



Department for Transport

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10 April 2025

Dear Mr McFadden,

PLANNING ACT 2008: APPLICATION FOR A NON-MATERIAL CHANGE TO THE WEST MIDLANDS RAIL FREIGHT INTERCHANGE ORDER 2020

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the requested change application ("the Application") by Four Ashes Limited ("the Applicant") made on 22 October 2024 for a non-material change to the West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511) ("the 2020 Order") as amended by the West Midlands Rail Freight Interchange (Correction) Order 2020 (S.I. 2020 No.1163) and the West Midlands Rail Freight Interchange (Amendment Order) 2023 (S.I. 2023 No.1132) ("the 2023 Amendment Order"). The non-material change application ("the Application") was made under section 153 and Schedule 6 ("Schedule 6") of the Planning Act 2008 ("PA08"). The Application was published in accordance with regulations 6 and 7 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) ("the 2011 Regulations") and any representations on the Application were due to be submitted to the Planning Inspectorate by 27 November 2024. This letter is the notification of the Secretary of State's decision in accordance with regulation 8 of the 2011 Regulations.
2. The Original Order was granted on 4 May 2020. The West Midlands Rail Freight Interchange (Correction) Order 2020 was made on 20 October 2020 to correct errors in the 2020 Order, and the West Midlands Rail Freight Interchange

(Amendment Order) 2023 was made on the 25 October 2023 and amended article 4 (parameters of authorised development) and substituted a new table in Schedule 15 (certification of documents).

3. The Development site is on land at Four Ashes near Junction 12 of the M6 motorway in South Staffordshire District. The 2020 Order allows for the construction and operation of a new Strategic Rail Freight Interchange and associated infrastructure (collectively referred to as 'the Development') including:
 - an intermodal freight terminal with direct connections to the West Coast Main Line, capable of handling at least four trains per day, also including container storage, Heavy Goods Vehicle ('HGV') parking, rail control building and staff facilities;
 - up to 743,200 square metres (gross internal area) of rail served warehousing and ancillary service buildings;
 - new road infrastructure and works to existing road infrastructure;
 - demolition and alterations to existing structures and earthworks to create development plots and landscape zones;
 - reconfiguring and burying of electricity pylons and cables; and
 - strategic landscaping and open space, including alterations to public rights of way and the creation of new ecological enhancement areas and publicly accessible open areas, including two new country parks.
4. The 4 May 2020 decision letter sets out the main reasons and considerations on which the decision to grant the Original Order is based, including relevant information about the participation of the public. The 25 October 2023 decision letter sets out the main reasons and considerations on which the decision to grant the 2023 Amendment Order is based, including relevant information about the participation of the public.
5. The Applicant is seeking a change to the 2020 Order to allow amendments to the consented finished road level on the eastern section of the A5/A449 Link Road identified on the Parameters Plans relating to Development Zones (Document 2.5C), Floor Levels and Building Heights (Document 2.6C) and Green Infrastructure (Document 2.7C).
6. The Secretary of State notes the reasons for seeking the change is set out in paragraph 1.2 and 1.3 of the Applicant's letter, namely; the Parameters Plans approved by the 2020 Order have been inadvertently amended by the 2023 Amendment Order. The Secretary of State is aware that the 2020 Order allowed for a level of 106.5m Above Ordnance Datum ("AOD"), with a maximum vertical deviation tolerance of +/-0.5. The 2023 Amendment Order decreased the height of the A5/A449 Link Road from 106.5 AOD to 105.6m AOD and permits a tolerance of up to 106.1m AOD. The Secretary of State notes that the Application seeks to amend the AOD to 107.2m so that it is able to:

- provide sufficient vertical cover to the new culvert to be installed underneath the proposed A5/A449 Link Road adjacent to the proposed A5 Roundabout, to facilitate the necessary and planned diversion of the Canal and River Trust feeder channel from Calf Heath Reservoir into the Staffordshire and Worcestershire Canal;
- deliver a gravity-driven surface water drainage system connecting the proposed A5/A449 Link Road to the new surface water attenuation pond adjacent to the proposed A5/A449 Link Road – North South Spine Road Roundabout, in accordance with Staffordshire County Council’s design standards for adoption as local highway authority; and
- provide a vertical highway geometry design in accordance with the Design Manual for Roads and Bridges, aligned with the agreed road speed design, as required by Staffordshire County Council as local highway authority.

Summary of Secretary of State’s Decision

7. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a non-material change to the original 2020 Order as amended in 2023 to authorise the change detailed in the Application. This letter is notification of the Secretary of State’s decision in accordance with regulation 8 of the 2011 Regulations.

Consideration of the Materiality of the Proposed Change

8. The Secretary of State has given consideration as to whether the Application is for a material or non-material change. In doing so, she has had regard to paragraph 2(2) of Schedule 6 to the PA08 which requires the Secretary of State to consider the effect of the change, together with any previous changes under paragraph 2, on the 2020 Order as made.
9. There is no statutory definition in the Planning Act 2008 or the 2011 Regulations of what constitutes a ‘material’ or ‘non-material’ change for the purposes of an application made under Schedule 6 to the PA08.
10. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the Department for Communities and Local Government, the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Change Guidance”), which makes the following points. Firstly, given the range of infrastructure projects that are consented through the PA08, and the variety of changes that could possibly be proposed for a single project, the Change Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material, and such decisions will inevitably depend on the circumstances of the specific case. Secondly, the Change Guidance sets out that there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change.
11. The characteristics are set out below:

- A change to a development consent order should be treated as material if it would require an updated Environmental Statement (“ES”) to take account of materially new, or materially different, likely significant effects on the environment. There may be cases where the change proposed will result in likely significant effects on the environment that are entirely positive, but in such cases an updated ES will still be required, and the application will need to be treated as a material change to ensure that the regulatory requirements of the EIA are met.
 - A change to a development consent order is likely to be material if it would invoke a need for a Habitats Regulations Assessment. Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a material change.
 - A change to a development consent order should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing DCO.
 - The potential impact of the proposed change on local people will also be a consideration in determining whether a change is material. Additional impacts that may be relevant to whether a particular change is material will be dependent on the circumstances of a particular case, but examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.
12. Thirdly, that although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.
13. The Secretary of State has considered the change requested by the Applicant against the four matters set out in sub-paragraphs (a), (b), (c) and (d) above.

Environmental Statement

14. The Secretary of State has considered whether the Application would give rise to any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement for the development authorised by the 2020 Order. The Secretary of State is satisfied that the information provided by the Applicant in support of the Application and the document titled ‘Application Statement for Proposed Non-Material Change’ dated October 2024 is sufficient to allow her to make a determination on the Application.
15. The Secretary of State has considered all relevant information provided by the Applicant and the responses of consultees. The Secretary of State agrees with the Applicant’s conclusions that due to the localised and minor nature of the proposed change there will not be any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement submitted in support of the development authorised

by the 2020 Order. As such the Applicant considered that there is no requirement to update the Environmental Statement. The Secretary of State notes that South Staffordshire Council confirmed that it did not consider that the change proposed by the Applicant would necessitate the need for an amendment to the ES submitted in support of the 2020 Order. The Secretary of State agrees with these conclusions. As there are no new significant environmental impacts that would arise as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Habitats Regulations Assessment

16. The Secretary of State has considered her obligations as set out in the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”). The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a protected site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if she has ascertained that it will not adversely affect the integrity of the protected sites within the National Site Network. The Secretary of State has considered the information submitted in the Application documents for the proposed change and the comments of consultees and is satisfied that the proposals do not alter the conclusions set out in the Applicant’s Environmental Statement for the 2020 Order. The Secretary of State is also satisfied that the proposed change does not alter the Secretary of State’s conclusion set out in the 4 May 2020 decision letter that the Development does not lead to a likely significant effect on any protected sites or their qualifying features. She therefore considers that it is unnecessary for her to carry out an appropriate assessment under the Habitats Regulations.

Compulsory Acquisition

17. In respect of compulsory acquisition, the Secretary of State notes the change sought through the Application would not result in any change to the compulsory acquisition provisions in the Original 2020 Order, and she is satisfied that this does not raise any issues of materiality.

Impacts on local people

18. The Secretary of State is aware that the Applicant is of the view that local people will not experience a change in the environment as a consequence of the proposed changes or experience any change of amenity. The Secretary of State agrees with the Applicant that the amendments to the consented finished road level would not result in a Development inconsistent with the 2020 Order. She is also content that, given no change is anticipated to the impacts already assessed in the Environmental Statement for the 2020 Order, the potential

impacts on local people and businesses are no greater than those that arise from the Development permitted by the 2020 Order.

19. For the reasons explained in the paragraphs above, the Secretary of State is satisfied that the change sought by the Applicant is not material and should therefore be dealt with under the procedure of a non-material change.

Consultation

20. On the 10 September 2024 the Applicant sought approval from the Secretary of State, under regulation 7(3) of the Infrastructure Planning (Changes to, and Revocation of, Development Consent; Orders) Regulations 2011 (as amended) ("the 2011 Regulations") on an intended approach to consultation on the non-material change application. The Secretary of State responded on the 17 September 2024 to agree with the Applicant's approach. The Applicant publicised the Application in accordance with regulation 6 of the 2011 Regulations and consulted the persons in the manner prescribed. The Applicant undertook a consultation as required by regulation 7 of the 2011 Regulations and consulted the agreed interested parties and consultees. The deadline for the receipt of representations on the Application was 27 November 2024.
21. The Application was made available on the Planning Inspectorate website on 28 October 2024 so that there was an opportunity for anyone not notified to also submit representations to the Planning Inspectorate.

Consultation responses

22. Responses were received from;
- Historic England
 - National Highways
 - South Staffordshire Council
 - Canal & River Trust
 - Roger Frederick Holt
23. The consultation responses were published on the [Planning Inspectorate Website](#)¹. The responses did not raise any concerns or objections to the change being sought by the Applicant.

Other Matters Raised During Consultation

24. The Secretary of State also received a letter from the Rt. Hon. Sir Gavin Williamson CBE MP, sent on behalf of the residents in Crateford Lane, Brewood, which highlighted concerns relating to impacts on traffic as a result of the Development. The Secretary of State has considered the points raised in this letter and has concluded they are not material to this change request because, as set out in paragraph 12 above, the changes sought through this

¹ <https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR050005/documents?stage-7=Non-Material%20Change%20&itemsPerPage=25>.

Application would not result in any impacts beyond those already identified for the 2020 Order. In reaching her conclusion, the Secretary of State has considered the South Staffordshire Council response which confirmed that it did not consider that the changes sought would result in an increase in traffic, and the response from National Highways which confirmed that it was broadly content with the change sought by the Applicant. The Applicant may nevertheless wish to investigate the matter raised in the letter further outside of this Application.

General Considerations

Equality Act 2010

25. The Equality Act 2010 includes a public-sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sexual orientation; sex; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
26. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010, and is satisfied that there is no evidence that granting the Application will affect adversely the achievement of those objectives.

Human Rights Act 1998

27. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the proposed change to the development. The Secretary of State considers that allowing the proposed change to the development consent would not contravene any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

28. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting amended development consent. The Secretary of State is of the view that biodiversity has been previously considered sufficiently in the original Application and the proposed amendment to the development consent order does not alter the consideration given to this duty.

The Secretary of State's overall conclusion and decision

29. The Secretary of State has considered the nature and effect of the proposed change, noting that it would have no materially new or materially different likely

significant environmental effects. She is satisfied that the conclusions of the Environmental Statement submitted in support of the application for the 2020 Order remain unchanged, and notes that no new powers of compulsory acquisition are sought.

30. The Secretary of State is content that none of the specific indicators referred to in the Change Guidance, or other relevant considerations, suggest that the change sought by the Applicant is a material change and is satisfied that the change requested by the Applicant is not a material change to the 2020 Order. The Secretary of State has therefore decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the 2020 Order so as to authorise the change sought by the Applicant.

Modifications to the draft Order

31. Minor drafting amendments have been made by the Secretary of State to the draft Order proposed by the Applicant. These changes do not materially alter the terms of the draft Order.

Challenge to the decision

32. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached to the Annex to this letter.

Notification of decision

33. The Secretary of State's decision on this application is being notified as required by regulation 8 of the Changes Regulations.

Yours faithfully,

Gareth Leigh

LEGAL CHALLENGES RELATING TO DECISIONS MAKING CHANGES TO DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the PA08 to make a change to an Order granting development consent, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order making the change is published. The West Midlands Rail Freight Interchange (Amendment No.2) Order 2025 is published on the planning inspectorate website at the following address:

[West Midlands Interchange - Project information](#)

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).