) 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),

(2) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(3) Tritax Symmetry (Hinckley) Limited has the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Parts 2, 3 and 4 of Schedule 13 (protective provisions) unless—

- (a) the Secretary of State consents to the transfer of the benefit of those provisions; or
- (b) the provisions of paragraphs 8(7) or 12(3) of Part 2 or paragraph 22 of Part 3 or paragraph 4(7) of Part 4 of Schedule 13 apply in which case the relevant highway authority shall have the benefit of the powers to carry out the relevant highway works.

(4) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers, operators of the electronic communications code network and other persons affected by the authorised development.

Transfer of the benefit of certain provisions of the Order

8. The undertaker may with the consent of the Secretary of State transfer to another person (“the transferee”)—

- (a) the benefit of the provisions of Part 5 (powers of acquisition); and
- (b) the benefit of the provisions of Parts 2, 3 and 4 of Schedule 13 (protective provisions).

(2) Where a transfer has been made in accordance with paragraph (1) references in this Order to the undertaker except in paragraph (1), include references to the transferee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The undertaker must—

- (a) consult the Secretary of State before making an application for consent under paragraph (1) of this article by giving notice in writing of the proposed application; and
- (b) prior to any transfer under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer relates to the exercise of powers in their area, the relevant planning authority and in respect of paragraph (1)(b), the relevant highway authority.

(5) A notice under paragraph (4)(b) must—

- (a) state—
 - (i) the name and contact details of the transferee;
 - (ii) subject to paragraph (6), the date on which the transfer will take effect;
 - (iii) the provisions to be transferred;
 - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (3), will apply to the person exercising the powers transferred; and
 - (v) where the provisions to be transferred include all or any of the benefit of powers in Part 5 of this Order, confirmation of the availability and adequacy of funds for compensation, and
- (b) be accompanied by—
 - (i) where relevant, a plan showing the works or areas to which the transfer relates; and
 - (ii) a copy of the document effecting the transfer signed by the undertaker and the transferee.

(6) The date specified under paragraph (5)(a)(ii) must not be earlier than the expiry of 14 days from the date of receipt of the notice given under paragraph (4)(b).

(7) The notice given under paragraph (4)(b) must be signed by the undertaker and the transferee as specified in that notice.

PART 3

STREETS

Street works

9. 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—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act and is subject to the provisions of Parts 2, 3 and 4 of Schedule 13 (protective provisions).

Power to alter layout, etc., of streets

10. Subject to paragraph (2), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the main site and the

layout of any street at its junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) 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;
- (b) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers, and passing places.

(2) The powers conferred by paragraph (1) must not be exercised without the consent of the relevant street authority but such consent must not be unreasonably withheld and if the relevant street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

(3) An application for consent under paragraph (2) must be accompanied by a letter informing the relevant street authority—

- (a) of the period mentioned in paragraph (2); and
- (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Permanent stopping up of streets

11. Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently each of the streets specified in columns (1) and (2) of Schedule 4 (streets to be permanently stopped for which no substitute is to be provided) to the extent shown on the access and rights of way plan, specified in column (3) of the Schedule.

(1) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.

(2) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of any dispute, under Part 1 of the 1961 Act.

(3) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped up streets).

(4) Any stopping up carried out under this article must be carried out in accordance with any relevant provisions of Schedule 13 (protective provisions).

(5) The powers conferred by paragraph (1) in respect of the permanent stopping up of Smithy Lane as identified in columns (1) and (2) of Schedule 4 must not be exercised unless and until the relevant works relating to the substitute bridleway for public right of way V29/7 identified in Part 1 of Schedule 5 (public rights of way to be permanently stopped up for which a substitute is to be provided) or an alternative temporary substitute public right of way agreed by the relevant highway authority has been provided in accordance with article 13(2) (public rights of way – creation, substitution, stopping up and closure of level crossings).

Temporary closure of streets

12. The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily closed, altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site. The undertaker must restore any street used as a temporary working site to a standard to be agreed with the relevant street authority, such agreement not to be unreasonably withheld or delayed.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily close, alter, divert or restrict any street without the consent of the relevant street authority which may subject to paragraph (5) attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of higher standard than the temporarily closed street.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority which receives an application for consent under paragraph (4) accompanied with all relevant information fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was submitted with all relevant information, it is deemed to have granted consent.

(8) An application for consent under paragraph (4) must be accompanied by a letter informing the relevant street authority—

- (a) of the period mentioned in paragraph (7); and
- (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Public rights of way - creation, substitution, stopping up and closure of level crossings

13. Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

- (a) stop up each of the public rights of way specified in columns (1) and (2) of Part 1 of Schedule 5 (public rights of way to be permanently stopped up for which a substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule;
- (b) provide the substitute public rights of way described in column (4) of Part 1 of Schedule 5 between the specified terminus points, on a detailed alignment to be agreed with the relevant highway authority;
- (c) temporarily close any public rights of way to the extent agreed with the relevant highway authority and provide substitute temporary public rights of way on an alignment to be agreed with the relevant highway authority prior to the temporary closure of the public right of way concerned; and
- (d) stop up each of the public rights of way specified in columns (1) and (2) of Part 2 of Schedule 5 (public rights of way to be permanently stopped up for which no substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule.

(2) No public right of way specified in columns (1) and (2) of Part 1 of Schedule 5 may be wholly or partly stopped up under this article unless the permanent substitute public rights of way referred to in column (4) of Part 1 of Schedule 5 or an alternative temporary substitute public right of way agreed by the relevant highway authority has first been provided by the undertaker, to the reasonable satisfaction of the relevant highway authority.

(3) Any temporary substitute right of way must be maintained by the undertaker with appropriate signage until the completion and opening of the permanent substitute public right of way specified in column (4) of Part 1 of Schedule 5.

(4) The undertaker must in connection with carrying out of the authorised development provide the new public rights of way specified in columns (1) and (2) of Part 3 of Schedule 5 (new public rights of way to be created) to the extent specified in column (3) of that Part of that Schedule.

(5) Subject to the provisions of this article, where a relevant level crossing is crossed by a public right of way which is stopped up under paragraph (1), the relevant level crossing is stopped up and discontinued at the same time.

(6) In paragraph (6), “relevant level crossing” means Thorney Fields Farm level crossing, Elmesthorpe level crossing, Earl Shilton level crossing, Barwell level crossing and The Outwoods level crossing identified on the level crossings plan.

Accesses

14. The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(1) The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

(2) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

(3) An application for consent under paragraph (1) must be accompanied by a letter informing the relevant highway authority or relevant street authority—

(a) of the period mentioned in paragraph (3); and

(b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access to be replaced) may be removed by the undertaker and if removed must be replaced by the means of access as set out in column (3) of Part 1 of Schedule 6 at the stage of the authorised development identified in column (4) of that Part of that Schedule.

(5) The private means of access as set out in column (2) of Part 2 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker at the stage of the authorised development identified in column (3) of that Part of that Schedule without a substitute being provided.

(6) The undertaker must provide the private means of access as set out in column (2) of Part 3 of Schedule 6 (new private means of access created) at the stage of the authorised development identified in column (3) of that Part of that Schedule.

Maintenance of highway works

15. The highway works must be completed in accordance with the provisions of Parts 2, 3 and 4 of Schedule 13 (protective provisions).

(1) With effect from the date of the final certificate referred to in paragraph 14 of Part 2 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of National Highways.

(2) With effect from the date of the final certificate referred to in paragraph 5 of Part 3 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of Leicestershire County Council.

(3) With effect from the date of the final certificate referred to in paragraph 7 of Part 4 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of Warwickshire County Council.

(4) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 10 of Part 2 of Schedule 13 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(5) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 4 of Part 3 of Schedule 13 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(6) For the purposes of this article, the definition of “maintain” in article 2 (interpretation) shall not apply and the word “maintain” shall be given its ordinary meaning when applied to highways.

Classification of highways

16. The new highways described in Part 1 of Schedule 7 (new highways) are to be—

- (a) classified as set out in column (3) of Part 1 of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such; and
- (b) provided for the use of the classes of traffic defined in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act as set out in column (4) of Part 1 of Schedule 7.

(2) From the date on which the undertaker notifies the Secretary of State that the new highways described in Part 1 of Schedule 7 have been completed as evidenced by issue of the provisional certificate in accordance with paragraph 6 of Part 2 and paragraph 6 of Part 3 of Schedule 13 (protective provisions) or are open for through traffic, whichever is the earliest—

- (a) the body set out in column (5) of Part 1 of Schedule 7 is the highway authority for those highways; and
- (b) the new highways identified as special roads in column (3) of Part 1 of Schedule 7 are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

Speed limits

17. The order referred to in column (1) of Part 1 (existing order) of Schedule 8 (speed limits) is varied as set out in column (3) of that Part of that Schedule upon the event listed in column (4) occurring.

(1) Upon the event listed in column (3) of Part 2 (highways subject to 40 mph speed limit) of Schedule 8 no person is to drive any motor vehicle at a speed exceeding 40 miles per hour along the lengths of highway identified in columns (1) and (2) of that Part of that Schedule.

(2) Upon the event listed in column (3) of Part 3 of Schedule 8 (derestricted highways) the lengths of highway specified in columns (1) and (2) of that Part of that Schedule shall cease to be restricted highways for the purpose of section 81 of the 1984 Act.

(3) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development, impose a temporary speed limit either at all times or at times, on days or during such periods, and on such highways as may be specified by the undertaker.

(4) The undertaker must not exercise the powers in paragraph (4) unless it has given not less than 4 weeks’ notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority.

(5) The speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

- (a) have the same effect; and

(b) may be varied by the relevant traffic authority in the same manner, as any other speed limit imposed by an order under that Act.

(6) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(a) when used in accordance with regulation 3(5) of those Regulations.

Traffic regulation

18. Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) suspend or authorise the use as a parking place of any highway;
- (d) make provision as to the direction or priority of vehicular traffic on any highway; and
- (e) permit or prohibit vehicular access to any highway,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker shall not exercise the powers in paragraph (1) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) shall—

- (a) have effect as if duly made by, as the case may be—
 - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
 - (ii) the relevant highway authority as an order under section 32 of the 1984 Act(b); and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).

(4) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) at any time.

(5) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

(6) If the relevant traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (3) that is accompanied by all relevant information the relevant traffic authority shall be deemed to have given consent.

(7) An application for consent under paragraph (3) must be accompanied by a letter informing the relevant traffic authority—

- (a) of the period mentioned in paragraph (6); and

(a) S.I. 2011/935.

(b) 1984 c. 27. Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51). There are other amendments to section 32 which are not relevant to this Order.

- (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Clearways and no waiting

19. Subject to paragraphs (3) and (4), following the event specified in column (3) of Part 1 of Schedule 9 (clearways), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any part of a carriageway specified in columns (1) and (2) of that Part of that Schedule, other than a lay-by.

(1) Subject to paragraphs (3) and (5), following the event specified in column (3) of Part 2 of Schedule 9 (no waiting at any time), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait at any time on any day on the sides of the carriageway specified in columns (1) and (2) of that Part of that Schedule or its adjacent verge.

(2) Nothing in paragraphs (1) and (2) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A to the 2003 Act(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, National Highways, a safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person's control.

(3) Nothing in paragraph (1) applies to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

(4) Nothing in paragraph (2) applies—

- (a) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary—
 - (i) to enable a person to board or alight from the vehicle;
 - (ii) to enable goods to be loaded on to or unloaded from the vehicle; or

(a) 2003 c. 21.
(b) 1991 c. 56.
(c) 2000 c. 26.

- (iii) to enable goods to be sold from the vehicle provided such goods are immediately delivered at, or taken into, premises adjacent to the vehicle from which the sale is effected;
- (b) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary to enable that vehicle, if it cannot conveniently be used for such purpose without waiting on such verge, to be used in connection with any building operation or demolition, the removal of any obstruction or potential obstruction to traffic, the maintenance, improvement or reconstruction of such verge or of a carriageway immediately adjacent to such verge or the erection, laying, placing, maintenance, testing, alteration, repair or removal of any structure, works or apparatus in, on, under or over that verge or carriageway;
- (c) to a vehicle waiting on any verge specified in paragraph (2) while any gate or other barrier at the entrance to premises to which the vehicle requires access or from which it has emerged is opened or closed.

(5) Paragraphs (1) to (5) have effect as if made by a traffic regulation order under the 1984 Act and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

Agreements with highway authorities

20. A relevant highway authority and the undertaker may enter into agreements related to the authorised development with respect to—

- (a) the construction and/or maintenance of any new highway, including any structure carrying the highway over the existing railway and any railway authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any highway under the powers conferred by this Order;
- (c) the maintenance of landscaping within a highway constructed as part of the highway works;
- (d) the maintenance of highway related assets which fall outside of the extent of highway maintained by a relevant highway authority;
- (e) any stopping up, alteration or diversion of a highway as part of or to facilitate the authorised development;
- (f) the carrying out in the highway of any of the works referred to in article 9 (street works);
or
- (g) the erection of signage in connection with the authorised development.

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the relevant highway authority to carry out any function under this Order which relates to the highway in question;
- (b) include an agreement between the undertaker and relevant highway authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

21. Subject to paragraphs (3), (4), (5) and (6) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and

may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(1) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(2) The undertaker must not discharge any water into any public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(3) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the relevant highway authority consider appropriate such consent not to be unreasonably withheld or delayed.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not work on, over, under or near an ordinary watercourse (within 3 metres of the landward toe of the bank), makes changes to any structure that helps control water or discharge any water into any watercourse except with the approval of the lead local flood authority, and such approval may be given subject to such terms and conditions as the lead local flood authority may reasonably impose but must not be unreasonably withheld.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) All expressions excluding “watercourse” and “public sewer or drain”, which are used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(9) If a person who has received an application for consent under paragraphs (3) or (4) or approval under paragraph (5)(a) fails to notify the undertaker of its decision within 42 days of receiving the application submitted with all relevant information, that person is deemed to have granted consent or given approval as the case may be.

(10) An application for consent under paragraphs (3) or (4) or approval under paragraph (5)(a) must be accompanied by a letter informing the person or relevant highway authority—

(a) of the period mentioned in paragraph (10); and

(b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Protective works to buildings and structures

22. Subject to the provisions of this article, the undertaker may at its own expense carry out the protective works to any building or structure which may be affected by the authorised development as the undertaker considers necessary or expedient.

(1) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building or structure of any part of the authorised development; or

(a) 1991 c.56. Section 106 was amended by sections 35(1) and (8), 43(2) and 56(7) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154. There are amendments to regulation 12 which are not relevant to this Order.

- (b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of five years beginning with the day on which that part of the authorised development first comes into use or becomes operational.

(2) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building or structure to which the power applies and any land within its curtilage and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.

(3) For the purpose of carrying out the protective works under this article to a building or structure the undertaker may (subject to paragraphs (5), (6) and (7))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it).

(4) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building or structure;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or structure or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a) or (c) specifying the planned protective works proposed to be carried out.

(5) Where a notice is served under paragraph (5)(a), (c) or (d), the owner and or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question as to whether the protective works proposed by the undertaker are necessary or expedient to be referred to arbitration under article 51 (arbitration).

(6) Where the protective works relate to the strategic road network the counter-notice under paragraph (6) may attach conditions to any protective works to be undertaken under paragraph (1).

(7) The undertaker must compensate the owners and occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(3) of the 2008 Act (compensation in cases where no right to claim as nuisance).

(9) Any compensation payable under paragraph (7) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “protective works” in relation to a building or structure means those works the purpose of which is to prevent damage which may be caused to the building or structure which may include monitoring, underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

23. The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 28 days' notice has been served on every owner, who is not the undertaker, and occupier of the land.

(3) Any person entering land under the powers conferred by this article on behalf of the undertaker—

- (a) must, if so required, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
- (b) in a private street without the consent of the relevant street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) If either a highway authority or a street authority which has received an application for consent under paragraph (4) that includes all relevant information fails to notify the undertaker of its decision within 42 days of receiving the application the authority is deemed to have granted the consent.

(7) An application for consent under paragraph (4) must be accompanied by a letter informing the relevant highway authority or relevant street authority—

- (a) of the period mentioned in paragraph (6); and
- (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Removal of human remains

24. Before the undertaker carries out any development or works which will or may disturb any human remains within the Order limits it must remove those human remains or cause them to be removed, in accordance with the provisions of this article.

(1) Before any such remains are removed from within the Order limits the undertaker must give notice of the intended removal, describing the Order limits land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near the Order limits.

(2) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(3) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are

interred within the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(4) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be —

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(5) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by a county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(6) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(7) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by a county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(8) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(9) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(10) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(11) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representatives of the deceased is likely to object to the remains being removed in accordance with this article.

(12) In this article references to a relative of the deceased are to a person who—

- (a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased;
- (b) is, or is a child of, a brother, sister, uncle or aunt of the deceased;
- (c) is the lawful executor of the estate of the deceased; or
- (d) is the lawful administrator of the estate of the deceased.

(13) Any jurisdiction or function conferred on a county court by this article may be exercised by the district judge of the court.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

25. The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it.

(1) The undertaker must not under this Order acquire or take temporary possession pursuant to articles 34 or 35 of a total area of more than 200 square metres of common land provided that nothing in this article 25 prevents the undertaker from exercising both temporary possession and compulsory acquisition powers over that land.

(2) This article is subject to article 27 (compulsory acquisition of rights), article 29 (time limit for exercise of authority to acquire land compulsorily), article 30 (private rights) and article 34(1) (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land - minerals

26. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for the “acquiring authority” substitute “the undertaker”;
- (c) for “undertaking” substitute “authorised development”; and
- (d) for “compulsory purchase order” substitute “this Order”.

Compulsory acquisition of rights

27. Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land), by creating them as well as by acquiring rights and the benefit of restrictions already in existence.

(1) In the case of the Order land specified in column (2) of Schedule 11 (land in which new rights, may be created), the undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(2) Subject to section 8 (other provisions as to divided land) of, and Schedule 2A (counter notice requiring purchase of land not in notice to treat) to, the 1965 Act (as substituted by Schedule 12 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 12 has effect for the purpose of modifying the enactments referred to in that Schedule in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(4) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Power to override easements and other rights

28. Any authorised activity undertaken by the undertaker which takes place within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it or by any contractors, servants or agents of the Undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of the land arising by virtue of a contract.

(2) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of the land arising by virtue of a contract.

(3) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provisions as to compensation for injurious affection) of the 1965 Act^(a); and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(7) Subsection (2) of section 10 of the 1965 Act applies to paragraph (5) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act^(b).

(8) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(9) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

- (a) is liable to pay compensation; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(a) 1965 c. 56. Section 10 was amended by S.I. 2009/1307.

(b) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(10) For the purposes of this article, “authorised activity” means—

- (a) the erection, construction, carrying out or maintenance of any building or works on land;
- (b) the erection, construction or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

Time limit for exercise of authority to acquire land and rights compulsorily

29. After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act (as modified by article 33 (modification of Part 1 of the 1965 Act)); and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(a) (execution of declaration) as applied by article 32 (application and modification of the 1981 Act).

(2) The authority conferred by article 34 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession was taken before the end of that period.

Private rights

(3) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of the acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act(b),

whichever is the earlier.

(4) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right by the undertaker, whether compulsorily or by agreement or through the grant of a lease of the land by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(5) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(6) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(7) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation in accordance with the terms of section 152 (compensation where no right to claim in nuisance) of the 2008 Act(c) to be determined, in case of dispute, under Part 1 of the 1961 Act.

(a) 1981 c. 66. Section 4 was amended by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

(b) 1965 c. 56. Section 11(1) was amended by section 34(1) of, and Schedule 4 to the Acquisition of Land Act 1981 (c. 67), section 14 of and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provision) Measure 2006 (No 1) and sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

(c) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(8) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act^(a) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 36 (statutory undertakers) applies.

(9) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights over land;
- (ii) the undertaker's appropriation of the land;
- (iii) the undertaker's entry onto the land; or
- (iv) the undertaker's taking temporary possession of the land,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(10) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(11) References in this article to private rights over land include references to any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and including restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Rights under or over streets

30. Subject to paragraph (6), the undertaker may temporarily enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(1) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(2) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Compensation is not payable under paragraph (4) to any person who is a statutory undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

(5) Paragraph (1) does not apply to any street which is part of the strategic road network.

(a) 2008 c. 29. Section 138 was amended by sections 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

Application and modification of the 1981 Act

31. The 1981 Act applies as if this Order were a compulsory purchase order.

(1) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(2) In section 1 (application of Act) for subsection (2) there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “and this subsection” to the end.

(4) Omit section 5A(a) (time limit for general vesting declaration).

(5) In section 5B(b) (extension of time limit during challenge) for subsection (1) there is substituted—

“(1) If an application is made under section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 29 of the Hinckley National Rail Freight Interchange Order 202X is to be extended by—

(a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined; or

(b) if shorter, one year.”

(6) In section 6(c) (notices after execution of declaration) for subsection (1)(b) there is substituted—

“(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”

(7) In section 7(d) (constructive notice to treat) in subsection (1)(a), “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.

(8) In section 11(e) (recovery of compensation overpaid), for subsection (1) substitute—

“(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”

(9) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 33 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Modification of Part 1 of the 1965 Act

32. Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(1) In section 4A(1)(g) (extension of time limit during challenge)—

-
- (a) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
(b) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
(c) Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).
(d) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
(e) Section 11 was amended by S.I. 2009/1307.
(f) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
(g) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 29 of the Hinckley National Rail Freight Interchange Order 202X”.

(2) In section 22 (2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act substitute “article 29 of the Hinckley National Rail Freight Interchange Order 202X”.

(3) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development) of the Hinckley National Rail Freight Interchange Order 202X.”

Temporary use of land for carrying out the authorised development

33. The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act^(a) (powers of entry) (other than in connection with the acquisition of rights or restrictive covenants only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act^(b);
- (b) remove any buildings and vegetation from that land;
- (c) construct any permanent or temporary works (including the provision of means of access), haul roads, fencing and other means of enclosure, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site (including storage of materials and siting of equipment and apparatus) with access in connection with the authorised development;
- (e) construct or carry out any works (including mitigation works or operations) or use the land for the purpose of the authorised development;
- (f) construct such works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(a) 1965 c. 56. Section 11 was amended by section 34(1) of, and paragraph 14(3) of Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and sections 186, 187 and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(b) 1981 c. 66. Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) above, after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land or has otherwise acquired the land subject to temporary possession.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act of otherwise acquired the land or rights over land subject to temporary possession, before giving up possession of the land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land; but the undertaker is not required to—

- (a) replace a building or structure removed under this article;
- (b) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works);
- (c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development;
- (d) remove or reposition any apparatus belonging to statutory undertakers or any necessary mitigation works; or
- (e) restore the land on which any permanent works have been constructed under paragraph (1).

(6) Any dispute as to the satisfactory removal of temporary works and restoration of the land under paragraph (5) does not prevent the undertaker from giving up possession of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act^(a) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

(10) Unless provided for in the book of reference and article 25 (compulsory acquisition of land) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

(a) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

- (a) acquiring new rights over any part of that lands under article 27 (compulsory acquisition of rights);
- (b) carrying out a survey of that land under article 23 (authority to survey and investigate the land).

(11) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act^(a) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act^(b).

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land.

Temporary use of land for maintaining the authorised development

34. Subject to paragraph (2) and Parts 2, 3 and 4 of Schedule 13 (protective provisions), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act^(c) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(a) 1965 c. 56. Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals Courts and Enforcement Act 2007 (c. 15).
 (b) 2008 c. 29. Section 125 was amended by section 190 of, and Schedule 16 to, the Housing and Planning Act 2016.
 (c) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(9) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act^(a) (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act^(b) (application of compulsory acquisition provisions).

(12) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first occupied for commercial use or becomes operational.

Statutory undertakers

35. Subject to Schedule 13 (protective provisions) and article 27 (compulsory acquisition of rights), the undertaker may—

- (a) acquire compulsorily, or acquire new rights over, any Order land belonging to statutory undertakers;
- (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers within the Order land; and
- (c) extinguish the rights of, remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1)(c) has no effect in relation to apparatus in respect of which article 37 (apparatus and rights of statutory undertakers in stopped up streets) applies.

(3) In this article, a reference to statutory undertaker includes a reference to a public communications provider.

Apparatus and rights of statutory undertakers in stopped up streets

36. Where a street is stopped up under article 11 (permanent stopping up of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(1) Where a street is stopped up under article 11 any statutory undertaker whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory undertaker may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(a) 1965 c. 56. Section 13 was amended by section 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals Courts and Enforcement Act 2007 (c. 15).

(b) 2008 c. 29. Section 125 was amended by section 190 of, and Schedule 16 to, the Housing and Planning Act 2016.

(2) Subject to the following provisions of this article, the undertaker must pay to any statutory undertaker an amount equal to the cost reasonably incurred by the statutory undertaker in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(3) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or land at the same depth as the existing apparatus, then the amount payable to the statutory undertaker is to be reduced by a sum equivalent to those additional costs.

(4) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which, apart from this paragraph, would be payable to a statutory undertaker in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(6) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works must be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs must be borne by the undertaker and the statutory undertaker in such proportions as may be prescribed by any such regulations.

(7) In this article—

- (a) reference to a statutory undertaker includes a public communications code provider; and
- (b) “relocation works” means work executed, or apparatus provided, under sub-paragraph (2).

Recovery of costs of new connections

37. Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(1) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 36, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(2) This article does not have effect in relation to apparatus to which article 37 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(3) In this article “public utility undertaker” has the same meaning as in the 1980 Act.

Guarantees in respect of payment of compensation

38. 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.

(1) The provisions are—

- (a) article 12 (temporary closure of streets);
- (b) article 23 (authority to survey and investigate the land);
- (c) article 25 (compulsory acquisition of land);
- (d) article 26 (compulsory acquisition of land - minerals);
- (e) article 27 (compulsory acquisition of rights);
- (f) article 30 (private rights);
- (g) article 31 (rights under or over streets);
- (h) article 34 (temporary use of land for carrying out the authorised development);
- (i) article 35 (temporary use of land for maintaining the authorised development); and
- (j) article 36 (statutory undertakers).

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order must be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(3) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Special category land

39. Upon entry by the undertaker onto the special category land under article 25 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights), so much of the special category land as is required for the purposes of the exercise by the undertaker of the order rights is discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of the Order rights.

(1) In this article—

“the Order rights” means rights exercisable over the special category land by the undertaker under article 25 (compulsory acquisition of land); article 27 (compulsory acquisition of rights); article 34 (temporary use of land for carrying out the authorised development) or article 35 (temporary use of land for maintaining the authorised development);

“rights, incidents and trusts” means all such provisions attaching to the land, and in respect of the Burbage Common and Woods includes all such provisions attaching to that land contained in or having effect under the Common Registration Act 1965(a), the Commons Act 2006(b) and section 193 of the Law of Property Act 1925(c); and

“special category land” has the same meaning as “common land” in article 2 (interpretation) of this Order.

PART 6

MISCELLANEOUS AND GENERAL

Operation and use of railways

40. The undertaker may operate and use the railway comprised in the authorised development and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

(1) In respect only of that part of the existing Leicester to Hinckley railway within the order limits nothing in this order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

Operational land for the purposes of the 1990 Act

41. Development consent granted by this Order within that part of the Order limits upon which the highway or railway works are to be carried out is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

Charges

42. The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, and for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Defence to proceedings in respect of statutory nuisance

43. Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisance)(d) 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)(e) of that Act if—

- (a) the defendant shows that the nuisance—
 - (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 authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent

(a) 1965 c.64.

(b) 2006 c.26.

(c) 1925 c.20. Section 193 was amended by section 189(4) of the Local Government Act 1972, sections 37, 38 and 46 of the Criminal Justice Act 1982, section 16 and paragraph 10(5) of Schedule 8 to, the Local Government Act 1985, and section 46(3) and paragraph 1 of Schedule 4 to the Countryside and Rights of Way Act 2000.

(d) 1990 c. 43. There are amendments to this section which are not relevant to this Order.

(e) 1990 c. 43.

given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(a); or

- (ii) is a consequence of complying with a requirement or any other provision of this Order and that it cannot reasonably be avoided; or
- (b) the nuisance is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) it relates to premises used by the undertaker for the purposes of or in connection with the maintenance, operation or 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.

(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.

Felling or lopping of trees and removal of hedgerows

44. Subject to paragraphs (4), (5) and (6) the undertaker may fell or lop any tree, shrub or hedgerow within 15 metres of any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person who suffers any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The provisions of paragraph (1) do not apply without the agreement of the relevant planning authority to any tree or hedgerow identified to be retained in arboriculture method statement approved as part of the construction environmental management plan approved under requirement 8(2)(d).

(5) The provisions of paragraph (1) do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway.

(6) The undertaker may fell or lop or cut back any tree or shrub which is subject to a tree preservation order with the prior approval of the relevant planning authority, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(7) In carrying out any activity authorised by paragraph (6)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and must pay compensation to any person who suffers any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(a) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55). Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c. 25), and section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

(8) The authority given by paragraph (6) shall constitute a deemed consent under the relevant tree preservation order.

Protective provisions

45. Schedule 13 to this Order has effect.

Governance of requirements and governance of protective provisions relating to highway works

46. When in any requirement or in Parts 2, 3 and 4 of Schedule 13 (protective provisions) approval or agreement is required of, or with, anybody in relation to the detail, carrying out or use of the authorised development (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development which would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations(a).

(1) When any details, plans or other matters have been agreed or approved by the relevant planning authority under a requirement or the relevant highway authority under a requirement or Parts 2, 3 and 4 of Schedule 13 then they may subsequently be amended by agreement with the relevant planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development outside the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(2) Where a consent, agreement or approval is required or requested by the undertaker under a requirement then the procedure set out in Part 2 of Schedule 2 (procedure for approvals etc. under requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, shall apply.

Disapplication, application and modification of legislative provisions

47. The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the authorised development—

- (a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991(b);
- (b) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(c) in relation to watercourses for which Leicestershire County Council is the drainage board concerned;
- (c) section 32 (variation of awards) of the Land Drainage Act 1991(d);
- (d) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(a);

(a) S.I. 2017/572 as amended by S.I. 2017/1012.

(b) 1991 c. 57. Paragraph 5 was amended by section 106 of the Natural Environmental and Rural Communities Act 2006, section 31 of, and paragraphs 40 and 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29), and sections 84 and 146(1) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6 was amended by section 105 of, and paragraph 6 of Schedule 15 to, the Environment Act 1995 (c. 25), sections 233(1), 224 and 321 of, and paragraphs 20 and 24 of Schedule 16 and Part 5(b) of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6A was inserted by section 103(3) of the Environment Act 1995 (c. 25).

(c) 1991 c. 59. Section 23 was amended by section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).

(d) 1991 c. 59.

- (e) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981**(b)**; and
- (f) section 25 of the Burial Act 1857**(c)** (offence of removal of body from burial grounds) does not apply to a removal carried out in accordance with article 24 (removal of human remains) of this Order.

(2) The provisions of the Neighbourhood Planning Act 2017**(d)** do not apply in so far as they relate to the temporary possession of land under articles 34 (temporary use of land for carrying out the authorised development) and 35 (temporary use of land for maintaining the authorised development) of this Order.

(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order shall be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act**(e)** and such development or planning permission shall not at any time be construed as preventing the further construction, maintenance or use of the authorised development (or any part of it) in accordance with this Order.

(4) Regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007**(f)** does not apply to any advertisement erected in the location and in accordance with the parameters shown on the parameters plans.

(5) This Order shall not constitute a planning permission for the purpose of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within article 5 of the 2010 Regulations (meaning of planning permission).

(6) Schedule 14 (miscellaneous controls) to this Order which makes provision applying, modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order has effect.

(7) Paragraphs (1) to (6) only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

Certification of plans and documents

48. The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the plans and documents identified in Schedule 15 (certification of plans and documents) for certification that they are true copies of the plans and documents referred to in this Order.

(1) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(2) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in this Order as made,

(a) 1991 c.59. Section 66 was amended by section 31 of, and paragraphs 25 and 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).

(b) 1981 c. 69. Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16).

(c) 1857 c. 81.

(d) 2017 c. 20.

(e) 2008 c. 29. Sections 160 and 161 were amended by regulation 4(1) of, and paragraph 41 of Part 1 of Schedule 4 to, S.I. 2015/664. Section 161 was also amended by section 112(2) of, and paragraph 4 of Part 1 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c. 23).

(f) S.I. 2007/783.

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in this Order as made.

- (3) The undertaker must liaise with the relevant planning authority to ensure that—
- (a) as soon as practicable following the making of this Order, a copy of each of the documents listed in Schedule 15 is included under Part 2 of the local planning register as if this Order were a planning permission granted under the 1990 Act^(a);
 - (b) a register of those requirements contained in Part 1 of Schedule 2 of this Order (requirements) that provide for further approvals to be given by the relevant planning authority is included within the local planning register under regulation 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015^(b) as if each requirement were a condition of a planning permission granted under the 1990 Act; and
 - (c) the reference number, the date and the effect of the decision of the Secretary of State of an appeal under paragraph 4 of Part 2 of Schedule 2 of this Order is included within the local planning register under regulation 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Service of notices

49. A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(c) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of that land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

(a) 1990 c. 8.

(b) S.I. 2015/595, amended by S.I. 2016/873, S.I. 2016/873, S.I. 2016/912, S.I. 2017/402, S.I.2017/571, S.I. 2017/1013, S.I. 2017/1243, S.I. 2017/1309, S.I. 2018/119, S.I.2018/695, S.I. 2020/505, S.I. 2021/746, S.I. 2021/814, S.I. 2023/1279 and S.I. 2024/50.

(c) 1978 c. 30

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article—

“electronic transmission” means a communication transmitted—

- (a) by means of electronic communications network; or
- (b) by other means but while in electronic form; and

“legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

50. Subject to paragraph (2) except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order, other than a difference which falls to be determined by the tribunal must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party, after giving notice in writing to the other, by—

- (a) in the case of matters pertaining to land and the surveying of such land, the president of the Royal Institute of Chartered Surveyors;
- (b) in the case of matters of legal interpretation, the president of the Law Society; and
- (c) in the case of all other matters the president of the Institute of Civil Engineers.

(2) Paragraph (1) does not apply to any decisions of the Secretary of State made pursuant to the provisions of this Order.

Signed by the authority of the Secretary of State

Address
Date

Name
Position
Department

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Leicestershire and the District of Blaby, in the Borough of Hinckley and Bosworth, the Borough of Rugby and the District of Harborough—

A nationally significant infrastructure project as defined in sections 14 and 26 of the 2008 Act and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising—

Work No.	Description
1	<p>Within the area shown on the works plans for Work No. 1—</p> <p>The construction of new railway lines from the rail freight terminal (Work No. 2) to connect with the existing Leicester to Hinckley railway line, the general arrangement of which is shown on the railway plans including—</p> <ul style="list-style-type: none">construction of a new railway track and associated rail infrastructure;formation of new railway embankments, cuttings and all necessary earthworks and drainage;construction of railway improvements including—the alteration of the existing railway infrastructure including track, points, signals and associated plant;railway signage and warning lights;new arrival and departure railway tracks adjacent to the existing railway;works to accommodate the demolition of the Burbage Common Road bridge over the Leicester to Hinckley railway line;works to accommodate the construction of a new bridge over the Leicester to Hinckley railway line and all necessary superstructures and substructures including footings, abutments and wingwalls to be provided as part of Work No. 7;a headshunt;works to stop up the existing public rights of way shown on the access and rights of way plans including works associated with the closure of the existing Barwell level crossing and Earl Shilton level crossings;works to accommodate a revised public right of way from Burbage Common Road underneath the rail corridor, to be provided as part of Work No. 6;works to accommodate a new foul rising main within Burbage Common Road underneath the rail corridor, connecting to the rising main constructed as part of Work No. 18;the closure of existing private accesses shown on the access and rights of way plans;andthe stopping up of the length of Burbage Common Road shown on the access and rights of way plans.
2	<p>Within the area shown on the works plans for Work No. 2—</p> <p>The construction of a rail freight terminal to connect with the rail infrastructure described in Work No. 1, the general arrangement of which is shown on the railway plans including—</p> <ul style="list-style-type: none">construction of an intermodal freight loading/unloading terminal including but not exclusively—railway sidings to load/unload freight and cripple sidings;gantry cranes, crane rails, reach stacker loading/unloading areas and freight dock platforms; andfreight and container storage areas;

- earthworks to achieve a terminal plateau;
 - railway infrastructure including signals, gantry signals and signs;
 - rail freight terminal refuelling and minor maintenance areas;
 - terminal entrance and exit gateways, loading lanes, internal roads, gatehouses and parking areas;
 - rail freight terminal administrative building including staff and visitor welfare facilities;
 - works to accommodate the demolition of the Burbage Common Road bridge over the Leicester to Hinckley railway line;
 - works to accommodate the construction of a new bridge to cross the Leicester to Hinckley railway line and all necessary superstructures and substructures including footings, abutments and wingwalls to be provided as part of Works No. 7;
 - storage and workshop buildings;
 - the stopping up of existing public rights of way shown on the access and rights of way plans;
 - the closure of the existing private accesses shown on the access and rights of way plans; and
 - the stopping up of the length of Burbage Common Road shown on the access and rights of way plans.
- 3 Within the area shown on the works plans for Work No. 3 the construction of railway infrastructure to serve the warehousing described in Work No. 5 to be constructed on land identified as zones B3, D1, D2, E1 and E2 on the parameters plans, including—
 railway tracks and points;
 signals and signs; and
 associated infrastructure.
- 4 Within the area shown on the works plans for Work No. 4 the construction of road infrastructure including—
 roads and associated junctions;
 roundabout junctions;
 footways and shared use footways/cycleways;
 the stopping up of existing public rights of way as shown on the access and rights of way plans;
 bus stops, bus stop lay-bys, bus interchange, shelters and signage;
 street lighting and signage;
 demolition of existing buildings;
 the closure of existing private accesses shown on the access and rights of way plans;
 and
 the stopping up of the length of Burbage Common Road shown on the access and rights of way plans.
- 5 Within the area shown on the works plans for Work No. 5 the construction of rail served warehousing including—
 construction of development plateaux;
 demolition of existing buildings;
 warehouses and ancillary buildings including estate management office and gatehouses;
 drainage, swales, bunding, landscape and planting works;
 vehicle, cycle, equestrian and pedestrian access routes and signage;
 roof mounted photovoltaics;
 external plant;
 vehicle maintenance, service yards, washing and refuelling facilities, weighbridges and electric vehicle charging units;
 hardstandings and container storage;
 parking for HGVs and other vehicles (including cycles), driver welfare facilities and HGV fuelling area;

- energy centre;
- works to accommodate a revised public right of way from Burbage Common Road to be provided as part of Work No. 6;
- the stopping up of the lengths of existing public rights of way as shown on the access and rights of way plans;
- the closure of existing private accesses shown on the access and rights of way plans;
- the stopping up of the length of Burbage Common Road shown on the access and rights of ways plans; and
- primary electricity substation.
- 6 Within the area shown on the works plans for Work No. 6 the provision of hard and soft landscape works including—
- demolition of existing buildings;
- earthworks to create screening bunds;
- soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements;
- basins for surface water attenuation (including flood alleviation related drainage infrastructure);
- new and diverted footpaths and bridleways as shown on the access and rights of way plans;
- wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest;
- amenity open space;
- noise attenuation including acoustic fencing and/or landscape screening;
- the stopping up of existing public rights of way shown on the access and rights of way plans; and
- signage and totems located within the areas indicated on the parameters plans.
- 7 Within the area shown on the works plans for Work No. 7 the construction of the A47 link road the general arrangement of which is shown on the highway plans including—
- connection into a new arm provided at the roundabout at junction 2 of the M69 motorway (Work No. 9);
- construction of a new three arm roundabout on the B4668 Leicester Road including a segregated left-turn lane from the B4668 southbound onto the A47 link road;
- upgrading and realignment of the B4668 either side of the new three arm roundabout;
- two no. roundabouts to connect to Work No. 4 and one further roundabout;
- a new bridge over the Leicester to Hinckley railway line;
- a new private access to Bridge Farm as shown on the access and rights of way plans;
- signalised crossings for pedestrians, cyclists and horse-riders;
- the closure of existing private accesses as shown on the access and rights of way plans;
- the stopping up of existing public rights of way as shown on the access and rights of way plans;
- the provision of a bridleway linking the A47 link road to Burbage Common Road as shown on the access and rights of way plans;
- bus stops and bus stop lay-bys;
- acoustic barriers; and
- demolition of the Burbage Common Road bridge over the Leicester to Hinckley railway line.
-
- 8 Within the area shown on the works plans for Work No. 8, works to junction 2 of the M69 motorway within the strategic road network the general arrangement of which is shown on the highway plans comprising—
- construction of a new slip road for southbound traffic joining the M69 at junction 2;
- construction of a new slip road for northbound traffic leaving the M69 at junction 2;
- minor alterations to the existing slip road for southbound traffic leaving the M69 at junction 2;

roadside landscape works and planting, to include structural tree planting and landscape bunds;

motorway signage;

improvements to bridleway V29/6; and

diversion and protection of existing services.

- 9 Within the area shown on the works plans for Work No. 9, works to the roundabout at junction 2 of the M69 motorway outwith the strategic road, the general arrangement of which is shown on the highway plans comprising—
realignment, widening and signalisation of the B4669 Hinckley Road to the east and west of the M69 junction 2 roundabout;
realignment, widening and signalisation of the circulatory carriageway of the M69 junction 2 roundabout;
works to connect the A47 link road (Work No. 7) and new slip roads (Work No. 8) into the M69 junction 2 roundabout;
signalisation of the M69 approaches to the M69 junction 2 roundabout; and
closure of existing private accesses and provision of new private accesses as shown on the access and rights of way plans.
- 10 Within the area shown on the works plans for Work No. 10 works to the B4669 Hinckley Road the general arrangement of which is shown on the highways plans including—
the provision of improvements to the footway along the B4669 Hinckley Road; and
carriageway widening and signalisation of the junction between the B4669 Hinckley Road and Stanton Lane.
- 11 Within the area shown on the works plans for Work No. 11 works to Stanton Lane and works to Hinckley Road, B581 Station Road and B581 New Road in Stoney Stanton, the general arrangement of which is shown on the highways plans including
conversion of the mini roundabout at the junction between Hinckley Road, B581 Station Road and B581 New Road to a signalised junction.
- 12 Within the area shown on the works plans for Work No. 12 works to the B4669 Hinckley Road and B4669 Leicester Road in Sapcote, the general arrangement of which is shown on the highways plans including—
provision of a zebra crossing of the B4669 Leicester Road to the immediate east of the junction with Church Street;
kerb realignments at the junction between the B4669 and Church Street;
relocation of a bus stop; and
public realm scheme including seating and planting.
- 13 Within the area shown on the works plans for Work No. 13 works to the junction of the A47 Normandy Way and A447 Ashby Road, the general arrangement of which is shown on the highways plans including—
lane widening;
pedestrian crossing; and
signage.
- 14 Within the area shown on the works plans for Work No. 14 works to the junction of the A47 Normandy Way and B4668 Leicester Road, the general arrangement of which is shown on the highways plans including the widening of the B4668 northbound approach to the roundabout.
- 15 Within the area shown on the works plans for Work No. 15 works to the junction of the B4114 Coventry Road and Croft Road, the general arrangement of which is shown on the highways plans including the widening of the B4114 southbound approach to the junction.
- 16 Within the area shown on the works plans for Work No. 16 works to the Cross in Hand roundabout at the A5, A4303, Coal Pit Lane and B4027 Lutterworth Road, the general arrangement of which is shown on the highways plans including—
widening of all approaches to the roundabout to increase capacity; and
realignment of the B4027 Lutterworth Road arm of the roundabout to improve entry

- deflection.
- 17 Within the area shown on the works plans for Work No. 17 works to the junction of the B4114 Coventry Road, B581 Broughton Road and B581 Coventry Road, the general arrangement of which is shown on the highways plans including—
signalisation of the junction between the B4114 Coventry Road and the B581 Broughton Road;
carriageway widening; and
a lay-by.
- 18 Within the area shown on the works plans for Work No. 18—
the installation of a new foul rising main within Burbage Common Road and the B581 Stanton Road;
the construction of a connection with the existing public sewer within the B581 Stanton Road;
provision of a turning head on Burbage Common Road, the general arrangement of which is shown on the highway plans; and
connection to a new public bridleway shown on the access and rights of way plans.
- 19 Within the area shown on the works plans for Work No. 19—
earthworks to create screening bunds and a bund to the north of the railway works (Work No. 1);
soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements;
basins for surface water attenuation (including flood alleviation related drainage infrastructure);
new and diverted footpaths and bridleways as shown on the access and rights of way plans;
wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest;
amenity open space;
noise attenuation including acoustic barriers and/or landscape screening;
connection into the existing ditch at Burbage Common;
the stopping up of existing public rights of way as shown on the access and rights of way plans;
the stopping up of the length of Burbage Common Road shown on the access and rights of way plans;
the reinstatement of agricultural land; and
the provision of a new turning head on Burbage Common Road as shown on the highway plans.
- 20 Within the area shown on the works plan for Work No. 20—
the closure of the Outwoods level crossing and the diversion of public footpath U8/1 comprising the construction of a new footbridge over the Leicester to Hinckley railway line to connect into existing footpath U52/3 as shown on the access and rights of way plans; and
removal of existing infrastructure associated with the above.
- 21 Within the area shown on the works plans for Work No. 21—
the closure of the Thorney Fields level crossing and the diversion of public footpath U17/2 along the route shown on the access and rights of way plans; and
removal of existing infrastructure associated with the above.
- 22 Within the area shown on the works plans for Work No. 22—
the stopping up of public footpath T89/1 as shown on the access and rights of way plans including closure of the Elmesthorpe level crossing and removal of associated infrastructure; and
provision of an uncontrolled crossing over the B581 Station Road as shown on the highway plans.

Further works

The following further works provided that such works do not give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations—

1. Within the area shown on the works plans for Work Nos. 1 to 6 the provision of—
 - (a) weighbridges;
 - (b) internal estate roads and accesses;
 - (c) parking facilities for all vehicles including cycles and electric vehicles;
 - (d) site preparation works, site clearance, regrading and adjustments to ground levels and excavation;
 - (e) footways, cycle tracks, permissive paths for pedestrians and cyclists, bridleways, ramps, footpath linkages and crossing facilities;
 - (f) water supply works, foul drainage and storage, foul pumping stations, surface water management systems, drainage conveyance system, balancing ponds (surface and underground), attenuation and culverting;
 - (g) utilities and services including connections to mains services and provision of utilities infrastructure including primary and secondary electricity substations, catenary and pressure reducing stations;
 - (h) demolition of existing buildings and surface structures;
 - (i) public art;
 - (j) security fencing;
 - (k) gatehouses, barriers and CCTV;
 - (l) acoustic barriers;
 - (m) the clearing of and making good to existing watercourses, works to alter the course of or otherwise interfere with a watercourse;
 - (n) ducting;
 - (o) removal of existing hedgerows and making good;
 - (p) swales, landscaping, fencing, bunds, embankments, aprons, abutments, shafts, foundations, retaining walls, wing walls, cuttings, landscaping and boundary treatments, earthworks and earthwork retaining structures;
 - (q) environmental mitigation;
 - (r) pavements, surface treatments, kerbs and channels;
 - (s) works to alter or remove road furniture;
 - (t) refurbishment works to existing structures;
 - (u) traffic signs, traffic signals, surface course and carriageway markings;
 - (v) lighting and electrical equipment;
 - (w) diversion of sewers, pipelines, utilities and services;
 - (x) works for the benefit or protection of land affected by the authorised development;
 - (y) works required for the strengthening, improvement, maintenance or reconstruction of any streets; and
 - (z) works associated with archaeology and heritage investigation.
2. Within the area of land described on the works plans as Work nos. 7 to 22 the provision where appropriate of—
 - (a) site clearance and excavation;

- (b) removal of existing and creation of new private means of accesses in the locations shown on the access and rights of way plans;
- (c) fencing for boundary treatment and acoustic barriers;
- (d) safety barriers;
- (e) surface water drainage works including swales, attenuation, outfalls, headwalls and culverting;
- (f) ducting;
- (g) bunds, embankments, cuttings, landscaping, earthworks and earthwork retaining structures;
- (h) pavements, surface treatments, refuge islands, kerbs and channels;
- (i) footways, cycle tracks, bridleways and footpath linkages;
- (j) traffic signs, traffic signals and road markings;
- (k) street lighting and electrical equipment;
- (l) retaining walls;
- (m) motorway communications and control equipment;
- (n) diversion and provision of utilities including foul water sewers; and
- (o) demolition of buildings and structures.

3. Within the area of land described on the works plans as Work Nos. 1 to 22 temporary works as necessary including but not limited to—

- (a) traffic management;
- (b) earthworks, trenching, ducting and stock piling of topsoil and subsoil material;
- (c) statutory undertakers plant diversions;
- (d) haulage roads;
- (e) temporary road construction;
- (f) signage and fencing;
- (g) rail sidings;
- (h) construction compounds including temporary buildings, welfare facilities, batching plants, storage and parking areas; and
- (i) drainage systems.

4. Such other works as may be necessary or expedient for the purpose of or in connection with the construction and operation of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 REQUIREMENTS

Interpretation

1. — In this Schedule—

“A47 link road concept drainage strategy” means the document of that description referred to in Schedule 15 and certified as the A47 link road concept drainage strategy by the Secretary of State for the purposes of this Order;

“archaeological mitigation strategy” means the document of that description referred to in Schedule 15 and certified as the archaeological method statement by the Secretary of State for the purposes of this Order;

“biodiversity impact assessment” means the document of that description referred to in Schedule 15 and certified as the biodiversity impact assessment by the Secretary of State for the purposes of this Order;

“CEMP” means the document of that description referred to in Schedule 15 and certified as the construction environmental management plan by the Secretary of State for the purposes of this Order;

“commencement of construction works” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), as part of the authorised development with the exception of any works related to archaeological investigation, ecological mitigation or site investigation;

“construction traffic management plan” means the document of that description referred to in Schedule 15 and certified as the construction traffic management plan by the Secretary of State for the purposes of this Order;

“design code” means the document of that description referred to in Schedule 15 and certified as the design code by the Secretary of State for the purposes of this Order;

“ecological mitigation and management plan” means the document of that description referred to in Schedule 15 and certified as the ecological mitigation and management plan by the Secretary of State for the purposes of this Order;

“energy strategy” means the document of that description referred to in Schedule 15 and certified as the energy strategy by the Secretary of State for the purposes of this Order;

“Euro VI compliant” means compliant with the Euro VI standard for the vehicle in question contained in Regulation (EC) no 595/2009;

“flood risk assessment” means the document of that description referred to in Schedule 15 and certified as the flood risk assessment by the Secretary of State for the purposes of this Order;

“framework site wide travel plan” means the document of that description referred to in Schedule 15 and certified as the framework site wide travel plan by the Secretary of State for the purposes of this Order;

“HGV route management plan and strategy” means the document of that description submitted with the Application ;

“illustrative landscape strategy” means the document of that description referred to in Schedule 15 and certified as the illustrative landscape strategy by the Secretary of State for the purposes of this Order;

“lighting strategy” means the document of that description referred to in Schedule 15 and certified as the lighting strategy by the Secretary of State for the purposes of this Order;

“lorry park management plan” means the document of that description referred to in Schedule 15 and certified as the lorry park management plan by the Secretary of State for the purposes of this Order;

“M69 Junction 2 concept drainage strategy” means the document of that description referred to in Schedule 15 and certified as the M69 Junction 2 concept drainage strategy by the Secretary of State for the purposes of this Order;

“main HNRFI site concept surface water drainage strategy” means the document of that description referred to in Schedule 15 and certified as the HNRFI site concept surface water drainage strategy by the Secretary of State for the purposes of this Order;

“main HNRFI site concept foul water drainage strategy” means the document of that description referred to in Schedule 15 and certified as the HNRFI site concept foul water drainage strategy by the Secretary of State for the purposes of this Order;

“outline landscape and ecological management plan” means the document of that description referred to in Schedule 15 and certified as the outline landscape and ecological management plan by the Secretary of State for the purposes of this Order;

“passive provision” means in relation electric vehicle charging points, the design and construction of the relevant part of the development so as not to preclude the provision of the remainder of the electric charging points referred to in paragraph 4(3) of Part 1 of this Schedule at a later date;

“phase” means a phase of the authorised development as shown in the latest written phasing scheme approved by the relevant planning authority pursuant to requirement 4;

“public rights of way appraisal and strategy” means the document of that description referred to in Schedule 15 and certified as the public rights of way appraisal and strategy by the Secretary of State for the purposes of this Order;

“rail freight terminal” means Work No. 2 as set out Schedule 1 of this Order;

“rail infrastructure” means the provision of any rail infrastructure as part of the authorised development excluding any such works to the existing Felixstowe to Nuneaton railway line or within the operational estate of Network Rail;

“site waste and materials management plan” means the document of that description referred to in Schedule 15 and certified as the site waste and materials management plan by the Secretary of State for the purposes of this Order;

“sustainable drainage statement” means the document of that description referred to in Schedule 15 and certified as the sustainable drainage statement by the Secretary of State for the purposes of this Order;

“sustainable transport strategy” means the document of that description referred to in Schedule 15 and certified as the sustainable transport strategy by the Secretary of State for the purposes of this Order;

“woodland management plan” means the document of that description referred to in Schedule 15 and certified as the woodland management plan by the Secretary of State for the purposes of this Order.

Time limits

2. The authorised development must commence no later than the expiration of five years beginning with the date on which this Order comes into force.

3. Securing land

4. No commencement of construction works shall take place until details showing that the freehold ownership, with the exception of rights held by Network Rail and Leicestershire County Council, of Plots 13, 15a, 22, 22a, 24, 25, 26, 27, 28, 31, 32, 33, 34, 37, 39, 71, 72 and 73 as shown on the land plans has been transferred to the undertaker, or to any other undertaker permitted by the Secretary of State pursuant to Articles 7 or 8 of this Order, has been submitted to and agreed in writing by Blaby District Council.

Phasing of Development

5. No commencement of construction works are to take place until a written phasing scheme setting out all the phases of the authorised development, has been submitted to and approved in writing by the relevant planning authority.

(1) The written phasing scheme must include phasing details of—

- (a) earthworks;
- (b) rail infrastructure;
- (c) roads and bridges;
- (d) highway works;

- (e) surface water and foul drainage;
- (f) development plots;
- (g) landscape works and planting, including mounding and acoustic fencing;
- (h) public rights of way and the creation of private means of access;
- (i) the energy centre; and
- (j) mains utility services.

(2) The authorised development must be carried out in accordance with the approved phasing scheme.

Detailed design approval

6. Commencement of construction works must not take place on any phase until details of that phase have been submitted to and approved in writing by the relevant planning authority. The details of each phase must be in accordance with the parameters plans and the principles set out in the design code. The design code shall be deemed to have been amended by replacing the second sentence in the second bullet of paragraph 9.2 with “The parking will be provided at surface level only.”

(1) The details of each phase must include details of the following where they are located within that phase—

- (a) rail infrastructure, rail freight terminal, container storage and container returns area;
- (b) built development design and layout (including external plant);
- (c) vehicular circulation routes;
- (d) cycle tracks, footpaths and bridleways, including highway crossing points for pedestrian, bicycle and equestrian traffic;
- (e) telecommunication masts;
- (f) energy centre;
- (g) hard and soft landscaping;
- (h) surface and foul drainage;
- (i) vehicle, cycle and motorcycle parking including the location and quantum of electrical charging points;
- (j) embankments and bunds;
- (k) site levels and finished floor levels;
- (l) roads within the main site;
- (m) bridges;
- (n) fuelling and maintenance areas;
- (o) freight storage area (including containers);
- (p) weighbridges;
- (q) gatehouses;
- (r) security fencing;
- (s) substations;
- (t) flagpoles;
- (u) public transport infrastructure;
- (v) the height, position, form, construction and appearance of acoustic barriers including provision for landscaping between the acoustic barrier and the Aston Firs Gypsy and Traveller Site and between the acoustic barrier and the site boundary at the junction of the A47 link road with the B4668 Leicester Road;
- (w) fencing, walls and other permanent means of enclosure;

- (x) location and quantum of bin stores;
- (y) location and type of litter bins;
- (z) any temporary site notices or advertisements;
- (aa) permanent advertisements in the locations identified on the parameters plans;
- (bb) temporary accesses and rights of way;
- (cc) any temporary means of enclosure;
- (dd) outdoor gym and seating areas;
- (ee) sprinkler tanks;
- (ff) external canopies;
- (gg) standby generators;
- (hh) site compounds; and
- (ii) cycle storage.

(2) A minimum of 20% of the total number of car parking spaces to be provided within the authorised development is to be equipped with electrical vehicle charging points with a minimum rating of 7.4 kWh and passive provision for the remainder (the rating for which remainder is to be determined by the building occupier in accordance with their requirements).

(3) Details of any acoustic barriers submitted under sub-paragraph (2) must be included within the phase generating the noise source for which they are designed to mitigate.

(4) Details of any rail infrastructure submitted under sub-paragraph (2) must include maintenance regimes to reduce noise, including ‘wheel squeal’.

(5) Each phase must be carried out in accordance with the approved details for that phase.

Design and phasing of highway works

7. Subject to sub-paragraphs (2) and (3), the undertaker must complete the highway works identified in columns (1) and (2) of the following table by no later stage than the stage of the authorised development as set out in column (3) of that table below or such alternative later stage as agreed by the relevant body or bodies identified in column (4) or such successor body as may replace them in function.

(1) Work Nos.	(2) Description	(3) Stage of development	(4) Relevant body
8 and 9	M69 Junction 2 works including new northbound exit slip road and new southbound entry slip road	To be completed prior to the occupation of any warehouse floorspace	National Highways (Work No. 8) and Leicestershire County Council (Work No. 9)
7	A47 link road	To be completed prior to the opening of the earlier of— the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
11	Works to junction of B581 Station Road/New Road and Hinckley Road, Stoney Stanton	To be completed prior to the opening of the earlier of— the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or the new southbound entry slip	Leicestershire County Council

12	Works to junction of B4669 Hinckley Road and Stanton Lane, west of Sapcote and to B4669 Hinckley Road/Leicester Road, Sapcote	road at M69 Junction 2 comprised in Work No. 8 To be completed prior to the opening of the earlier of— the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
10	Works to Stanton Lane/Hinckley Road, south-west of Stoney Stanton	To be completed prior to the opening of the earlier of— the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
17	Works to junction of B4114 Coventry Road and B581 Broughton Road at Soar Mill, south-east of Stoney Stanton	To be completed prior to the opening of the earlier of— the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
15	Works to junction of B4114 Coventry Road and Croft Road, south-west of Narborough	To be completed prior to the opening of the earlier of— the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
13	Works to junction of A47 Normandy Way and A447 Ashby Road, Hinckley	To be completed prior to the opening of the earlier of— the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
14	Works to junction of A47 Normandy Way/Leicester Road, the B4668 Leicester Road and The Common, south-east of Barwell	To be completed prior to the opening of the earlier of— the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
16	Works at Cross in Hand roundabout at the junction of the A5 Watling Street, B4027 Lutterworth Road and Coal Pit Lane, west of	To be completed prior to the opening of the earlier of— the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or the new southbound entry slip	National Highways and Warwickshire County Council and Leicestershire County Council

(1) The undertaker is not obliged to undertake Work No. 17 if a third party has commenced construction of works shown coloured green on sheet 8C of the highways plans prior to the stage of development specified in column (3).

(2) The undertaker is not obliged to undertake highway works under Work No. 16 where—

- (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
- (b) 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 subparagraph (1), and either—
 - (i) an agreement for carrying out that alternative work has been entered into between the relevant highway authority and a third party; or
 - (ii) the undertaker has entered into an agreement with the relevant highway authority in relation to the carrying out of that alternative work.

Public rights of way and level crossing closures

8. The undertaker must stop up the public rights of way identified in column (1) of the following table by no later than the stage of the authorised development set out in column (2) of that table or such later stage as agreed by the relevant body identified in column (3) or such successor body as may replace them in function.

(1) Public right of way	(2) Stage of the authorised development by which time the stopping up must have been completed	(3) Relevant body
U17/2 to the extent shown by the dashed green line between point 19 and point 20 on the access and rights of way plan (Document 2.3B)	Commencement of Work No. 21	Leicestershire County Council
U8/1 to the extent shown by the dashed green line between point 21 and point 22 on the access and rights of way plan (Document 2.3C)	Commencement of Work No. 20	Leicestershire County Council
V29/7 to the extent shown by the solid green line between point 15 and point 31 on the access and rights of way plan (Document 2.3D)	Commencement of Work No. 5, Work No. 6 or Work No. 7	Leicestershire County Council
V29/6 to the extent shown by the solid green line between point 16 and point 31 on the access and rights of way plan (Document 2.3D)	Commencement of Work No. 5	Leicestershire County Council
U52/9 to the extent shown by the solid green line between point 2 and point 27 on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 19	Leicestershire County Council
V23/1 to the extent shown by	Commencement of Work No. 1, Work	Leicestershire County

the dashed green line between point 9 and point 11 on the access and rights of way plan (Document 2.3A)	No. 2 or Work No. 19	Council
U50/3 to the extent shown by the dashed green line between point 10 and point 12 on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1, Work No. 2, Work No. 3, Work No. 5 or Work No. 19	Leicestershire County Council
U50/1 to the extent shown by the dashed green line between point 6 and point 7 in the access and rights of way plan (Document 2.3D)	Completion of Work No. 6 in accordance with the phasing details approved pursuant to requirement 4	Leicestershire County Council
U52/6 to the extent shown by the dashed green line between point 4 and point 32 on the access and rights of way plan (Document 2.3A and Document 2.3C)	Commencement of Work No. 2, Work No. 6 or Work No. 7	Leicestershire County Council
U52/7 to the extent shown by the dashed green line between point 32 and point 3 on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 2, Work No. 3 or Work No. 7	Leicestershire County Council
V35/2 to the extent shown by the dashed green line between point 29 and point 32 on the access and rights of way plan (Document 2.3A and Document 2.3D)	Commencement of Work No. 5, Work No. 6 or Work No. 7	Leicestershire County Council
U50/2 to the extent shown by the dashed green line between point 28 and point 29 on the access and rights of way plan (Document 2.3A and Document 2.3D)	Commencement of Work no. 4, Work No. 5, Work No. 6 or Work No. 7	Leicestershire County Council
U53/1 to the extent shown by the dashed green line between point 30 and point 31 on the access and rights of way plan (Document 2.3A and Document 2.3D)	Commencement of Work No. 4, Work No. 5 or Work No. 6	Leicestershire County Council
T89/1 to the extent shown by the dashed green line between point 24 and point 25 and point 26 on the access and rights of way plan (Document 2.3B)	Commencement of Work No. 22	Leicestershire County Council

(1) Notwithstanding the provisions of sub-paragraph (1), the rail freight terminal forming part of Work No. 2 must not commence operation (which for the purposes of this sub-paragraph shall include any testing of rail tracks within the rail freight terminal which may take place before the commencement of commercial operation) until the following level crossings have been closed in accordance with article 13—

- (a) Thorney Fields Farm on footpath U17/2;

- (b) Elmesthorpe on footpath T89/1;
- (c) Earl Shilton on footpath U50/3;
- (d) Barwell on footpath V23/1; and
- (e) The Outwoods on footpath U8/1.

Construction Environmental Management Plan

9. Prior to commencement of construction works on each phase a detailed construction environmental management plan for that phase, in accordance with the principles set out in the CEMP, must be submitted to and approved in writing by the relevant planning authority.

- (1) The detailed construction environmental management plan for each phase must include—
 - (a) details of the methods to control noise and vibration arising from construction activities including—
 - (i) proposals for monitoring of construction noise and vibration;
 - (ii) a noise and vibration management plan; and
 - (iii) proposals for the introduction of mitigation measures or alternative working practices where required.
 - (b) details of a dust management plan setting out the methods to be used to control dust from the site in line with ‘highly recommended’ measures set out in tables 9.40 and 9.41 of Chapter 9 of the environmental statement (air quality);
 - (c) details of all temporary fencing, temporary buildings, temporary compound areas and temporary parking areas including arrangements for their removal following completion of construction;
 - (d) an arboriculture method statement detailing measures to protect retained trees and hedgerows, including details of built development and construction buffers which must be a minimum of 15 metres from Sites of Special Scientific Interest and ancient woodland;
 - (e) measures to protect the safety and amenity of public rights of way users during construction;
 - (f) details of existing and proposed landscaping which needs to be protected during construction;
 - (g) details of areas to be used for the storage of fuel, oil and other chemicals, including measure to prevent pollution;
 - (h) details of the facilities to be provided for the storage of fuel, oil and other chemicals, including measures to prevent pollution and adverse impacts on the Narborough Bog Site of Special Scientific Interest;
 - (i) details of temporary signage;
 - (j) details of any temporary surface water management system including measures to prevent sediment mobilisation to nearby watercourses and adverse effects on the Narborough Bog Site of Special Scientific Interest;
 - (k) details of any groundwater contamination remediation strategy;
 - (l) an earthworks specification, remediation strategy and verification report informed by ground investigation work;
 - (m) proposals for gas monitoring and associate gas protection measures for buildings if required;
 - (n) proposals for the disposal of asbestos if required;
 - (o) details of site rules and communication with the community;
 - (p) details of temporary lighting; and

- (q) a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development.

(2) The approved detailed construction environmental management plan for each phase must be complied with during the construction works in that phase until the completion of construction works on that phase. The detailed construction environmental management plan for each phase is to be kept under review by the undertaker and updated if necessary as construction proceeds and any such update to the detailed construction environmental management plan is to be approved in writing by the relevant planning authority.

Travel plan

10. The provisions of the framework site wide travel plan must be complied with at all times following commencement of the authorised development.

(1) Prior to each and every occupation of an individual warehouse unit an occupier-specific travel plan is to be submitted to, and approved in writing by, the relevant planning authority following consultation with the relevant highway authority. Each occupier specific travel plan must be in accordance with the framework site wide travel plan and include provisions for promoting the travel plan across the occupiers work force for the site. Each occupier must comply with their occupier specific travel plan from not less than three months of the date on which they first occupy the relevant warehouse unit for the duration of the occupation of the relevant warehouse by that occupier. Each occupier must monitor the operation of the occupier specific travel plan for the period of their occupation.

(2) No warehouse units may be occupied until the undertaker has established arrangements, including inviting participation from the relevant planning authority and the relevant highway authorities, for the travel plan steering group to discharge the role of that group in relation to the provision of the framework site wide travel plan.

Sustainable transport strategy

11. No floorspace shall be occupied, until a revised sustainable transport strategy has been submitted to and approved in writing by the relevant planning authority. The sustainable transport strategy shall be based on that submitted with the Application, but shall include:

- (a) revised targets based on reducing single car occupancy, with the existing set based on data from the Middle Super Output Areas of the Modelled HNFRI Employee Trips set out in Figure 6-3 of the Technical Appendix to the Transport Assessment (document reference 6.2.8.1B Revision: 09);
- (b) changes to paragraph 7.27 so that the free 6 month bus pass applies to users of both the Demand Response Transport and the public bus service.

(2) The approved revised sustainable transport strategy shall be complied with at all times following the first occupation of any warehouse floorspace on the authorised development.

(3) The undertaker must use reasonable endeavours to maximise the use of Euro VI compliant HGV and public transport in respect of—

- (a) Any HGV fleets operated by occupiers of the warehouse units which visit those warehouses; and
- (b) Any public transport service provided pursuant to the public transport strategy and dedicated to serving the authorised development.

Rail

12. 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 rail infrastructure has been completed.

(1) The undertaker must notify the relevant planning authority of the date of the first occupation of more than 105,000 square metres of warehousing within 28 days of such occupation occurring.

(2) Following completion of the rail freight terminal works the undertaker must retain, manage and keep the rail freight terminal available for use throughout the period of occupation of the warehousing floorspace.

Container stack height

13. The height of any stack of containers within the container storage area approved pursuant to the details submitted in accordance with requirement 5(2) must—

- (a) not exceed 8.7 metres from finished level prior to the second anniversary of the date on which the container storage area first comes into use;
- (b) not exceed 11.6 metres from finished level prior to the third anniversary of the date on which the container storage area first comes into use; and
- (c) not exceed 14.5 metres from finished level at any time thereafter.

(2) The height of any stack of containers within the returns area approved pursuant to the details submitted in accordance with requirement 5(2) must not—

- (a) exceed 8.7 metres from finished level prior to the fifth anniversary of the date on which the returns area first comes into use; and
- (b) exceed 14.5 metres from finished level at any time thereafter.

(3) In this paragraph “finished level” means the site level of the area upon which the containers are to be stored as approved pursuant to requirement 5(2).

Archaeology and building recording

14. No phase is to commence until such time as a written scheme of investigation for that phase, informed by the provisions of the archaeological mitigation strategy, has been submitted to and approved in writing by the relevant planning authority.

(1) The written scheme of investigation submitted for approval must include—

- (a) the statement of significance and research objections;
- (b) details of the on-site recording methodology;
- (c) details of sampling, analysis and reporting strategy;
- (d) details of monitoring arrangements;
- (e) details of timetable and personnel; and
- (f) details of post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material.

(2) No part of the authorised development on the main site is to commence until a level 3 record of the buildings and structures of historic interest identified in the archaeological mitigation strategy has been undertaken. The record must be carried out in accordance with a written specification first agreed with the relevant planning authority in consultation with Leicestershire County Council and prepared by a competent building recorder in accordance with Historic England Understanding Historic Buildings, A Guide to Good Recording Practice, 2016.

(3) A copy of any analysis, reporting and publication required as part of the written scheme of investigation must be deposited with the Leicestershire and Rutland Historic Environment Record within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme of investigation.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported by way of a notice to the relevant planning authority, as soon as reasonably practicable from the date they are identified.

(5) Each phase must be carried out in accordance with the approved written scheme of investigation.

Sustainable drainage

15. No phase is to commence until a sustainable drainage strategy for that phase based on (in so far as relevant to that phase)—

- (a) sustainable drainage statement;
- (b) main HNRFI site concept surface water drainage strategy;
- (c) main HNRFI site concept foul water drainage strategy;
- (d) A47 link road concept drainage strategy; and
- (e) M69 Junction 2 concept drainage strategy

has been submitted to and approved in writing by the relevant planning authority.

(2) The development of each phase must be carried out in accordance with the approved sustainable drainage strategy for that phase.

Surface water

16. No phase is to commence until a surface water drainage scheme for that phase based on sustainable drainage principles and the assessment of the hydrological and hydrogeological context of the development in accordance with the flood risk assessment has been submitted to and approved in writing by the relevant planning authority. The scheme must include—

- (a) the limitation of surface water run-off generated by all rainfall events up to the critical 1 in 100 year return period rainfall event (plus 20% for climate change) to the equivalent greenfield rate;
- (b) detailed design (plans, cross sections and calculations) in support of any surface water drainage scheme, including details of any attenuation system and the outfall arrangements;
- (c) details in relation to the management of surface water on site during construction of the development in order to mitigate flood risk, and for the removal of suspended solids from surface water discharging from the site. Details shall demonstrate how surface water will be managed on site to prevent an increase in flood risk during the various construction stages of development from initial site works through to completion. This shall include temporary attenuation, additional treatment, controls, maintenance and protection; and
- (d) infiltration testing to BRE Digest 365 or suitable evidence that infiltration methods of disposal on-site is not technically viable. Where infiltration results indicate that infiltration is a viable method of surface water disposal, the surface water strategy should be amended to incorporate infiltration disposal methods.

(2) Where any phase includes works that would affect land parcels 65, 66, 67, 68 and 69 as shown on the land plans, the surface water drainage scheme submitted under sub-paragraph (1) must include provisions to allow for the drainage of the strategic road network.

(3) The surface water drainage scheme for each phase must be implemented in accordance with the approved scheme for that phase.

(4) No phase is to be occupied until details of the long-term maintenance of the surface water drainage system within that phase have been submitted to and approved in writing by the relevant planning authority. The maintenance details must include—

- (a) details of routine maintenance, access, remedial actions and monitoring of the separate elements of the surface water drainage system that will not be adopted by a third party; and
- (b) where relevant, procedures that must be implemented in the event of pollution incidents.

(5) The long term maintenance strategy for each phase must be implemented in accordance with the approved details for that phase.

Contaminated land

17. No phase is to commence until a remediation strategy to deal with any risks associated with contamination of land and controlled waters for that phase has been submitted to and approved by the relevant planning authority following consultation with the Environment Agency. This strategy must include the following components—

- (a) a preliminary risk assessment which has identified—
 - (i) all previous uses;
 - (ii) potential contaminants associated with those uses;
 - (iii) a conceptual model of the site indicating sources, pathways and receptors; and
 - (iv) potentially unacceptable risks arising from contamination at the site.
- (b) a site investigation scheme, based on sub-paragraph (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
- (c) the results of the site investigation and the detailed risk assessment referred to in sub-paragraph (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
- (d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in sub-paragraph (c) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components requires the written consent of the relevant planning authority.

(2) The remediation strategy for each phase must be implemented in accordance with the approved strategy for that phase.

(3) No phase of the authorised development is to be brought into use until a verification report demonstrating that any works required by the approved remediation strategy for that phase have been completed has been submitted to and approved in writing by the relevant planning authority following consultation with the Environment Agency. The report must include results of sampling and monitoring carried out in accordance with the approved verification plan.

Construction hours

18. Construction works relating to the authorised development must not take place on Sundays, bank holidays, public holidays, nor otherwise outside the hours of 7:00 to 19:00 on week days and 7:00 to 15:00 on Saturdays in the phase of the authorised development which includes the earthworks as detailed in the written phasing scheme submitted and approved pursuant to requirement 4. Construction works relating to all phases of the authorised development must not take place on Sundays, bank holidays, public holidays, nor otherwise outside of the hours of 7:00 to 19:00 Monday to Friday and 7:00 to 13:00 on Saturday.

- (1) The restrictions in sub-paragraph (1) do not apply to construction works where these—
 - (a) are carried out within existing buildings or buildings constructed as part of the authorised development;
 - (b) works to the railway including demolition of Burbage Common Road Bridge and installation of the replacement bridge across the railway forming part of the ‘A47 Link Road’;
 - (c) works to the highway agreed with the relevant highway authority;
 - (d) are carried out with the prior approval of the relevant planning authority;
 - (e) are associated with slip form working;

- (f) deliveries, movements to work, maintenance and general preparation works but not including running plant and machinery for a period of one hour either side of the above times;
- (g) any oversize deliveries or deliveries where daytime working would be disruptive due to normal traffic operation;
- (h) removal or protection of overhead powerlines;
- (i) are associated with an emergency;
- (j) overnight traffic management measures; and
- (k) completion of an operation that would otherwise cause greater interference with the environment/general public if left unfinished.

(2) Any emergency works carried out under sub-paragraph (2)(i) must be notified to the relevant planning authority within 72 hours of their commencement.

Energy strategy

19. No phase of the authorised development is to be occupied until a detailed energy strategy for that phase has been submitted to and approved in writing by the relevant planning authority. Each detailed energy strategy submitted and approved must be in accordance with the energy strategy.

(1) The energy strategy for each phase must be implemented in accordance with the approved detailed energy strategy for that phase and complied with throughout the occupation of that phase.

HGV route management plan and strategy

20. (1) No floorspace shall be occupied, until a revised HGV route management plan and strategy has been submitted to and approved in writing by the relevant planning authority. The revised HGV route management plan and strategy shall be based on that submitted with the Application, but shall include:

- (a) triggers based on a proportional approach to the overall floorspace and the use of the rail freight terminal;
- (b) financial penalties set based on fixed sums; and
- (c) revised measures to deliver mitigations.

(2) The approved revised HGV route management plan and strategy shall be complied with at all times following the first occupation of any warehouse floorspace on the authorised development.

Landscape and Ecological Management Plan

21. No phase is to commence until a detailed landscape and ecological management plan for that phase has been submitted to and approved in writing by the relevant planning authority. The detailed landscape and ecological management plan must be in accordance with the principles set out in the outline landscape and ecological management plan.

(1) The content of any detailed landscape and ecological management plan will—

- (a) identify features of ecological importance;
- (b) provide a management framework for the conservation and enhancement of habitats and other features of ecological interest; and
- (c) provide a work schedule (including an annual work plan).

(2) Any detailed landscape and ecological management plan must be implemented as approved as part of the relevant phase of the authorised development and must be reviewed on the 5th anniversary of commencement of the relevant phase of the authorised development and at five yearly intervals thereafter for the lifetime of the relevant phase of the authorised development. Any review of a detailed landscape and ecological management plan is to be approved in writing by the relevant planning authority.

Ecological mitigation management plan

22. Subject to sub-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 set out in the ecological mitigation and management plan and must—

- (a) apply a precautionary approach to working methodologies and habitat creation for reptiles and amphibians;
- (b) ensure that mitigation and compensation measures have demonstrable and measurable outcomes, which are monitored and reported on; and
- (c) create alternative habitats to an agreed form to compensate for the loss of irreplaceable habitats.

(2) Any detailed ecological mitigation and management plan approved under sub-paragraph (1) must include an implementation timetable and must be carried out as approved in writing by the relevant planning authority.

(3) If a phase does not include ecological mitigation or management then a statement from the undertaker must be provided to the relevant planning authority prior to the relevant phase being commenced, confirming that the phase includes no ecological mitigation or management and therefore no ecological mitigation and management plan is required for that phase pursuant to sub-paragraph (1). A phase for which a notification has been given in accordance with this sub-paragraph must not commence until the relevant planning authority has confirmed in writing that no ecological mitigation and management plan is required for that phase.

(4) Where specified as required in the framework ecological mitigation and management plan, works must be supervised by a suitably qualified person or body.

Landscape scheme

23. No phase is to commence until a written landscaping scheme for that phase (including any strategic landscaping included within that phase) in accordance with the illustrative landscape strategy has been submitted to and approved in writing by the relevant planning authority.

(1) The written landscaping scheme must be in accordance with the parameters plans and must include details of all proposed soft landscaping works, including—

- (a) details of any trees and hedgerows to be removed;
- (b) location, number, species, size, layout, method of trees support, plant protection measures and planting density of any proposed planting;
- (c) cultivation, importation of materials and other operations to ensure plant establishment;
- (d) a programme for the implementation of the works; and
- (e) a landscape management plan setting out for a period of 30 years from completion of that phase the arrangements for future maintenance including methods of funding and future monitoring, review and the maintenance of new trees, shrub, hedgerows, woodlands and grassed areas and retained trees, shrub, hedgerows, woodlands and grassed areas.

(2) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

(3) The detailed written landscape scheme for each phase must be implemented in accordance with the approved scheme for that phase.

Site waste and materials management plan

24. Prior to the commencement of construction work on each phase of the authorised development a detailed site waste and materials management plan for that phase in accordance with the principles set out in the site waste and materials management plan must be submitted to and approved by the relevant planning authority.

(1) The detailed site waste and materials management plan for each phase must be implemented in accordance with the approved plan for that phase.

Construction traffic management plan

25. Prior to the commencement of construction works on each phase a detailed construction traffic management plan for that phase must be submitted to and approved by the relevant planning authority following consultation with the relevant highway authority. The detailed construction traffic management plan must be in accordance with the principles set out in the construction traffic management plan and must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) the construction programme; and
- (d) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(2) Notices must be erected and maintained thorough the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(3) The detailed construction traffic management plan for each phase are to be kept under review by the undertaker and updated if necessary with the approval of the relevant planning authority following consultation with the relevant highway authority.

(4) The detailed construction traffic management plan for each phase must be implemented in accordance with the approved plan for that phase.

Temporary highway accesses

26. Prior to commencement of construction works on any phase details of the siting, design and layout of any new or modified temporary means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction of that phase, and the means of reinstating any such means of access after completion of construction shall be submitted to and approved by the relevant planning authority following consultation with the relevant highway authority.

(1) Any works for the layout of any new or modified temporary means of access and the means for reinstating any such means of access referred to in sub-paragraph (1) above for each phase are to be carried out in accordance with the approved details for that phase.

Public rights of way strategy

27. Prior to commencement of construction works on any phase a detailed public rights of way strategy for that phase in accordance with the principles set out in the public rights of way appraisal and strategy must be submitted to and approved by the relevant planning authority following consultation with the relevant highway authority.

(1) The detailed public rights of way strategy for each phase must be implemented in accordance with the approved strategy for that phase.

Control of operational noise

28. Prior to their installation, details of all mechanical and ventilation plant and any other noisemaking machinery, or mobile plant (including HGV chiller units) that is intended to be used within the main site, must be submitted to and approved in writing by the relevant planning authority including details of mitigation measures to any machinery and the provision of details of automated hardware and software to lift and place containers. This will include an assessment of the expected noise impact at relevant receptors in accordance with BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound and BS8233:2014 Guidance on sound insulation and noise reduction for buildings (or such other amendment or replacement of such documents as shall apply at the time of submission of the relevant application). The assessment will consider noise from the proposed plant and machinery to demonstrate compliance with government and local policy on noise. The installation of all mechanical and ventilation plant and any other noisemaking machinery or mobile plant (including HGV chiller units) must be carried out in accordance with the approved details. Any fixed plant or ventilation equipment must also be installed and operated in accordance with manufacturers' instructions at all times.

Acoustic barriers

29. Acoustic barriers to be provided as part of any phase in accordance with the details approved pursuant to requirement 5 and must be completed prior to the first occupation of that phase.

(1) The acoustic barriers must be maintained and retained for the lifetime of the authorised development.

Combined heat and power

30. The combined heat and power plant may not be operated for more than 30% of the hours in a calendar year. For the lifetime of the authorised development the undertaker must maintain an up-to-date usage report covering 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.

Biodiversity net gain

31. The authorised development must not commence until a biodiversity net gain strategy to deliver an overall 10% biodiversity net gain in respect of the authorised development (taken as a whole) in accordance with the principles set out in the biodiversity impact assessment calculations has been submitted to and approved by all of the planning authorities in whose areas any of the authorised development is to be constructed (whether or not any element of the biodiversity net gain strategy is to be provided within a particular planning authority's area).

(1) The biodiversity net gain strategy must be implemented in accordance with the approved strategy.

Lighting

32. No phase of the authorised development is to be commenced until a report detailing the lighting scheme for all permanent external lighting to be installed in that phase has been submitted to and approved by the relevant planning authority. The reports and schemes submitted and approved must be in accordance with the lighting strategy and include the following—

- (a) a layout plan with beam orientation;
- (b) an Isolux contour map showing light spillage to 1 lux both vertically and horizontally and areas identified in the detailed ecological mitigation and management plan approved pursuant to requirement 21 as being of ecological importance;

- (c) a quantitative light intrusion and luminous intensity assessment in accordance with ILP Guidance Note 01/21; and
- (d) measures to avoid glare on surrounding railway and highways.

(2) The lighting scheme for each phase must be implemented and maintained in accordance with the approved strategy for that phase and may be reviewed by the undertaker as necessary with the approval of the relevant planning authority. No external lighting other than that approved under this requirement may be installed.

Woodland management plan

33. No phase is to commence until a detailed woodland management plan for that phase in accordance with the principles set out in the woodland management plan has been submitted to and approved in writing by the relevant planning authority.

(1) The detailed woodland management plan must include details of—

- (a) the maintenance and management of existing woodland habitat; and
- (b) new proposed woodland planting and its maintenance.

(2) The detailed woodland management plan must be reviewed annually during the establishment period and at five yearly intervals thereafter for the lifetime of the development. During the establishment period, newly created shrub, ecotone, understory and hedgerow planting will be subject to an annual assessment.

(3) In sub-paragraph (3) “the establishment period” means a period of five years from the first spring following planting.

(4) The detailed woodland management plan for each phase must be implemented in accordance with the approved plan.

Amendments to approved details

34. With respect to any requirement which requires the authorised development or any phase to be carried out in accordance with details approved by the relevant planning authority or another person, the authorised development or phase must be carried out in accordance with the details as approved unless an amendment or variation is agreed in writing by the relevant planning authority or that other person in accordance with sub-paragraph (2).

(1) Any amendments to or variation from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or (as the case may be) by that other person that the subject matter of the amendment or variation sought is unlikely to give rise to any materially greater environmental effect from those assessed in the environmental statement.

(2) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.

Lorry park management plan

35. The lorry park management plan must be complied with at all times following the first occupation of any warehouse floorspace on the authorised development.

PART 2

PROCEDURE FOR APPROVALS ETC UNDER REQUIREMENTS

Interpretation

36. In this Part of this Schedule—

“appeal documentation” means the application submitted to the discharging authority, any further information submitted under paragraph 3 and any notice of a decision to refuse;

“the appeal parties” means the discharging authority, the undertaker and any requirement consultee(s);

“discharging authority” means the authority from whom a consent, approval or agreement is required or requested by the undertaker under the requirement concerned; and

“requirement consultee” means anybody named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement.

Applications made for certain approvals

37. Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated under the requirements in Part 1 of this Schedule the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

- (1) For the purposes of sub-paragraph (1), the decision period is—
 - (a) where no further information is requested under paragraph 3 (further information), 56 days from the day immediately following that on which the application is received by the discharging authority;
 - (b) where further information is requested under paragraph 3, 56 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 3; or
 - (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in paragraph (a) or (b).

Further information

38. In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(1) If the discharging authority considers such further information to be necessary it must, within 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(2) If the discharging authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

Appeals

39. The undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated under the requirements or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 2 (applications for certain approvals);
- (c) on receipt of a request for further information under paragraph 3 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 2 (applications for certain approvals) in this Schedule;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must within 7 working days provide copies of the appeal documentation to the discharging authority and any requirement consultee;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State is to appoint a person to determine the appeal (“the appointed person”)(a) and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 20 working days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 20 working days of receipt of written representations under paragraph (d).

(3) The appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable following the deadline for the receipt of counter-submissions pursuant to sub-paragraph (2)(e).

(4) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(5) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(6) Any further information required under sub-paragraph (5) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 working days of that date.

(7) On an appeal under this paragraph, the appointed person must—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(8) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or time limits set by the appointed person and notified to the appeal parties under this sub-paragraph.

(9) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, or any other time limit set in accordance with sub-paragraph (8).

(10) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(11) If an approval is given by the appointed person under this Part of this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under

(a) The appointment is made at the discretion of the Secretary of State, and such appointment may be made by the Planning Inspectorate on behalf of the Secretary of State.

the requirement as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the undertaker(a).

(13) The appointed person may, following an application by the discharging authority or the undertaker, or in the absence of such application, give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance or guidance which may from time to time replace it.

Fees

40. 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 any application pursuant to requirement 5 were an application for approval of reserved matters and any other matter were an application for written confirmation of a condition or conditions attached to a grant of planning permission, is to be paid to that authority.

(1) Any fee paid under this Part of this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph 2 of this part.

unless within that period the undertaker agrees, in writing, that the fee is to be returned by the discharging authority and credited in respect of a future application.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

(1) Area	(2) Street within the Order limits subject to street works
District of Blaby	M69 B4669 B581 B4114 Burbage Common Road Stanton Lane Church Street Stanton Road Croft Road

- (a) The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under s78/s79 of the PA2008. See the National Infrastructure Planning website for more information: <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>
- (b) S.I. 2012/2920, amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/2026, S.I. 2015/643, S.I. 2017/1314 S.I. 2019/1154 and S.I. 2023/1197.

Borough of Hinckley & Bosworth	M69 A47 A447 B4668 B4667 The Common
District of Harborough	A5 A4303 B581
Borough of Rugby	B4027 Coal Pit Lane

SCHEDULE 4

Article 11

STREETS TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) Area	(2) Street to be stopped up	(3) Extent of stopping up	(4) Stage of the authorised development
District of Blaby	Burbage Common Road	Through the main site along the route shown hatched red on access and rights of way plan (Document 2.3A) and (Document 2.3 B)	Commencement of any of works numbered 1 to 7
	Smithy Lane	At the entrance to the main site along the route shown hatched red on access and rights of way plan (Document 2.3D)	Commencement of any of works numbered 1 to 7

SCHEDULE 5

Article 13

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) Area	(2) Public right of way to be stopped up	(3) Extent of stopping up	(4) Substitute to be provided
District of Blaby	U17/2	The dashed green line between point 19 and point 20 on the access and rights of way plan (Document 2.3B)	The footpaths shown dashed and dotted brown between point 19 and point 20 on the access and rights of way plan (Document 2.3B)
	U8/1	The dashed green line between	The footpath shown dashed

	point 21 and point 22 on the access and rights of way plan (Document 2.3C)	and dotted brown between point 21 and point 22 on the access and rights of way plan (Document 2.3C)
V29/7	The solid green line between point 15 and point 31 on the access and rights of way plan (Document 2.3D)	The bridleway shown with a solid yellow line between point 16 and point 37 and point 14 and point 18 on the access and rights of way plan (Document 2.3D)
V29/6	The solid green line between point 16 and point 31 on the access and rights of way plan (Document 2.3D)	The bridleway shown with a solid yellow line between point 16 and point 37 and point 14 and point 18 on the access and rights of way plan (Document 2.3D)
U50/1	The dashed green line between point 6 and point 7 in the access and rights of way plan (Document 2.3D)	The bridleway shown with a solid yellow line between point 6 and point 7 on the access and rights of way plan (Document 2.3D)
U52/9	The solid green line between point 2 and point 27 on the access and rights of way plan (Document 2.3A)	The bridleway shown with a solid yellow line between point 1 and point 2 on the access and rights of way plan (Document 2.3A)

PART 2

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) Area	(2) Public right of way to be stopped up	(3) Extent of stopping up
District of Blaby	V23/1	The dashed green line between point 9 and point 11 on the access and rights of way plan (Document 2.3A)
	U50/3	The dashed green line between point 10 and point 12 on the access and rights of way plan (Document 2.3A)
	U52/6	The dashed green line between point 4 and point 32 on the access and rights of way plan (Document 2.3A and Document 2.3C)
	U52/7	The dashed green line between point 32 and point 3 on the access and rights of way plan (Document 2.3A)
	V35/2	The dashed green line between point 29 and point 32 on the access and rights of way plan (Document 2.3A and 2.3D)
	U50/2	The dashed green line between point 28 and point 29 on the access and rights of way plan (Document 2.3A and Document 2.3D)
	U53/1	The dashed green line between point 30 and point 31 on the access and rights of way plans

T89/1	(Document 2.3A and Document 2.3D) The dashed green line between point 24 and point 25 and point 26 on the access and rights of way plan (Document 2.3B)
-------	--

PART 3

NEW PUBLIC RIGHTS OF WAY TO BE CREATED

(1) Area	(2) Public right of way to be created	(3) Extent of new public right of way to be created
District of Blaby	Public bridleway	The bridleway shown with a solid yellow line between point 5 and point 7 on the access and rights of way plan (Document 2.3C (point 5) and Document 2.3D (point 7))
	Public footpath	The footpath shown dashed brown between point 8 and point 10 on the access and rights of way plan (Document 2.3A)
	Public footpath	The footpath shown dashed brown between point 33 and point 34 on the access and rights of way plan (Document 2.3D)
	Public footpath	The footpath shown dashed brown between point 35 and point 36 on the access and rights of way plan (Document 2.3D)
	Public bridleway	The bridleway shown with a solid yellow line between point 7 and point 18 on the access and rights of way plan (Document 2.3D)
	Public bridleway	The bridleway shown with a solid yellow line between point 13 and point 37 on the access and rights of way plan (Document 2.3B (point 13) and Document 2.3D (point 37))
	Public bridleway	The bridleway shown with a solid yellow line between point 38 and point 39 on the access and rights of way plan (Document 2.3A)
	Public footpath	Extension of U17/2 between point 19 and point 20 shown dashed brown on the access and rights of way plan (Document 2.3B)

SCHEDULE 6

Article 14

PRIVATE MEANS OF ACCESS

PART 1

PRIVATE MEANS OF ACCESS TO BE REPLACED

(1) Area	(2) Private means of Access	(3) Replacement	(4) Stage of the authorised development
Borough of Hinckley and Bosworth	The private means of access shown coloured blue and labelled A on the	The private means of access shown hatched blue and labelled B on the access and	Commencement of Work No. 7

District of Blaby	access and rights of way plan (Document 2.3A) The private means of access shown coloured blue and labelled Z on the access and rights of way plan (Document 2.3D)	rights of way plan (Document 2.3A) The private means of access shown coloured hatched blue and labelled AA on the access and rights of way plan (Document 2.3D)	Commencement of Work No. 9
	The private means of access shown coloured blue and labelled F on the access and rights of way plan (Document 2.3A)	The private means of access marked E and shown hatched blue on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 7

PART 2

PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) Area	(2) Private Means of Access	(3) Stage of the authorised development
District of Blaby	The private means of access shown coloured blue and labelled D on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1
	The private means of access shown coloured blue and labelled G on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1 or Work No. 2
	The private means of access shown coloured blue and labelled H on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1
	The private means of access shown coloured blue and labelled I on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1
	The private means of access shown coloured blue and labelled J on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1
	The private means of access shown coloured blue and labelled K on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 2
	The private means of access shown coloured blue and labelled L on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 5
	The private means of access shown coloured blue and labelled M on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 5
	The private means of access shown coloured blue and labelled N on the access and right of way plan (Document 2.3A)	Commencement of Work No. 5
	The private means of access shown coloured blue and labelled O on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 5
	The private means of access shown coloured blue and labelled P on the access and rights of way plan (Documents 2.3A)	Commencement of Work Nos. 4 or Work No. 5

The private means of access shown coloured blue and labelled Q on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled R on the access and rights of way plan (Document 2.3A)	Commencement of Work No 4. or Work No. 5
The private means of access shown coloured blue and labelled S on the access and rights of way plan (Document 2.3A)	Commencement of Work No 4. or Work No. 5
The private means of access shown coloured blue and labelled T on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled U on the access and rights of way plan (Document 2.3B)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled V on the access and rights of way plan (Document 2.3 B)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled W on the access and rights of way plan (Document 2.3B)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled AB on the access and rights of way plan (Document 2.3D)	Commencement of Work No. 5 or Work No. 6

PART 3

NEW PRIVATE MEANS OF ACCESS CREATED

(1) Area	(2) Private means of Access	(3) Stage of the authorised development
District of Blaby	The private means of access marked C and shown hatched blue on the access and rights of way plan (Document 2.3A)	Completion of Work No. 19 in accordance with the phasing details approved pursuant to requirement 4.
	The private means of access marked AC and shown hatched blue on the access and rights of way plan (Document 2.3B)	Completion of Work No. 6 in accordance with the phasing details approved pursuant to requirement 4.
	The private means of access marked X and shown hatched blue on the access and rights of way plan (document 2.3B)	Completion of Work No. 6 in accordance with the phasing details approved pursuant to requirement 4.
	The private means of access shown hatched blue and labelled AD on the access and rights of way plan (Document 2.3D)	Completion of Work Nos. 4 and 7 in accordance with the phasing details approved pursuant to requirement 4.
	The private means of access shown hatched blue and labelled AE on the access and rights of way plan (Document 2.3D)	Completion of Work Nos. 4 and 7 in accordance with the phasing details approved pursuant to requirement 4.
	The private means of access shown hatched blue and labelled AF on the access and rights of way plan (Document 2.3D)	Completion of Work Nos. 4 and 7 in accordance with the phasing details approved pursuant to requirement 4.

way plan (Document 2.3D)

The private means of access shown hatched blue and labelled AG on the access and rights of way plan (Document 2.3D)

details approved pursuant to requirement 4.

Completion of Work Nos. 4 and 6 in accordance with the phasing details approved pursuant to requirement 4.

SCHEDULE 7

Article 16

CLASSIFICATION OF HIGHWAYS

PART 1

NEW HIGHWAYS

(1) Area	(2) Extent of Highway	(3) Classification	(4) Classes of traffic	(5) Relevant Highway Authority
District of Blaby and Borough of Hinckley and Bosworth	The A47 link road shown with a solid pink line between point 1 and point 2 on the highway classification plans (Documents 2.5A and 2.5B)	Classified	All purpose	Leicestershire County Council
	The A47 link road shown with a solid pink line and following a circular route around point 2 and point 3 and returning to point 2 on the highway classification plans (Document 2.5B)	Classified	All purpose	Leicestershire County Council
	The A47 link road shown with a solid pink line between point 3 and point 4 on the highway classification plans (Document 2.5B)	Classified	All purpose	Leicestershire County Council
	The A47 link road shown with a solid pink line and following a circular route around point 4 and point 5 and returning to point 4 on the highway classification plans (Document 2.5B)	Classified	All purpose	Leicestershire County Council
	The A47 link road shown with a solid pink line between point 5 and point 6 on the	Classified	All purpose	Leicestershire County Council

highway classification plans (Document 2.5B) The A47 link road shown with a solid pink line and following a circular route around point 6 and point 7 and returning to point 6 on the highway classification plans (Document 2.5B)	Classified	All purpose	Leicestershire County Council
The A47 link road shown with a solid pink line between point 7 and point 8 on the highway classification plans (Document 2.5B)	Classified	All Purpose	Leicestershire County Council
M69 junction 2 roundabout shown with a solid pink line between point 10 and point 11 on the highway classification plans (Document 2.5C)	Classified	All purpose	Leicestershire County Council
M69 junction 2 roundabout shown with a solid pink line between point 12 and point 13 on the highway classification plans (Document 2.5C)	Classified	All purpose	Leicestershire County Council
M69 junction 2 shown with a solid blue line between point 9 and point 10 on the highway classification plans (Document 2.5C)	Special Road	Class I and II	National Highways
M69 junction 2 shown with a solid blue line between point 13 and point 14 in the highway classification plans (Document 2.5C)	Special Road	Class I and II	National Highways

**SCHEDULE 8
SPEED LIMITS**

Article 17

**PART 1
EXISTING ORDERS**

(1) Statutory	(2) S.I.	(3) Changes	(4) Event
------------------	-------------	----------------	--------------

Instrument/Order Title	Number		
The Leicestershire County Council (B4668 Leicester Road, Hinckley) (Imposition of 30mph, 40mph and 50mph Speed Limits) Order 2008	N/A	In Schedule 3— For, B4668 Leicester Road, Hinckley From a point 7 metres south west of the southern boundary of the property Penryl in a south westerly direction to a point approximately 17 metres east of its junction with the access to Fairways Court for a distance of approximately 950 metres Substitute B4668 Leicester Road, Hinckley From a point 35 metres south west of the roundabout junction between the B4668 and the A47 to M69 link road to a point approximately 17 metres east of its junction with the access to Fairways Court for a distance of approximately 580 metres	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15

PART 2

HIGHWAYS SUBJECT TO 40 MPH SPEED LIMIT

(1) Location	(2) Description	(3) Event
B4668	The B4668 as shown by a solid pink line on the speed limit plan between point D and point C (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
B4668	The B4668 as shown with a solid pink line on the speed limit plan and following a circular route around point C and point B and point E and returning to point C (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
B4668	The B4668 as shown by a solid pink line on the speed limit plan between point B and point A (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point E and point F (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point G and point H (Document 2.7A and Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown with a solid pink line on the speed limit plan and following a circular route around point H and point J and point R and returning to	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to

A47 link road	point H (Document 2.7B) The A47 link road as shown by a solid pink line on the speed limit plan between point J and point K (Document 2.7B)	article 15 The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point R and point S (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown with a solid pink line on the speed limit plan and following a circular route around point K and point L and point T and point S and returning to point K (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point L and point M (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point T and point V (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown with a solid pink line on the speed limit plan and following a circular route around point M and point N and point W and point V and returning to point M (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point N and point P (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point W and point X (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
Stanton Lane	Stanton Lane as shown by a solid pink line on the speed limit plan between point AD and point AE (Document 2.7C)	The date on which the relevant part of Work No. 11 becomes maintainable by the relevant highway authority pursuant to article 15

PART 3

DERESTRICTED HIGHWAYS

(1) Location	(2) Description	(3) Event
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line on the speed limit plan	The date on which the relevant part of Work No. 7

	between point X and point Y (Documents 2.7B and 2.7C)	becomes maintainable by the relevant highway authority pursuant to article 15
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line on the speed limit plan between point P and point Q (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line on the speed limit plan between point Z and point AA (Document 2.7C)	The date on which the relevant part of Work No. 8 becomes maintainable by the relevant highway authority pursuant to article 15
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line on the speed limit plan between point AB and point AC (Document 2.7C)	The date on which the relevant part of Work No. 8 becomes maintainable by the relevant highway authority pursuant to article 15
Roundabout J2 M69 and A47 link road	The A47 link road as shown by a dashed light blue line on the speed limit plan between point F and point G (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15

SCHEDULE 9

Article 19

CLEARWAYS AND NO WAITING

PART 1

CLEARWAYS

(1) Location	(2) Description	(3) Event
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 1 and point 2 of the traffic regulation plans (Documents 2.6A and 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 15 and point 16 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 8 and point 9 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 17 and point 18 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 8 becomes maintainable by the relevant highway authority pursuant to article 15

A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 19 and point 20 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 8 becomes maintainable by the relevant highway authority pursuant to article 15
--------------------------------	---	---

PART 2
NO WAITING AT ANY TIME

(1) Location	(2) Zone	(3) Event
A47 link road (local highway)	The A47 link road as shown with a solid blue line on the traffic regulation plan and following a circular route around point 2 and point 3 and point 10 and returning to point 2 (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 3 and point 4 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 10 and point 11 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line on the traffic regulation plan and following a circular route around point 4 and point 5 and point 12 and point 11 and returning to point 4 (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 5 and point 6 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 12 and point 13 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line on the traffic regulation plan and following a circular route around point 6 and point 7 and point 14 and point 13 and returning to point 6 (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 7 and point 8 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 14 and point 15 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the

SCHEDULE 10

Article 34

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) Area	(2) Number of land shown on land plan	(3) Purpose for which temporary possession may be taken	(4) Relevant part of the authorised developmen t
District of Blaby	44	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	45	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	46	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	47	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	49	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	50	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	57	The closure of the Thorney Fields railway level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No. 21
District of Blaby	58	The closure of the Thorney Fields railway level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No. 21
District of Blaby	59	The closure of the Thorney Fields railway level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No. 21
District of Blaby	60	The closure of the Thorney Fields railways level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No.21
District of Blaby	61	The closure of the Thorney Fields railway level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No. 21
District of Blaby	77	Improvements to bridleway V29/6	Work No. 8
District of Blaby	101	Construction laydown sites and stock piling areas for topsoil and subsoil material and construction of temporary haul roads including access in connection with the works to junction 2 of the M69 motorway.	Work No. 9
Borough of Hinckley	112	The closure of the Outwoods railway level crossing and the diversion of public footpath U8/1 including the installation of a new footbridge over the Felixstowe to	Work No. 20

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensations for the compulsory purchase of land apply, with the necessary modifications set out in this Schedule as respects compensation, the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2. Without limitation on paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

3. For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 12 to the Hinckley National Rail Freight Interchange Order 202X)(a);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 12 to the Hinckley National Rail Freight Interchange Order 202X) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purposes of exercising that right.”

4.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(b) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken” substitute “a right over land is purchased”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable”.

Application of Part 1 of the 1965 Act

5. Part 1 of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act, and modified by article 33 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under article 25 (compulsory acquisition of land) applies to the compulsory acquisition of a right by the creation of a new right under article 27 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with other modifications as may be necessary.

6. The modifications referred to in paragraph 4(a) are as follows—

(a) S.I. [202X/X]
(b) 1973 c.26

(1) References in the 1965 Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) For section 7 (measure of compensation) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(3) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

(4) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 25 (compulsory acquisition of land)), it has the power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on a specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(5) Section 20(f) (tenants at will etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

(6) Section 22 (interests omitted from purchase) of the 1965 Act, as modified by article 33(2) (modification of Part 1 of the 1965 Act) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(7) For Schedule 2A to the 1965 Act substitute—

-
- (a) Section 11 was amended by section 34(1) of, and paragraph 14(3) of Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and sections 186, 187 and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c. 22).
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 32 (application and modification of the 1981 Act) of the Hinckley Rail Freight Interchange Order 202X in respect of the land to which the notice to treat relates.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to-

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the acquiring authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right;
- (b) the use to be made of the right proposed to be acquired; and

- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 13

Article 46

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“bridge” means the new bridge to be constructed as part of the A47 link road over the Leicester to Hinckley railway line which, for the purposes of this Part of this Schedule, is to include the superstructure of the new bridge including deck, piers, footings, abutments and wingwalls to be provided as part of Work No. 7 but does not include the highway, approach embankments, road approaches/embankments, footpaths, street lighting and all necessary highway related structures and apparatus (which are to be maintained by the local highway authority);”

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated

(a) 1993 c 43. Section 8 was amended by section 216 of, and paragraphs 1 and 4 of Schedule 17 and Part 4 of Schedule 31 to, the Transport Act 2000 (c. 38), paragraphs 1 and 4 of Schedule 2 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 3 of Schedule 1, and Part 1 of Schedule 13, to the Railways Act 2005 (c. 14) and S.I. 2015/1682.

company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006^(a)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (c) the Railways Act 1993;
- (d) the network licence; and/or
- (e) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approval of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 6 (maintenance of authorised development) in respect of such works.

3. Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(1) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4. The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent granted by the Order);
- (b) article 6 (maintenance of authorised development);
- (c) article 12 (public rights of way – creation, substitution, stopping up and closure of level crossings);

(a) 2006 c. 46.

- (d) article 14 (accesses);
- (e) article 21 (discharge of water);
- (f) article 23 (authority to survey and investigate the land);
- (g) article 25 (compulsory acquisition of land);
- (h) article 27 (compulsory acquisition of rights);
- (i) article 28 (power to override easements and other rights);
- (j) article 30 (private rights);
- (k) article 34 (temporary use of land for carrying out the authorised development);
- (l) article 35 (temporary use of land for maintaining the authorised development);
- (m) article 36 (statutory undertakers);
- (n) article 41 (operation and use of railways);
- (o) article 45 (felling or lopping of trees and removal of hedgerows);
- (p) the powers conferred by section 11(3) (powers of entry) of the 1965 Act;
- (q) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (r) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (s) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(4) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 28 (power to override easements and other rights), or article 33 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(6) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(7) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(8) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

6. Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9. If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(1) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(2) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11. In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(1) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(2) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(3) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(4) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to the sub-paragraph.

(5) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(6) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail’s apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(7) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(8) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(9) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(10) In relation to any dispute arising under this paragraph the reference in article 51(1)(c) (arbitration) to the institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15. The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 39 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be

followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable notice of any such claims or demands;
- (b) must not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstance to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and

- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Network Rail and the undertaker agree that, following the construction and completion of the bridge and payment of an appropriate commuted sum to Network Rail, Network Rail will take transfer of the bridge and maintain the bridge from the date of such transfer.

20. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

21. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

22. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 50 (certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

PART 2

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.

23. The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(1) The undertaker and National Highways and Warwickshire County Council and Leicestershire County Council or their successors in function as highway authorities for their respective road networks may in respect of Work No. 16 in its entirety agree with each other that any one of the highway authorities may assume responsibility for that work pursuant to section 4 or 6 or 8 (as relevant) of the 1980 Act or by agreement.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

24. Where the terms used in this Part of this Schedule are defined in article 2 (interpretation) of this Order save where inconsistent with subparagraph (2) below the latter prevail.

(1) In this Part of this Schedule—

“as built information” means one electronic copy of the following information where applicable—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;

- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during the construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highways' Asset Data Management Manual as is in operation at the relevant time including CCTV surveys;

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) index linked;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 16 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus provided under the Order;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the specified works—

- (m) site clearance details;
- (n) boundary, environmental and mitigation fencing;
- (o) road restraints systems and supporting road restraint risk appraisal process assessment;
- (p) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
- (q) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (r) pavement, pavement foundations, kerbs, footways and paved areas;
- (s) traffic signs and road markings;
- (t) traffic signal equipment and associated signal phasing and timing detail;
- (u) road lighting (including columns and brackets);
- (v) regime of California Bearing Ratio testing;
- (w) electrical work for road lighting, traffic signs and signals;
- (x) motorway communications as required by DMRB;

- (y) highway structures and any required structural approval in principle;
- (z) landscaping;
- (aa) proposed departures from DMRB standards;
- (bb) walking, cycling and horse riding assessment and review report;
- (cc) stage 1 and stage 2 road safety audits and exceptions agreed;
- (dd) utilities diversions;
- (ee) topographical survey;
- (ff) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (gg) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (hh) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 9;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 7 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works, street works and signalisation, authorised by this Order including any maintenance of that work, as is

undertaken in, on under or over the strategic road network for which National Highways is the highway authority, except in those circumstances where the undertaker, National Highways, Warwickshire County Council and Leicestershire County Council have in respect of Work No. 16, agreed that any one of those relevant highway authorities is to assume responsibility for that work as highway authority in which case the relevant Part of Schedule 13 shall apply in respect of that work;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway for which National Highways is the highway authority;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

(2) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

General

25. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part 2 of Schedule 13 but for the purposes of any approvals required under this Part of Schedule 13 the undertaker shall liaise directly with National Highways.

26. Notwithstanding the limits of deviation permitted pursuant to article 4 (parameters of authorised development) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network unless such works are agreed in writing with National Highways at the absolute discretion of National Highways.

27. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

28. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

29. The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);

- (ii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;
 - (iii) the identity and qualification of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding or any successor document; and
 - (vi) until a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (d) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
 - (e) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
 - (f) the undertaker has agreed the estimate of the commuted sum with National Highways;
 - (g) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
 - (h) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
 - (i) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.
- (2) The undertaker must not exercise—
- (a) article 6 (maintenance of authorised development);
 - (b) article 9 (street works);
 - (c) article 10 (power to alter layout etc. of streets);
 - (d) article 12 (temporary closure of streets)
 - (e) article 14 (accesses) article 15 (maintenance of highway works);
 - (f) article 18 (traffic regulation);
 - (g) article 21 (discharge of water);
 - (h) article 23 (authority to survey and investigate the land);
 - (i) article 25 (compulsory acquisition of land);
 - (j) article 27 (compulsory acquisition of rights);
 - (k) article 28 (power to override easements and other rights);
 - (l) article 30 (private rights)
 - (m) article 31 (rights under or over streets);
 - (n) article 34 (temporary use of land for carrying out the authorised development);
 - (o) article 35 temporary use of land for maintaining the authorised development);
 - (p) article 36 (statutory undertakers); or

(q) article 45 (felling or lopping trees or removal of hedgerows) of this Order,

(3) over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management as required for National Highways' approval.

(4) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraphs (1) or (2).

(5) Any approval of National Highways required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been given if neither given nor refused within 42 days of the receipt of the information for approval or, where further particulars are requested by National Highways within 42 days of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways acting reasonably considers necessary.

(6) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(7) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(1) of this Part.

Construction of the specified works

30. The undertaker must give National Highways 3 months' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(1) The undertaker must comply with National Highways' road space booking procedures when booking road space on the strategic road network prior to and during the carrying out of the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(2) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(3) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works pursuant to the Order

including all land in which National Highways has an interest for the purposes of inspection and supervision of the specified works.

- (4) If any part of the specified works is constructed—
- (a) other than in accordance with the requirements of this Part of this Schedule; or
 - (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(5) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(6) If within 28 days on which a notice under sub-paragraph (5) or sub-paragraph (6) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(7) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(8) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(9) Until such time that National Highways issues the provisional certificate the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 7(1)(h) and the undertaker must carry out such maintenance at its own cost.

(10) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 7(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

31. The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 7(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the specified works and sub-paragraphs (a) to (d); and

- (f) any value added tax which is payable by National Highways only in respect of such costs and expenses arising under this paragraph and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs notified pursuant to sub-paragraph (2) it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (the excess) and, subject to paragraph 21, the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess. If the excess is not considered reasonable and proper by the undertaker paragraph 21 (expert determination) shall apply.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).

(6) Within 28 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National Highways, subject to paragraph 21, the undertaker must pay to National Highways the sum shown due to it; and
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

32. Following the completion of any specified works or prior to reopening any part of the strategic road network following any closure or partial closure, whichever shall be sooner, the undertaker shall notify National Highways who will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection.

(1) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(2) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(3) When—

- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 10(3)(b) have been completed to the satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(4) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(5) The undertaker must submit a stage 4 road safety audit as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

33. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date and must not open the strategic road network to the public prior to the expiration of that period.

Final condition survey

34. The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(1) If the re-surveys carried out pursuant to paragraph 12(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(2) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(3) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 12(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(4) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

35. The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issuing of the provisional certificate National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

36. The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(1) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the strategic road network; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(2) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).

(3) When National Highways is satisfied that—

- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
- (b) the NH costs have been paid to National Highways in full,

National Highways must issue the final certificate and upon the issue of the final certificate the bond is released in full.

(4) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to the provisions in this paragraph 14.

Security

37. The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; or where agreed by National Highways
- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 9 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule, or a combination of a bond and cash surety together totalling 200%.

Commuted sums

38. National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(1) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

39. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £50,000,000.00 (fifty million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

40. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

41. The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(1) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(2) During any maintenance works, the undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(3) The provisions of paragraph 11 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

42. Following the issue of the final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(1) If the undertaker receives a notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(2) Where any land or interest is proposed to be acquired by the undertaker for the benefit of National Highways authorised by the Order, the undertaker must, unless otherwise agreed by National Highways, exercise article 25 (compulsory acquisition of land) and article 27 (compulsory acquisition of rights) as applied by articles 32 (application and modification of the

1981 Act) and article 33 (modification of Part 1 of the 1965 Act) of this Order to directly vest in National Highways any such land or interest.

(3) The undertaker agrees not to exercise powers of compulsory acquisition in respect of National Highways' interests only in land parcels 54, 84, 101, 101a, 102, 103 and 104 identified on the land plans.

(4) The undertaker may only exercise powers of compulsory acquisition in respect of land parcels 39, 65, 66, 67, 68, 69 and 71 identified on the land plans with the written consent of National Highways.

Expert Determination

43. Article 51 (arbitration) of the Order does not apply to this Part of this Schedule.

(1) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(2) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 51 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

44. As referred to in paragraph 15—

Form 1

Bond – National Highways

BY THIS BOND [] [(Company Regn No)] whose registered office is situated at [] (“the undertaker”) and [] [(Company Regn No)] whose registered office is situated at [] (“the Surety”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 202[] in the sum of [] pounds (£[Surety Sum]) to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns.

WHEREAS under a Development Consent Order known as The Hinckley National Rail Freight Interchange Order 202[X] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to National Highways such sums as are therein provided NOW THE CONDITIONS of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 2 of Schedule 13 to the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by National Highways thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by National Highways under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of National Highways shall in any way release the Surety from any liability under this Bond.

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 10 and 14 of Part 2 of Schedule 13 of the DCO.

[Attestation]

PART 3

FOR THE PROTECTION OF LEICESTERSHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY

Application

45. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Leicestershire County Council.

(1) The undertaker and Leicestershire County Council and National Highways and Warwickshire County Council or their successors in function as highway authorities for their respective road networks may in respect of Work No. 16 in its entirety agree with each other that any one of the highway authorities may assume responsibility for that work pursuant to section 4 or 6 or 8 (as relevant) of the 1980 Act or by agreement.

Interpretation

46. In this Part of this Schedule—

“as built information” means the following information—

- (a) drawings showing the highway works as constructed;

- (b) list of supplies and materials, test results and CCTV drainage;
- (c) product data sheets, technical specifications for all materials to be used;
- (d) as built information for any utilities discovered or moved during the highway works;
- (e) method statements for highway works to be carried out;
- (f) road lighting, signs and traffic signals;
- (g) organisation and methods manuals for all products used;
- (h) as built programme;
- (i) drawings referred to in paragraphs (a), (k) and (l) in Auto CAD;
- (j) test results and records;
- (k) landscape drawings;
- (l) highway drainage drawings;
- (m) plans identifying land which is highway maintainable at public expense; and
- (n) RSA3 and exceptions agreed;

“bridge” means the new bridge to be constructed as part of the A47 link road over the Leicester to Hinckley railway line which, for the purposes of this Part of this Schedule, is to include the highway, approach embankments, road approaches/ embankments, footpaths, street lighting and all necessary highway related structures and apparatus but does not include the superstructures of the new bridge including deck, piers, footings, abutments and wingwalls to be provided as part of Work No. 7, and forming part of the highway works;

“detailed design information” means the drawings, specifications and other information which must be in accordance with the general arrangements of the highway works shown on the highway plans unless otherwise agreed between the local highway authority and the undertaker which show the following—

- (o) site clearance details;
- (p) boundary environmental and mitigation fencing;
- (q) road restraint systems (vehicle and pedestrian);
- (r) drainage and ducting;
- (s) earthworks;
- (t) road pavements;
- (u) kerbs, footways and paved areas;
- (v) traffic signs, signals and road markings;
- (w) road lighting (including columns and brackets);
- (x) CCTV masts and cantilever masts;
- (y) electrical work for road lighting and traffic signs;
- (z) motorway communications;
- (aa) highway structures;
- (bb) landscaping;
- (cc) utility diversions; and
- (dd) identification of any land to be dedicated as highway;

“development inspector” means the officer of the highway authority appointed by it to inspect the highway works on its behalf;

“director” means the director of Environment and Transport of the highway authority or any successor post responsible for the highway authority function of Leicestershire County Council;

“final certificate” means the final certificate issued by the director for each phase of the highway works in accordance with paragraph 5;

- “highway authority” means Leicestershire County Council;
- “highway plans” means Highway Works Plans 2.4A, 2.4B, 2.4C, 2.4E, 2.4F, 2.4H, 2.4K relating to the highway works;
- “highway related structures fees” means the total costs properly and reasonably incurred in undertaking the technical approval, design checking and inspection of any highway related structure;
- “highway works” means those parts of the authorised development to be carried out in the areas identified as Work Nos. 7 to 17 (inclusive) on the highway plans the general arrangement of which is shown on the highway plans and any ancillary works thereto, except in those circumstances where the undertaker, National Highways, Warwickshire County Council and Leicestershire County Council have in respect of Work No. 16, agreed that any one of those relevant highway authorities is to assume responsibility for that work as highway authority in which case the relevant Part of Schedule 13 shall apply in respect of that work;
- “maintenance period”, in relation to each phase of the highway works, means 12 months from the date of issue of the provisional certificate for that phase;
- “phase” means those parts of the highway works to be carried out as separate packages of works in the areas identified as Work Nos. 7 to 17 (inclusive) on the highway plans or such other arrangement as must be agreed in writing by the highway authority in advance of commencement of that package of works;
- “provisional certificate” means the provisional certificate of completion issued by the director for each phase of the highway works in accordance with paragraph 4;
- “specification” means—
- (ee) in relation to design—
 - (i) Leicestershire Highway Design Guide; and
 - (ii) Design Manual for Roads and Bridges;
 - (ff) in relation to specification—
 - (i) Leicestershire County Council’s Specification for highway works for new developments; and
 - (ii) Leicestershire County Council’s Standard drawings;
 - (gg) in relation to street lighting—
 - (i) design in accordance with BS5489; and
 - (ii) Leicestershire County Council’s Street Lighting Specification; and
 - (hh) in relation to traffic signs—
 - (i) the Traffic Signs Regulations and General Directions 2016 and any modifications of them;
 - (ii) the Traffic Signs Manual (DfT); and
 - (iii) Leicestershire County Council’s Traffic Signs and Road Markings Specification;
- “works fees” means the actual costs of the carrying out of the highway works in relation to—
- (ii) considering and approving the detailed design information;
 - (jj) the work carried out by the development inspector including travel expenses to and from the highway works and all other expenses properly incurred by the development inspector in connection with his duties;
 - (kk) administration in relation to paragraphs (a) and (b) above; and
 - (ll) highway related structures fees.

Highway works

- 47.** The undertaker must carry out and complete the highway works in accordance with—
- (a) the detailed design information approved under paragraph 13; and

(b) the programme of works approved under paragraph 23 or as subsequently varied by agreement between the undertaker and the highway authority.

(2) The undertaker must carry out and complete the highway works in accordance with the stipulations, requirements and conditions laid down in this Schedule.

(3) Before commencement of the highway works and at no expense to the highway authority the undertaker shall obtain such consents, licences or permissions as may be required for the purposes of carrying out the highway works (including all requirements under the Traffic Management Act 2004), save where the need for such consents, licences or permissions is disapplied by this Order, and shall comply with the highway authority's requirements for booking the necessary time and permits to carry out the highway works and to indemnify and keep the highway authority indemnified from and against all liabilities, costs, claims, actions, demands or expenses which may arise from the undertaker's failure to obtain or to comply with such consents, licences or permissions.

(4) The undertaker shall, once having commenced the highway works, proceed with them conscientiously and expeditiously and with all due diligence.

(5) Subject to the provisions of this Schedule and immediately on the issuing of the provisional certificate for each phase of the highway works the undertaker shall dedicate as public highway (and the highway authority shall forthwith accept) all such land as is within its ownership and is required for the construction of that phase of the highway works which does not already form part of the public highway or is already maintained as if it were a public highway.

Provisional certificate and maintenance period

48. When and so soon as each phase of the highway works (including the bridge) has been completed including such road safety audits as required in accordance with paragraph 28 to the reasonable satisfaction of the director, the director must issue a provisional certificate for each phase of the highway works (including a phase containing the bridge), and the undertaker at its own expense must maintain that phase of the highway works (including a phase containing the bridge) in a good state of repair and to the satisfaction of the director for the duration of the maintenance period and must carry out such routine maintenance as may be necessary or required by the director to facilitate use by the public; and for the avoidance of doubt the undertaker must undertake all other work and maintenance in respect of that work, including but not limited to any defect or damage until issue of the final certificate in respect of that phase under paragraph 5, and that phase of the highway works (including a phase containing the bridge) becomes highways maintainable at the public expense.

Final certificate

49. The undertaker must apply to the director for issue of the final certificate in respect of each phase at the expiration of the maintenance period in respect of that phase or on a date (whichever is the later) on which any defect or damage arising during the maintenance period is made good to the reasonable satisfaction of the director or completion of all or any works identified by any road safety audit required in accordance with paragraph 26.

(1) Upon receipt of the as built information in respect of a phase and approval of the same, the director must issue a final certificate in respect of that phase (including a phase containing the bridge) and as from the date of such final certificate the highway works (including the bridge) become highways maintainable at the public expense.

(2) If the undertaker does not apply for a final certificate for a phase within two years of the issue of the provisional certificate in respect of that phase the undertaker must pay to the highway authority a further administration charge of five hundred pounds (£500.00).

Indemnity

50. The undertaker must indemnify the highway authority from and against all costs, expenses and liabilities arising from or in connection with or ancillary to any claim, demand, action or

proceedings resulting from the design, carrying out and maintenance of the highway works including but without limitation on the scope of this paragraph any claim against the highway authority under the Land Compensation Act 1973(a) or by virtue of the application of the provisions of the Noise Insulation Regulations Act 1975(b), including any liability falling upon the highway authority by virtue of its exercising its discretionary powers under the said Regulations, provided that—

- (a) the foregoing indemnity must not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the highway authority or its officers, servants, agents or contractors or any person or body for whom the highway authority is responsible;
- (b) the highway authority must notify the undertaker straight away upon receipt of any claim;
- (c) the highway authority must not accept any such claim without first having given the undertaker details of such claim and having given the undertaker the opportunity to make representations to the highway authority as to the validity and quantum of such claim;
- (d) the highway authority must, in settling any such claim, give full and due regard to any representations made by the undertaker in respect of the claim;
- (e) the highway authority must, following the acceptance of any claim, notify the quantum of the claim to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the highway authority the amount specified as the quantum of such claim;
- (f) the undertaker must notify the highway authority of the intended date of the opening of each phase of the highway works to public traffic not less than 14 days in advance of the intended date; and
- (g) the undertaker must notify the highway authority of the actual date that each phase of the highway works are open to public traffic on each occasion within 14 days of that occurrence.

Construction (Design and Management) Regulations 2015

51. The undertaker must comply with all aspects of the Construction (Design and Management) Regulations 2015(c) and in particular must ensure that all obligations imposed on the client (as defined in those Regulations) are satisfied and must indemnify the highway authority against all claims, liabilities and actions arising out of a failure to so do.

Security

52. Prior to the commencement of each phase of the highway works the undertaker must secure the cost of it by the deposit with the highway authority of a bond, drafted substantially as detailed in Form 2 contained in paragraph 9, in a sum equal to 100% of all the costs of the carrying out of the phase of the highway works (including any statutory undertakers works) together with any commuted sum payable to the highway authority or such other sum agreed between the undertaker and the highway authority, or must provide some alternative form of security acceptable to the highway authority. Upon issue of the provisional certificate the highway authority shall refund to the undertaker 90% of the deposit remaining, 10% being refunded after the issue of the final certificate.

(a) 1973 c. 26.

(b) S.I. 1975/1763, amended by S.I. 1988/2000.

(c) S.I. 2015/51.

Bond – Leicestershire County Council

BY THIS BOND WE [the undertaker] whose registered office is situated at [] (hereinafter called “the Undertaker”) and [the Surety] (Company Registration No []) whose registered office is situated at [] (hereinafter called “the Surety”) are held and firmly bound unto LEICESTERSHIRE COUNTY COUNCIL (hereinafter called “the Authority”) in the sum of (£[]) (“the Surety Sum”) the payment of which sum the Undertaker and the Surety bind themselves their successors and assigns jointly and severally by the presents

WHEREAS the Developer intends to carry out Phase [] of the highway works referred to in Schedule 13 in the Hinckley National Rail Freight Development Consent Order [] (“the DCO”) NOW THE CONDITIONS of the above written bond is such that if the undertaker well and truly performs and fulfils its obligations in Schedule 13 to the DCO or if on failure by the Undertaker so to do the Surety must pay to the Authority the Surety Sum then the above written Bond is null and void but otherwise it must be and remain in full force and the giving by the Authority of any extension of time for the performing of the obligations in Schedule 13 Part 3 to the DCO on behalf of the Undertaker to be performed or fulfilled or any forbearance or forgiveness on the part of the Authority to the Undertaker in respect of any matter referred to in or concerning provisions of Schedule 13 Part 3 to the DCO must not in any way release the Surety from the Surety’s liability under the above written Bond provided that upon the issue of the provisional certificate under Schedule 13 Part 3 to the DCO the liability of the Undertaker and the Surety under this Bond is to be reduced to a sum equivalent to ten per cent of the cost of the phase of the highway works together with the value of the commuted sum of one thousand pounds (£1,000) whichever is the greater and upon the issue of the final certificate in respect of that phase the liability of the Undertaker and the Surety under this Bond must absolutely cease.

[Attestation]

Notices etc.

54. Where under the provisions of this Schedule the highway authority or the director is required to agree, to approve, to express satisfaction with or to give notice of any matter such agreement, approval, satisfaction or notice must not be unreasonably withheld or delayed and is to be deemed to have been given or expressed if not given or refused (along with reasons for such refusal) within 42 working days.

Dispute resolution

55. Regardless of article 51 (arbitration) any dispute under or arising out of the operation of this Schedule may be referred to a single arbitrator if all parties to the dispute agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996(a) or any statutory modification or re-enactment thereof for the time being in force.

(a) 1996 c. 23.

Privately and publicly owned apparatus

56. For the avoidance of doubt it is expressly declared that the undertaker in carrying out the highway works must at its own expense divert or protect all or any pipes, wires, cables or equipment belonging to any person having power or consent to undertake street works under the 1991 Act as may be necessary to enable such works to be properly carried out or may be reasonably directed by the director and all alterations to existing services must be carried out to the reasonable satisfaction of the appropriate persons, authorities and statutory undertakers.

Detailed design approval

57. The undertaker must take the specifications into account in preparing the detailed design information for submission to the highway authority.

(1) No phase of the highway works is to commence until the detailed design information (including traffic signal equipment) has been submitted to and approved by the director.

Workmanship

58. All the highway work is to be carried out to the reasonable satisfaction of the director.

Conditions

59. The Developer shall comply with Leicestershire County Council's Standard Conditions Applying to Highway Works for New Developments.

Traffic and safety control

60. In carrying out work in or adjoining the public highway the undertaker must comply in all respects with chapter 8 of the Traffic Signs Manual 2009.

Site safety

61. The undertaker must in respect of each phase of the highway works keep that phase safe and in a good state of efficiency and repair including the fencing and lighting of all open trenches and must keep all building materials and plant clear of the carriageway and footways.

Approval of persons undertaking the highway works

62. The undertaker must not engage or permit the engagement of any person to carry out the highway works (or any part thereof including their design) unless that person has first been approved in writing by the highway authority as suitable to carry out such works.

Inspection of the highway works

63. The undertaker must permit and must require any contractor or sub-contractor engaged on the highway works to permit at all reasonable times persons authorised by the highway authority whose identity has been previously notified to the undertaker to gain access to the site of the highway works for the purpose of inspection to verify compliance with the provisions of this Schedule in accordance with the highway authority's inspection policy.

Design and inspection payment

64. The undertaker must pay the works fees to the highway authority within 30 working days following receipt of an invoice issued by the highway authority to the undertaker following the first submission of detailed design information for approval.

- (1) The undertaker must provide the following for the development inspector—
- (a) workplace on the site of the highway works including welfare facilities;

- (b) safe route for transportation around the highways works; and
- (c) parking provisions.

Commuted sum

65. Immediately prior to the issue of the final certificate in respect of any phase, the undertaker must pay to the highway authority any commuted sum payable in respect of that phase calculated as provided for in sub-paragraph (3).

(1) Upon completion of works relating to a public right of way within the Order limits as part of a phase of the authorised development pursuant to requirement 4 (Part 1 of Schedule 2) the undertaker must pay to the highway authority a commuted sum (if necessary) towards the maintenance of such public right of way (including the surfacing of the new footbridge at the Outwoods railway crossing) calculated as provided for in sub-paragraph (3).

(2) The rates to be applied in calculating the commuted sums payable must be based on those contained with the Leicestershire Highway Design Guide (or any replacement of it) or in the absence of relevant rates within that Guide must be agreed between the undertaker and the highway authority at the date of calculation.

Programme of works

66. The undertaker must, prior to the commencement of each phase of the highway works, submit to the director for their approval a programme of works setting out the undertaker's proposed timetables for executing those works and following such approval (which may be given with or without modification) the undertaker must use all reasonable endeavours to ensure that the programme of works is complied with.

Power to execute works in default or emergency

67. If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any phase of the highway works, having been given notice of an alleged breach and opportunity to remedy it by the director, the highway authority must, on giving to the undertaker 14 days' notice in writing to that effect, be entitled to carry out and complete that phase of the highway works and any maintenance works on the undertaker's behalf and the undertaker must within 28 days pay to the highway authority the cost so incurred by the highway authority.

(1) Nothing in this Schedule prevents the highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public, the cost to the highway authority of such work or action being chargeable to and recoverable from the undertaker.

Insurance

68. The undertaker must, prior to commencement of the highway works, effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 for any one claim against any legal liability for damage, loss or injury to any property or any persons as a direct result of the execution and maintenance of the highway works or any part of them by the undertaker.

Notice of commencement of highway works

69. The undertaker must, prior to the commencement of each phase of the highway works, give the highway authority at least five weeks' notice (or such shorter period to be agreed between the undertaker and the highway authority) in writing of the proposed date on which each phase of the highway works will start and such date must be subject to the agreement of the director.

Approval of team undertaking Road Safety Audits

70. The undertaker must not engage or permit the engagement of any audit team unless that audit team has first been approved by the highway authority as suitable to undertake Road Safety Audits in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit (formerly HD19/15) or any replacement or modification of that design manual.

Road Safety Audits

71. At any time during the detailed design stages the director may require that an interim Road Safety Audit be carried out in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit and be submitted to the director and if so required by the director any recommendations in such interim report must be implemented to the director's satisfaction.

(1) Prior to the approval of the detailed design information for a phase, a Stage 2 Road Safety Audit must be carried out in respect of that phase in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit or any replacement or modification of that design manual and must be submitted to the director and if so required by the director any recommendations made in the Stage 2 report must be implemented to the director's satisfaction.

(2) Prior to the issue of the provisional certificate in respect of a phase, a Stage 3 Road Safety Audit must be carried out for that phase in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit and must be submitted to the director and if so required by the director any recommendations made in the Stage 3 report must be implemented to the director's satisfaction.

(3) A Stage 4 12-month monitoring Report ("the 12-month report") carried out in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit in respect of each phase of the highway works must be submitted to the director no sooner than 8 weeks and no later than 12 weeks following the first anniversary of the opening of that phase for public use and if so required by the director any recommendations made in the 12-month report must be implemented to the director's satisfaction AND the undertaker will secure by the deposit of a bond with the highway authority a sum equivalent to the director's reasonable estimate of the cost of the potential liability of the developer in respect of works arising from the Stage 4 12-month report prior to the issue of the final certificate.

(4) In the event that the director does not require a 12-month report to be submitted following receipt of the Stage 3 Road Safety Audit then the final certificate shall be issued following the implementation of any recommendations made in that report to the director's satisfaction.

Traffic signal equipment

72. The undertaker must permit the highway authority access at all reasonable times to any part of the site upon which the highway works are being carried out and in which cables, pipes, ducts or other apparatus associated with the traffic signal equipment is to be or are located to enable the highway authority to undertake works reasonably required for the maintenance of the said cables, pipes, ducts or other apparatus including any works which are undertaken to improve the performance of the traffic signals.

Use of sums paid

73. The highway authority must use such sums as are payable in accordance with the terms of this Schedule together with any interest which may accrue only for the purposes for which they are expressed to be paid.

Statutory procedures and orders

74. The undertaker must pay to the highway authority upon demand the total costs properly and reasonably incurred by the highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for

effectively implementing the highway works and whether or not such procedure or order is or are experimental, temporary or permanent provided that this paragraph does not apply to the making of any orders which duplicate the orders contained in this Order.

Consultation

75. The undertaker shall pay to the highway authority upon demand the total costs properly and reasonably incurred by the highway authority in undertaking any public consultation in respect of the highway works, be the consultation a statutory requirement or any other form of consultation that the highway authority would normally carry out if it were undertaking the highway works.

PART 4

FOR THE PROTECTION OF WARWICKSHIRE COUNTY COUNCIL - AS HIGHWAY AUTHORITY

Application

76. The provisions of this Part of this Schedule have effect, and apply as follows unless otherwise agreed in writing between the undertaker and the local highway authority.

(1) The undertaker and Warwickshire County Council and National Highways and Leicestershire County Council or their successors in function as highway authorities for their respective road networks may in respect of Work No. 16 in its entirety agree with each other that any one of the highway authorities may assume responsibility for that work pursuant to section 4 or section 6 or section 8 of the 1980 Act (as applicable) or by agreement.

Interpretation

77. The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which shall prevail.

(1) In this Part of this Schedule—

“as built information” means one digital copy of the following information where applicable to the phase in question—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, test results and CCTV surveys;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) plan of temporary signage indicating new road layouts;
- (h) organisation and methods manuals for all products used in the construction of the county highway works;
- (i) as constructed programme;
- (j) test results and records required by the Detailed Design Information and during the construction phase of the project;
- (k) RSA3 and exceptions agreed; and
- (l) health and safety file;

“the bond sum” means the sum equal to 200% of all the costs of the carrying out of the phase of the county highway works concerned and 200% of the commuted sum relating to that phase or such other sum agreed between the undertaker and the local highway authority;

“commuted sum” means such sum as shall be calculated for each phase as provided for in paragraph 9(2) of this Part of this Schedule and to be used to fund the future cost of maintenance of the county highway works;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the county highway works or any phase of the county highway works and approved by the local highway authority pursuant to paragraph 3(2) below;

“county highway works” means that part of the authorised development to be carried out in the areas identified as Works No. 16 on the works plans the general arrangement of which is shown on the highway plans and any ancillary works thereto within the administrative area of the local highway authority except in those circumstances where the undertaker, National Highways, Warwickshire County Council and Leicestershire County Council have in respect of Work No. 16, agreed that any one of those relevant highway authorities is to assume responsibility for that work as highway authority in which case the relevant Part of Schedule 13 shall apply in respect of that work;

“detailed design information” means drawings, specifications and other information which must be in accordance with the general arrangements of the county highway works shown on the highway plans unless otherwise agreed between the local highway authority and the undertaker—

- (m) site clearance details;
- (n) boundary environmental and mitigation fencing;
- (o) road restraints systems (vehicle and pedestrian) and supporting Road Restraint Risk Appraisal Process assessment (RRRAP);
- (p) drainage and ducting;
- (q) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (r) pavement, pavement foundations, kerbs, footways and paved areas;
- (s) traffic signs and road markings;
- (t) traffic signal equipment and associated signal phasing and timing detail;
- (u) road lighting (including columns and brackets);
- (v) electrical work for road lighting, traffic signs and signals;
- (w) highway structures;
- (x) Stage 2 Road Safety Audit and exceptions;
- (y) landscaping;
- (z) utilities diversions;
- (aa) topographical survey;
- (bb) identification of any land to be dedicated as highway; and
- (cc) pre- construction health and safety information

where relevant to the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed pursuant to paragraphs 5(1) and (5) of this Part of this Schedule;

“the excess” means the amount by which the local highway authority estimates that the costs referred to in paragraph 5(1) will exceed the estimated costs pursuant to paragraph 5(5)(b);

“local highway authority” means Warwickshire County Council or its successor in function as highway authority for the county highway works;

“nominated persons” means the undertakers representatives or the contractors representatives on site during the carrying out of the county highway works as notified to the local highway authority from time to time;

“phase” means that part of the county highway works which is to be carried out in separate phases in the areas identified as separate works numbers on the works plans or such other phasing arrangements as shall be agreed with the local highway authority;

“programme of works” means a document setting out the sequence and timetabling of the phase in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard GG 119 or any successor document;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

Prior approvals and security

78. No work must commence on any phase of the county highway works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by the local highway authority.

(1) No works must commence on any phase of the county highway works other than by a contractor employed by the undertaker for that phase but first approved by the local highway authority.

(2) No work must commence on any phase of the county highway works until the local highway authority has agreed the bond sum for that phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 8 of this Part of this Schedule or some other form of security acceptable to the local highway authority.

(3) No work must commence on any phase of the county highway works until a Stage 2 Road Safety Audit has been carried out in respect of that phase and all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

(4) No work must commence on any phase of the county highway works until a scheme of traffic management has been submitted by the undertaker and approved by the local highway authority.

(5) For that phase no work must commence on any phase of the county highway works until the local highway authority has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that phase in accordance with the Road Safety Audit Standard.

(6) No works must commence on any phase of the county highway works until the undertaker has agreed the commuted sum for that phase with the local highway authority to be calculated in accordance with paragraph 9(2) of this Part of this Schedule.

(7) No works must commence on any phase of the county highway works until the undertaker has—

- (a) provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the county highway works;
- (b) obtained all necessary consents and approvals;
- (c) provided a completed collateral warranty to the local highway authority in accordance with paragraph 12 of this Part of this Schedule;
- (d) provided a completed construction contract for that phase of the highway works to the local highway authority;
- (e) provided a copy of the certificate of insurance to the local highway authority obtained in accordance with paragraph 10 of this Part of this Schedule.

Carrying out of works

79. The undertaker must prior to commencement of each phase of the county highway works give the local highway authority 28 days' notice in writing of the date on which that phase will start unless otherwise agreed with the local highway authority.

(1) The undertaker must comply with the local highway authority's road space booking processes for the carrying out of each phase of the county highway works.

(2) Each phase of the county highway works must be carried out to the satisfaction of the local highway authority in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph 3(1) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works), the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the highway plans or a departure from such standards has been approved by the local highway authority;
- (c) such approvals or requirements of the local highway authority that are required by the provisions of paragraph 3 of this Part of this Schedule to be in place prior to the relevant phase of the county highway works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker as client shall ensure that all client duties (as defined in those regulations) are undertaken to the satisfaction of the local highway authority.

(3) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the land upon which the county highway works are being carried out for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the nominated persons with whom the local highway authority should liaise during the carrying out of the county highway works.

(4) Unless otherwise directed by the local highway authority or as provided for in this subparagraph 5, the undertaker shall not cover up or put out of view any county highway works without the approval of the local highway authority. The undertaker shall give at least 5 working days written notice to the local highway authority whenever any of the county highway works are ready or about to be ready for examination. The undertaker shall give the local highway authority full opportunity to examine any works about to be covered up or put out of view and to examine foundations before any permanent work is placed on top. The local highway authority shall arrange to inspect the relevant county highway works following receipt of the written notice, and will do this within a reasonable timescale and without undue delay.

(5) At any time during the carrying out of the county highway works the local highway authority may from time to time order such changes to the county highway works as it considers necessary. Any such changes to the county highway works are hereinafter called "necessary changes" and the undertaker shall ensure that such necessary changes are implemented by the nominated person via the construction contract. The local highway authority may from time to time request such changes to the county highway works as it considers desirable (as opposed to necessary) for the satisfactory completion and functioning of the county highway works in consultation and agreement with the undertaker provided always that the local highways authority's decision as to whether changes are necessary or desirable shall be final.

(6) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase of the county highway works having been given notice of an alleged breach and an adequate opportunity to remedy it by the local highway authority then the

local highway authority shall on giving to the undertaker 14 days' notice in writing to that effect be entitled to either—

- (a) carry out and complete that phase of the county highway works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or
- (b) carry out such necessary works of reinstatement of the highways and other land and premises of the local highway authority,

and in either case the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(7) If at any time the undertaker in carrying out any phase of the county highway works causes any damage or disruption to the local road network not hereby authorised then the local highway authority is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of the local highway authority then the local highway authority, on giving the undertaker 7 days' notice in writing to that effect, is entitled to carry out such necessary works deemed appropriate to remedy the damage or disruption, and the undertaker shall within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(8) Nothing in this Part of this Schedule shall prevent the local highway authority from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public the cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the county highway works.

(9) The undertaker in carrying out each phase of the county highway works must at its own expense divert or protect all utilities as may be necessary to enable the county highway works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of the local highway authority.

(10) The undertaker must notify the local highway authority of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify the local highway authority of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

Payments

80. The undertaker must fund the whole of the cost of the county highway works and all costs incidental to the county highway works and must also pay to the local highway authority in respect of each phase of the county highway works a sum equal to the whole of any costs and expenses which the local highway authority incur including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to the county highway works and arising out of them and their implementation including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of the inspection of that phase; and
- (d) all legal and administrative costs in relation to (a) and (b) and (c) above, together comprising "the estimated costs".

(2) The undertaker must pay to the local highway authority upon demand and prior to such costs being incurred the total costs that the local highway authority believe will be properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the county highway works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the local highway authority must agree a schedule of the estimated costs to be incurred pursuant to sub-paragraph (1) above in respect of each phase prior to the commencement of that phase.

(4) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed estimated costs to the local highway authority prior to the local highway authority undertaking those tasks in respect of any phase of the county highway works; and
- (b) if at any time or times after the payment in respect of a phase referred to in paragraph (5)(4)(a) of this Part of this Schedule has become payable the local highway authority reasonably estimates that the costs in respect of that phase referred to in paragraph (1) above will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to the local highway authority within 28 days of the date of that notice a sum equal to the excess.

(5) Prior to the issue of the final certificate for each phase of the county highway works pursuant to paragraph 7 of this Part of this Schedule the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the party to whom it was due interest at 4% above the Bank of England base rate for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional certificate and defects and maintenance period

81. As soon as each phase of the county highway works has been completed and inspected by the county highways authority and—

- (a) a Stage 3 Road Safety Audit for that phase has been carried out;
- (b) any resulting recommendations have been complied with and any exceptions agreed;
- (c) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by the local highway authority upon the issue of the final certificate referred to in paragraph 7 of this Part of this Schedule;
- (d) the undertaker providing confirmation that any additional land which is to be dedicated as highway maintainable at public expense is so dedicated; and
- (e) the as built information has been provided to the local highway authority,

the local highway authority must issue a provisional certificate of completion in respect of that phase of the county highway works within 10 working days of receipt of a written application.

(2) The undertaker must at its own expense remedy any and all defects arising out of defective design materials or workmanship or of any other nature whatsoever in that phase of the county highway works as reasonably required to be remedied by the local highway authority and identified by the local highway authority during a period of 12 months from the date of the provisional certificate in respect of that phase.

(3) The undertaker must submit Stage 4 Road Safety Audits for each phase of the county highway works as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

Final certificate

82. The undertaker must apply to the local highway authority for the issue of the final certificate in respect of each phase at the expiration of the 12 month period in respect of that phase referred to in paragraph 6(2) of this Part of this Schedule or if later on the date on which any defects or damage arising during that period which are the responsibility of the undertaker under the provisions of paragraph 6 of this Part of this Schedule have been made good to the reasonable satisfaction of the local highway authority.

(1) If the provisions of sub-paragraph (1) are satisfied and all fees due to the local highway authority under paragraph 5 of this Part of this Schedule the local highway authority must issue a final certificate for the phase of the county highway works concerned, such certificate not to be unreasonably withheld or delayed.

Security

83. Subject to paragraph 3(3) of this Part of this Schedule the undertaker must provide security for the carrying out of the county highway works as follows—

- (a) prior to the commencement of each phase the county highway works within that phase will be secured by a bond from a bondsman first approved by the local highway authority drafted substantially as detailed in Form 3 contained at paragraph 15 of this Part of this Schedule, or such other form that may be agreed between the undertaker and the local highway authority to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase of the county highway works under the provisions of this Part of this Schedule provided that the maximum liability of the bond shall not exceed the bond sum relating to that phase.
- (2) Each bond sum shall be progressively reduced as follows—
 - (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor the local highway authority must in writing authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 50% of those payments provided that an evaluation of the county highway works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors. The local highway authority will only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the county highway works plus an additional 10%;
 - (b) within 20 working days of completion of each phase of the county highway works (as evidenced by the issuing of the provisional certificate in respect of that phase pursuant to paragraph 6(1) of this Part of this Schedule) the local highway authority must in writing release the bond provider from its obligations in respect of 50% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date; and
 - (c) following 12 months after the issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority must in writing reduce the amount of the bond to a sum representing 25% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date;
 - (d) following the expiration of three years from the date of issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority must in writing release the bond provider from all its obligations in respect of the bond relating to that phase save insofar as any claim or

claims have been made against the bond or liability on its part has arisen prior to that date.

Commuted sums

84. Within 28 days following the issue of the final certificate in respect of any phase the undertaker must pay to the local highway authority any commuted sums payable in respect of that phase calculated as provided for in sub-paragraph (2).

(1) The rates to be applied in calculating the commuted sums payable must be calculated in accordance with Leicestershire County Council's commuted sum calculator or as otherwise agreed between the undertaker and the relevant local highway authority prior to commencement of work on any phase.

Insurance

85. The undertaker must prior to commencement of the county highway works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) for any one claim against any legal liability for damage loss or injury to any property or any person arising out of or in connection with the execution of the county highway works or any part thereof by the undertaker.

Indemnification

86. The undertaker must in relation to the carrying out of the county highway works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the county highway works including for the avoidance of doubt claims under Part 1 of the Land Compensation Act 1973; provided that—

- (a) the foregoing indemnity shall not extend to any costs expenses liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers servants agents or contractors or any person or body for whom it is responsible;
- (b) the local highway authority must notify the undertaker upon receipt of any claim; and
- (c) the local highway authority must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the local highway authority the amount specified as the quantum of such claim.

Warranties

87. The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant and that any patent or latent damage or defect in the county highway works will be remedied and made good for a period of 12 years from the issue of the final certificate such warranties to be provided to the local highway authority before that phase commences.

Approvals

88. Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approvals, certificates, consents or agreements shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(1) In this paragraph "specified day" means—

- (a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Schedule; or
- (b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority or within 28 days of the date in sub-paragraph (a),

whichever is the later.

Expert Determination

89. Article 51 (arbitration) does not apply to this Part 4 of Schedule 13 except in respect of sub-paragraph (5).

(1) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(2) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(3) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission; and
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and (d) give reasons for the decision.

(4) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 51 (arbitration).

(5) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

90. Form 3 as referred to in paragraph 8 of this Part of this Schedule—

Form 3

Bond – Local Highway Authority

BY THIS BOND [] [(Company Regn No)] whose registered office is situated at [] (“the undertaker”) and [] [(Company Regn No)] whose registered office is situated at [] (“the Surety”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 202[] in the sum of [] pounds (£[Surety Sum]) to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The Hinckley National Rail Freight Interchange Order 202[X] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the local highway authority such sums as are therein provided NOW THE CONDITIONS of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 4 of Schedule 13 of the DCO on the undertaker’s part to be observed and performed according to the true purpose intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by the local highway authority thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the local highway authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the local highway authority shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 8 of Part 4 of Schedule 13 of the DCO.

[Attestation]

PART 5

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

91. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

92. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipelines, pipes, pressure governors, ventilators, cathodic protection (including transformed rectifiers and associated groundbeds or cables), cables, marker posts, block valve installations, hydrogen above ground installations or other apparatus belonging to or maintained by, Cadent for the purposes of the transportation and/or storage of gas and/or hydrogen and includes any structure in which apparatus is or is to be lodged or

which gives or will give access to apparatus and for the avoidance of doubt includes alternative apparatus once constructed;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Limited (Company Number 10080864) whose registered office is situate at Registered office to be updated Cadent Pilot Way Ansty Coventry CV7 9JU and any successor in title or assign including any successor to their license as a gas transporter under Part 1 of the Gas Act 1986(a);

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes for the purposes of this Schedule the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“rights” includes rights and restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise; and/or
- (b) include any of the activities that are referred to in the Cadent guidance CD/SP/SSW/22 (“Cadent’s policies for safe working in the vicinity of Cadent’s apparatus”).

(a) 1986 c. 44.

On Street Apparatus

93. Except for paragraphs 4 (apparatus of Cadent in stopped up streets), 5 (removal of apparatus) and 6 (facilities and rights for alternative apparatus) (in so far as paragraph 3(2) below applies), 7 (retained apparatus: protection), 8 (expenses) and 9 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(1) Paragraphs 5 and 6 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within adopted public highway.

(2) Notwithstanding article 31 (rights under or over streets) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

Apparatus of Cadent in stopped up streets

94. Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 11 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph shall affect any right of the undertaker or Cadent to require removal of the Apparatus under paragraph 5.

(1) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 12 (temporary closure of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up street and/or to execute all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

(2) The protective provisions in this Part of this Schedule apply and take precedence over article 36 (statutory undertakers) of this Order which do not apply to Cadent.

Removal of apparatus

95. If, in the exercise of the agreement reached in accordance with paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, and is in operation and the facilities and rights referred to in sub-paragraph (2) have been provided to the reasonable satisfaction of Cadent in accordance with subparagraphs (2) to (5) inclusive.

(1) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent not less than 56 days advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) in other land or land secured by the undertaker; and

- (b) subsequently for the access and maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, within 56 days of receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it elects (in its absolute discretion) to so do.

(3) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(4) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of any such facilities and rights as are referred to in subparagraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

(5) As a condition of an agreement between the parties in sub-paragraph 5(1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

Facilities and rights for alternative apparatus

96. Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the construction, use, access, decommissioning or maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(1) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under paragraph 6(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 13 of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

97. Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(1) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(3) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(4) In relation to any work to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(5) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such requirements as may be made in accordance with sub-paragraphs (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent will be entitled to watch and inspect the execution of those works.

(6) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(7) If Cadent in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(9) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(10) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent guidance CD/SP/SSW/22 "Cadent's policies for safe working in the vicinity of Cadent's apparatus" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9.

Expenses

98. Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional costs) incurred by Cadent as a consequence of Cadent—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under 5(3) if it elects to do so; and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) or article 37 (apparatus and rights of statutory undertakers in stopped up streets) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 51 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Cadent must, in respect of the sums referred to in this paragraph 8 provide such details of the costings (including the formula by which those sums have been calculated if available) as the undertaker may reasonably require.

Indemnity

99. Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works or undertake its supervision properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (transfer of the benefit of certain provisions of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 9; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business

interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

100. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to Cadent on the date on which this Order is made.

Co-operation

101. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 5(2) Cadent makes requirements for the protection or alteration of apparatus under paragraph 6, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

(1) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

102. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expert determination

103. Article 51 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(1) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between Cadent and the undertaker, both acting reasonably and without delay).

(2) All parties involved in settling any difference must use reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(3) The costs and fees of the expert and the costs of Cadent and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination, the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

- (4) The expert must—
- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert’s appointment;
 - (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
 - (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
 - (d) give reasons for the decision.
- (5) The expert must consider where relevant—
- (a) the development outcome sought by the undertaker;
 - (b) the ability of the undertaker to achieve its outcome in a timely and cost effective manner;
 - (c) the nature of the power sought to be exercised by the undertaker;
 - (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
 - (e) Cadent’s service obligations and licence conditions; and
 - (f) any other important and relevant consideration.
- (6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 51 (arbitration).

Notices

104. The plan and scheme submitted to Cadent by the undertaker pursuant to paragraph 7(1) must be sent to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to toby.feirn@cadentgas.com and sent to the General Counsel Department at Cadent’s registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 6

FOR THE PROTECTION OF SEVERN TRENT WATER LIMITED

105. For the protection of Severn Trent Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Severn Trent Water, have effect.

106. In this Part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Severn Trent for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Severn Trent Water under The Water Industry Act 1991(a);
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(b) of The Water Industry Act 1991 or an agreement to adopt made under section 104(c) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works;

“alternative apparatus” means alternative apparatus adequate to enable Severn Trent to fulfil its statutory functions in no less efficient a manner than previously;

(a) 1991 c. 56.
 (b) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37) and section 56 of, and paragraph 90 of Schedule 7 to the Water Act 2014 (c. 21)..
 (c) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37), section 42(3) of the Flood and Water Management Act 2010 (c. 29) and sections 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014 (c. 21).

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes sections, drawings, specifications and method statements;

“Severn Trent” means Severn Trent Water Limited (company number 02366686) registered at Severn Trent Centre, 2 St John’s Street, Coventry, CV1 2LZ and any successor in function; and

“standard protection strips” means the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25 metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres, 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres.

107. The undertaker shall not interfere with, build over or within 6 metres of any apparatus within the Order Land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with Severn Trent, such agreement not to be unreasonably withheld or delayed.

108. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2010 or other legislations and any other associated consents are obtained, and any approval or agreement required from Severn Trent on alternative outfall locations as a result of such re-location are approved, such approvals from Severn Trent not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Severn Trent has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Severn Trent for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

109. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Severn Trent has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

110. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Severn Trent to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Severn Trent, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Severn Trent such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 51 (arbitration).

111. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Severn Trent to maintain or use the apparatus no less effectively than was possible before such obstruction.

112. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the company, notification of

the location of such assets will immediately be given to Severn Trent and afforded the same protection of other Severn Trent assets.

113. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 6 and 8 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Severn Trent, or there is any interruption in any service provided, or in the supply of any goods, by Severn Trent, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by Severn Trent in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Severn Trent for any other expenses, loss, damages, penalty or costs incurred by Severn Trent,

by reason or in consequence of any such damage or interruption.

PART 7

FOR THE PROTECTION OF ELECTRICITY UNDERTAKERS

114. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

115. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means any licence holder within the meaning of Part 1 of the Electricity Act 1989 (excluding National Grid Electricity Distribution (East Midlands) Plc and National Grid Electricity Transmission Plc for whom the protective provisions in Part 9 and Part 10 respectively of this Schedule shall have effect) for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

116. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

117. Where any street is stopped up under article 11 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of

(a) 1989 c. 29.

such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 6 or the power of the undertaker to carry out works under paragraph 8.

(1) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary closure of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Removal of apparatus

118. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(1) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

(4) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 51 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

119. Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the

undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

(1) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

120. Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(1) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(2) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(3) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(4) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

121. Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(1) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(2) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 51 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(3) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(4) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

122. Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 6(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

123. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 5(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

124. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 8

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

125. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

126. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in Part 1 of Schedule 3 of the Digital Economy Act 2017(b);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide; and

“operator” means the operator of an electronic communications code network.

127. The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 of Schedule 3A to the 2003 Act.

128. Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(a) 2003 c. 21.

(b) 2017 c. 30.

(c) See section 106 of the Communications Act 2003 (c. 21). Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 51 (arbitration).

(5) This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 9

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

Application

129. For the protection of National Grid Electricity Distribution (East Midlands) plc, the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and NGED.

Interpretation

130. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989)(a) belonging to or maintained by NGED for the purposes of electricity transmission and its distribution;

“diversion” means an alteration to the NGED Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“NGED” means National Grid Electricity Distribution (East Midlands) plc (Company Registration Number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

(a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by section 108 of, and paragraphs 24 and 38(1) and (3) of Schedule 6 to, the Utilities Act 2000 (c. 27).

“NGED Network” means NGED’s distribution network operated pursuant to its distribution licence issued pursuant to section 6(a) of the Electricity Act 1989; and other terms have the meaning given in article 2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

131. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition except by agreement

132. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of Apparatus

133. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that NGED’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land or gain access to it must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(1) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGED written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(2) If as a consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(3) If as a consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities, alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(4) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED must use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(5) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED must consider whether there is an alternative engineering solution that can

(a) Section 6 was amended by section 30 of the Utilities Act 2000, sections 89(3), 136(1) and (2), 145(5), (6) and (7) and 198(2) of, and paragraph 5 of Schedule 19 and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20), section 121(5)(c) of, and paragraph 3 of Schedule 1 to, the Energy Act 2011 (c. 16), S.I. 2011/2704 and S.I. 2012/2400.

achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which must be determined by the undertaker acting reasonably), NGED may but must not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(6) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(7) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 10 of this Part of this Schedule, and after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(8) Regardless of anything in sub-paragraph (7), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 10 of this Part of this Schedule; and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(9) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or the alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

Facilities and rights for alternative apparatus

134. Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(1) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted;
- (c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(2) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

135. Not less than 60 days before the undertaker intends to start the execution of any specified work, where the removal of the apparatus in question has not been required under paragraph 5, the undertaker must submit to NGED a plan, section and description of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3) below.

(1) Subject to sub-paragraph (3) below, the undertaker must not commence any works to which sub-paragraph (1) applies until NGED has given written approval of the submitted plan, and identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(2) If by the expiry of 60 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted, NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it must be deemed not to have any such requirements and the undertaker must be at liberty to proceed with the works.

(3) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED, and NGED must be entitled to watch and inspect the execution of those works.

(4) At all times when carrying out any works authorised under the Order the undertaker must comply with NGED's "Avoidance of Danger from Electricity Overhead Lines and Underground Cables" (2014), the Energy Network Association's "A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines" (undated), the Health and Safety Executive's GS6 "Avoiding Danger from Overhead Power Lines" and the Health and Safety Executive's "HSG47 Avoiding Danger from Underground Services (3rd edition, 2014) as the same may be replaced from time to time.

(5) If NGED, in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement in accordance with sub-paragraph (2), this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 5(2) of this Part of this Schedule.

(6) Nothing in this paragraph 7 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and submit a plan, section and description of those works to NGED as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) with sub-paragraph (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

136. The undertaker must pay to NGED the reasonable expenses incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus or the

construction of any new connection or alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(1) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(2) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED must reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(3) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(4) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

137. Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NGED, or there is any interruption in any service provided, or in the supply of any goods by, NGED, the undertaker is to—

- (a) bear and pay the cost reasonably incurred by NGED in making good such damage or restoring the supply; and
- (b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NGED's liability to the undertaker for negligence or breach of contract, in respect of each diversion, must be limited to the value of that diversion and NGED must not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

138. Article 51 (arbitration) must apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(1) Save as provided for in sub-paragraph (1) or sub-paragraph (7), any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person

who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(2) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(3) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination, the costs and fees of the expert are payable equally by the parties who must each bear their own costs.

(4) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) NGED's service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 51 (arbitration).

Cooperation

139. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or NGED requires the removal of apparatus under paragraph 5(3) or NGED makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NGED's undertaking and NGED must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(1) For the avoidance of doubt whenever NGED's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by NGED, it must not be unreasonably withheld or delayed.

PART 10

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

140. For the protection of NGET as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET.

(1) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGET, where the benefit of this Order is transferred or granted to another person under article 8 (transfer of the benefit of certain provisions of the Order)—

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between NGET and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to NGET on or before the date of that transfer or grant.

(2) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to NGET (but without prejudice to 11(3)(b)).

Interpretation

141. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event Such insurance shall be maintained—

- (a) during the construction period of the authorised works; and
- (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation)—
 - (i) a waiver of subrogation and an indemnity to principal clause in favour of NGET;
 - (ii) a pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (c) a parent company guarantee from a parent company in favour of NGET to cover the undertaker’s liability to NGET to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGET and where required by NGET, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (d) a bank bond or letter of credit from an acceptable credit provider in favour of NGET to cover the undertaker’s liability to NGET for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGET);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of NGET to enable NGET to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by NGET together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of NGET for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by NGET (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for NGET’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction NGET receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGET: construct, use, repair, alter, inspect, renew or remove the apparatus;

“NGESO” means as defined in the STC;

“NGET” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1 – 3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by NGET acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (e) will or may be situated over, under, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(f) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(g) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGENSO as modified from time to time;

"STC Claims" means any claim made under the STC against NGET arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of NGET's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC;

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

142. Except for paragraphs 4 (apparatus in stopped up streets), 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of NGET, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGET in stopped up streets

143. Where any street is stopped up under article 11 (permanent stopping up of streets), if NGET has any apparatus in the street or accessed via that street NGET has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to NGET, or procure the granting to NGET of, legal easements reasonably satisfactory to NGET in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or NGET to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (temporary closure of streets), NGET is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

144. The undertaker, in the case of the powers conferred by article 22 (protective works to buildings and structures), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

145. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of NGET otherwise than by agreement.

(1) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between NGET and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest

of NGET or affect the provisions of any enactment or agreement regulating the relations between NGET and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGET and the undertaker acting reasonably and which must be no less favourable on the whole to NGET unless otherwise agreed by NGET, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(2) Save where otherwise agreed in writing between NGET and the undertaker the undertaker and NGET agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGET and/or other enactments relied upon by NGET as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(3) Any agreement or consent granted by NGET under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

146. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET in accordance with sub-paragraph (2) to (5).

(1) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGET advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGET reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, NGET may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for NGET to use its compulsory purchase powers to this end unless it elects to do so.

(3) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGET and the undertaker.

(4) NGET must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGET of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

147. Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET.

(1) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGET as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

148. Not less than 56 days before the commencement of any specified works the undertaker must submit to NGET a plan of the works to be executed and seek from NGET details of the underground extent of their electricity assets.

(1) In relation to specified works the plan to be submitted to NGET under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

(2) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by NGET's engineers; and

- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.
- (3) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until NGET has given written approval of the plan so submitted.
- (4) Any approval of NGET required under sub-paragraphs (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
 - (b) must not be unreasonably withheld.
- (5) In relation to any work to which sub-paragraphs (2) or (3) apply, NGET may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET will be entitled to watch and inspect the execution of those works.
- (7) Where NGET requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to NGET's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and NGET shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If NGET in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGET notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under the Order, the undertaker must comply with NGET's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

149. Save where otherwise agreed in writing between NGET and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET within 30 days of receipt of an itemised invoice or claim from NGET all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGET in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by NGET in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET as a consequence of NGET;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to NGET by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to NGET in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NGET any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

150. Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of NGET, or there is any interruption in any service provided, or in the supply of any goods, by NGET, or NGET becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from NGET the cost reasonably and properly incurred by NGET in making good such damage or restoring the supply; and
- (b) indemnify NGET for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGET, by reason or in consequence of any such damage or interruption or NGET becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of NGET.

(2) The fact that any act or thing may have been done by NGET on behalf of the undertaker or in accordance with a plan approved by NGET or in accordance with any requirement of NGET or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless NGET fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of NGET, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by NGET as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (Transfer of the benefit of certain provisions of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) NGET must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NGET must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) NGET must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NGET’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGET’s control and if reasonably requested to do so by the undertaker NGET must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker must not commence construction (and not permit the commencement of such construction) of the authorised works on any land owned by NGET or in respect of which NGET has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGET's apparatus until the following conditions are satisfied—

- (a) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGET has confirmed the same to the undertaker in writing; and
- (b) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to NGET that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGET has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGET from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

151. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGET and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGET in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

152. Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGET requires the removal of apparatus under paragraph 7(2) or NGET makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of NGET's undertaking and NGET shall use its best endeavours to co-operate with the undertaker for that purpose.

(1) For the avoidance of doubt whenever NGET's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

153. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGET to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

154. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1) and 9 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 51 (arbitration).

Notices

155. Notwithstanding article 50 (service of notices), any plans submitted to NGET by the undertaker pursuant to paragraph 8 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as NGET may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 14

Article 49

MISCELLANEOUS CONTROLS

Public general legislation

Introduction

1. This Schedule applies, modifies and excludes statutory provisions which relate to matters for which provision may be made in this Order.

Highways Act 1980

2. Section 141 of the 1980 Act(a) (restriction on planting trees etc. in or near carriageway) shall not apply to any tree or shrub planted in the course of the authorised development before completion of construction.

(1) Section 167 of the 1980 Act(b) (powers relating to retaining walls near streets) shall not apply in relation to—

- (a) the erection of a wall in the course of the authorised development before completion of construction; or
- (b) a wall on land on which works are being carried out, or are to be carried out, in pursuance of the authorised development before completion of construction.

New Roads and Street Works Act 1991

3. The powers conferred by section 56(1) and (1A) of the 1991 Act(c) (powers to give directions as to the timing of proposed and subsisting street works) shall not apply in relation to the authorised development.

(1) Section 56A of the 1991 Act(d) (power to give directions as to placing of apparatus) shall not apply in relation to the placing of apparatus in the course of the authorised development.

(2) No restriction under section 58(1) of the 1991 Act(e) (power to impose restriction on execution of street works in the twelve months following completion of substantial road works) shall have effect in relation to the authorised development.

(3) Section 61(1) of the 1991 Act (under which the consent of the street authority is required for the placing of apparatus in a protected street) shall not apply to the placing of apparatus in the course of the authorised development.

(4) Section 62(2) of the 1991 Act (power following designation of a protected street to require removal or repositioning of apparatus already placed in the street) shall not apply in relation to apparatus placed in the course of the authorised development.

(a) 1980 c. 66. Section 141 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).

(b) 1980 c. 66. Section 167 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48).

(c) 1991 c. 22. Section 56(1) and (1A) were amended by section 43 of the Traffic Management Act 2004 (c. 18).

(d) 1991 c. 22. Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(e) 1991 c. 22. Section 58(1) was amended by section 51(1), (2) of the Traffic Management Act 2004 (c. 18).

(5) Section 62(4) of the 1991 Act (power when designation as protected street commences or ceases to give directions with respect to works in progress) shall not apply in relation to the authorised development.

(6) Section 63(1) of the 1991 Act (under which Schedule 4 to that Act has effect for requiring the settlement of a plan and section of street works to be executed in a street designated by the street authority as having special engineering difficulties) shall not apply in relation to the authorised development.

(7) The powers conferred by section 73A(1) and 78A(1) of the 1991 Act(a) (requirements for undertaker to re-surface street) may not be exercised in relation to the authorised development.

(8) Sections 74 and 74A of the 1991 Act(b) (charge for occupation of the highway and charge determined by reference to duration of works) shall not apply in relation to the authorised development.

(9) Schedule 3A to the 1991 Act (restriction on works following substantial street works) shall not apply where a notice under section 54 (advance notice of certain works) or 55 (notice of starting date of works) of that Act(c) is given in respect of the authorised development.

(10) No notice under paragraph 2(1)(d) of that Schedule (power by notice to require notification of works which an undertaker proposes to carry out in a part of a highway to which a proposed restriction applies) shall have effect to require the notification of works proposed to be carried out in the course of the authorised development.

(11) No directions under paragraph 3 of that Schedule (directions as to the date on which undertakers may begin to execute proposed works) may be issued to the undertaker.

(12) Paragraph 3(4) of that Schedule (under which it is an offence for an undertaker to execute street works before the completion of certain other street works) shall not apply in relation to the execution of works in the course of the authorised development.

(13) Paragraph 5(1) of that Schedule (effect of direction under paragraph 4 restricting further works) shall not apply in relation to the execution of works in the course of the authorised development.

Local Government (Miscellaneous Provisions) Act 1976

4. Section 42 of The Local Government (Miscellaneous Provisions) Act 1976(d) (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) shall not apply to the extent that it would make provisions of this Order authorising the authorised development subject to other provisions.

Environment Act 1995

5. No order, notice or regulation under the Environment Act 1995 in relation to the preservation of hedgerows, has effect in relation to the authorised development.

(a) 1991 c. 22. Section 73A was inserted by section 55(1) of the Traffic Management Act 2004 (c. 18). Section 78A was inserted by section 57(1) of the Traffic Management Act 2004 (c. 18).

(b) 1991 c. 22. Section 74 was amended by sections 256 and 274 of, and Part 5(2) of Schedule 31 to, the Transport Act 2000 (c. 38), section 40(4) and section 52(5) of the Traffic Management Act 2004 (c. 18), and section 1(6) of, and paragraphs 113 and 119 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). Section 74A was inserted by section 255(1) of the Transport Act 2000 (c. 38) and was amended by section 1(6) of, and paragraphs 113 and 120 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and section 40(4) of the Traffic Management Act 2004 (c. 18).

(c) 1991 c. 22. Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004 (c. 18). Section 54 was amended by section 40(1) and (2) and section 49(1) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18). Section 55 was amended by section 40(1) and (2), section 49(2) and section 51(1) and (9) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(d) 1976 c. 57. Section 42 was amended by section 6(2) of, and the Schedule to, the Ports (Finance) Act 1985 (c. 30), and section 15 of the Food and Environment Protection Act 1985 (c. 48).

SCHEDULE 15

Article 50

CERTIFICATION OF PLANS AND DOCUMENTS

1. Documents for certification that they are true copies of the documents referred to in this Order—

Document/Plan	Document Number	Document date/Plan number with revision number
A47 link road concept drainage strategy	6.3.14.6	ES Figure 14.6 V3
Access and rights of way plans		
Key Plan	2.3	HRF-BWB-LSI-XX-DR-CH-00170 Rev P02
Sheet 1	2.3A	HRF-BWB-LSI-D1-DR-CH-00170 Rev P06
Sheet 2	2.3B	HRF-BWB-LSI-D2-DR-CH-00170 Rev P02
Sheet 3	2.3C	HRF-BWB-LSI-D3-DR-CH-00170 Rev P04
Sheet 4	2.3D	HRF-BWB-LSI-D4-DR-CH-00170 Rev P04
Archaeological mitigation strategy	6.2.13.7	November 2022 Revision P01
Biodiversity impact assessment calculations	6.2.12.2C	27 February 2024 Revision 08
Book of reference	4.3D	27 February 2024 Revision 13
CEMP	17.1B	20 February 2024 V7
Construction traffic management plan	17.6C	February 2024 V5
Design code	13.1C	February 2024 V4 Rev C
Ecological mitigation and management plan	17.5	November 2022 Revision 03
Energy Strategy	6.2.18.1A	November 2023 Revision 03
Environmental statement	6.1 – 6.4 (inclusive)	March 2023 (subject to the substitutions and additions set out below)—
		Appendix 3.1 (Rail Operations Report) – 9 January 2024;
		Chapter 5 (Relevant legislation and policy) 9 January 2024;
		Chapter 7 (Land Use and Socio-Economic Effects) – November 2023;
		Appendix 7.1 (Health and Equality Briefing Note) – 9 January 2024;
		Appendix 7.2 (Equalities Impact Assessment Statement) – 9 February 2024;
		Appendix 8.1 (Transport Assessment Part 1) – October 2023 (Revision 08);
		Appendix 8.1 (Transport Assessment Part 9) – September 2023 (Revision 07);
		Appendix 8.1 (Transport Assessment Part 12a) – November 2023 (Revision 09);

Appendix 8.1 (Transport Assessment Part 12b)
– September 2023 (Revision 07);

Appendix 8.1 (Transport Assessment Part 14) –
October 2023 (Revision 06);

Appendix 8.1 (Transport Assessment Parts 17 –
20 Tables 7.1 – 7.4) – September 2023;

Addendum to Chapter 9 (Air Quality) – 11
September 2023;

Appendix 9.2 (National Legislation and Policy)
– October 2023 (Revision 06);

Chapter 10 (Noise and Vibration) – 9 January
2024;

Chapter 11 (Landscape and Visual Effects) – 9
January 2024;

Appendix 11.1 (Landscape and Visual Baseline
Assessment) – 9 January 2024;

Appendix 11.5 – Schedule of Landscape and
Visual Construction Effects – 9 January 2024;

Appendix 11.6 – Schedule of Landscape and
Visual Operational Effects – 9 January 2024;

Chapter 12 (Ecology and Biodiversity) – 9
January 2024;

Appendix 12.1 (Ecology Baseline) – 9 January
2024;

Appendix 12.2 (Biodiversity Impact
Assessment Calculations) – 9 January 2024;

Chapter 13 (Cultural Heritage) – 11 September
2023;

Appendix 13.1 (Archaeological Assessment) –
9 January 2024;

Chapter 18 Energy and Climate Change – 9
January 2024;

Appendix 21.1 (Register of Environmental
Actions and Commitments) – 9 February 2024;

Chapter 21 (Conclusion) – 9 January 2024;

Figure 3.1 (Illustrative Masterplan) – 27

		February 2024;
		Figure 9.29 (Operational Phase Road Traffic Emissions – Main Site Annual Mean PM10 Concentrations Future Year) – November 2023 – V2;
		Figure 11.12 (Night-Time Views and Photomontages) – 9 January 2024;
		Figure 11.14 (Public Rights of Way and Informal Open Space Strategy) – 27 February 2024;
		Figures 11.17 and 11.18 (Illustrative Landscape Sections AA – HH and II – JJ) – 9 January 2024;
		Figure 13.4 (Known Heritage Assets) – 9 January 2024;
		Figure 16.1 (Proposed Plateau Levels Isopachtyes) – 9 January 2024;
		Rugby Rural Area Model – Modelling Summary – September 2023
Flood risk assessment	6.2.14.1	November 2022 Revision P05
Framework site wide travel plan	6.2.8.2D	February 2024 Revision 8
Highway classification plans		
Key Plan	2.5	HRF-BWB-LSI-XX-DR-CH-00180 Rev P02
Sheet 1	2.5A	HRF-BWB-LSI-D1-DR-CH-00180 Rev P02
Sheet 2	2.5B	HRF-BWB-LSI-D2-DR-CH-00180 Rev P04
Sheet 3	2.5C	HRF-BWB-LSI-D3-DR-CH-00180 Rev P02
Highway plans		
Key Plan	2.4	HRF-BWB-LSI-ZZ-DR-CH-00100 Rev P02
Sheet 1	2.4A	HRF-BWB-LSI-D1-DR-CH-00100 Rev P06
Sheet 2	2.4B	HRF-BWB-LSI-D2-DR-CH-00100 Rev P04
Sheet 3	2.4C	HRF-BWB-LSI-D3-DR-CH-00100 Rev P02
Sheet 4	2.4D	HRF-BWB-LSI-D4-DR-CH-00100 Rev P05
Sheet 5	2,4E	HRF-BWB-LSI-D5-DR-CH-00100 Rev P02
Sheet 6	2.4F	HRF-BWB-LSI-D6-DR-CH-00100 Rev P02
Sheet 7	2.4G	HRF-BWB-LSI-D7-DR-CH-00100 Rev P04
Sheet 8	2.4H	HRF-BWB-LSI-D8-DR-CH-00100 Rev P06
Long sections Sheet 1	2.4J	HRF-BWB-LSI-D1-DR-CH-00105 Rev P01
Long sections Sheet 2	2.4K	HRF-BWB-LSI-D2-DR-CH-00105 Rev P01
Illustrative landscape strategy	6.3.11.20 B	ES Figure 11.20 Revision M 27 February 2024
Land plans		
Key Plan	2.20	1842-8018_003341 v10.0
Sheet 1	2.20A	1842-8018_003341 v14.0
Sheet 2	2.20B	1842-8018_003341 v13.0
Sheet 3	2.20C	1842-8018_003341 v10.0
Sheet 4	2.20D	1842-8018_003341 v12.0
Sheet 5	2.20E	1842-8018_003341 v10.0

Sheet 6	2.20F	1842-8018_003341 v10.0
Sheet 7	2.20G	1842-8018_003341 v12.0
Sheet 8	2.20H	1842-8018_003341 v12.0
Level crossings plan		
Key plan	2.28	HRF-BWB-LSI-XX-DR-CH-00140 Rev P01
Sheet 1	2.28A	HRF-BWB-LSI-DI-DR-CH-00140 Rev P02
Lighting strategy	6.2.3.2	27 February 2024 Revision 05
M69 Junction 2 concept drainage strategy	6.3.14.7	ES Figure 14.7 V1
Main HNRFI site concept surface water drainage strategy	6.3.14.4A	ES Figure 14.4 V5
Main HNRFI site concept foul water drainage strategy	6.13.14.5 A	ES Figure 14.5 V7
Outline Landscape and Ecological Management Plan	17.2C	27 February 2024 Revision 06
Parameters plans		
Key Plan	2.12	Parameters Key Plan January 2024
Sheet 1	2.12A	Parameters Plan – Sheet 1 January 2024
Sheet 2	2.12B	Parameters Plan – Sheet 2 January 2024
Sheet 3	2.12C	Parameters Plan – Sheet 3 January 2024
Sheet 4	2.12D	Parameters Plan – Sheet 4 January 2024
Sheet 5	2.12E	Parameters Plan – Sheet 5 January 2024
Public rights of way appraisal and strategy	6.2.11.2D	ES Appendix 11.2 Revision 07
Railway plans		
Illustrative Railport Line Diagram;	2.22	70080518-WSP-DRG-ETR-000200 (Rev P01)
Illustrative Railport Sections Full Scheme Cross Sections;	2.23.1	70080518-WSP-DRG-ETR-000209 (Rev P01)
Illustrative Railport Sections Long Section;	2.23.2	70080518-WSP-DRG-ETR-000206 (Rev P01)
Illustrative Railport General Arrangement Key Plan;	2.25.1	70080518-WSP-DRG-ETR-000201 (Rev P01)
Illustrative Railport General Arrangement Sheet 1;	2.25.2	70080518-WSP-DRG-ETR-000202 (Rev P01)
Illustrative Railport General Arrangement Sheet 2;	2.25.3	70080518-WSP-DRG-ETR-000203 (Rev P01)
Illustrative Railport General Arrangement Sheet 3;	2.25.4	70080518-WSP-DRG-ETR-000204 (Rev P01)
Site waste and materials management plan	17.3	November 2022 Revision 02
Speed limit plans		
Key Plan	2.7	HRF-BWB-LSI-XX-DR-CH-00190 Rev P03
Sheet 1	2.7A	HRF-BWB-LSI-D1-DR-CH-00190 Rev P03
Sheet 2	2.7B	HRF-BWB-LSI-D2-DR-CH-00190 Rev P04
Sheet 3	2.7C	HRF-BWB-LSI-D3-DR-CH-00190 Rev P03
Sustainable drainage statement	6.2.14.2C	February 2024 Revision P06
Traffic regulation plans		
Key Plan	2.6	HRF-BWB-LSI-XX-DR-CH-00150 Rev P02
Sheet 1	2.6A	HRF-BWB-LSI-D1-DR-CH-00150 Rev P02
Sheet 2	2.6B	HRF-BWB-LSI-D2-DR-CH-00150 Rev P04
Woodland management plan	6.2.12.4A	10 October 2023 Revision 04
Works plans		
Key Plan	2.2	HRF-BWB-LSI-XX-DR-CH-00160 Rev P02
Sheet 1	2.2A	HRF-BWB-LSI-D1-DR-CH-00160 Rev P08

Sheet 2	2.2B	HRF-BWB-LSI-D2-DR-CH-00160 Rev P06
Sheet 3	2.2C	HRF-BWB-LSI-D3-DR-CH-00160 Rev P05
Sheet 4	2.2D	HRF-BWB-LSI-D4-DR-CH-00160 Rev P07
Sheet 5	2.2E	HRF-BWB-LSI-D5-DR-CH-00160 Rev P04
Sheet 6	2.2F	HRF-BWB-LSI-D6-DR-CH-00160 Rev P04
Sheet 7	2.2G	HRF-BWB-LSI-D7-DR-CH-00160 Rev P05
Sheet 8	2.2H	HRF-BWB-LSI-D8-DR-CH-00160 Rev P05

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Tritax Symmetry (Hinckley) Limited (“the undertaker”) to construct, operate and maintain, the new Hinckley National Rail Freight Interchange together with associated development. The undertaker is authorised by the Order to acquire compulsorily land and rights over land. The Order also authorises the making of alterations to the highway network, stopping up and diversion of public rights of way and the discharge of water.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 49 (certification of plans and documents) of this Order may be inspected free of charge at the offices of Blaby District Council at Council Offices, Desford Road, Narborough, Leicestershire, LE19 2EP.