South Staffordshire Council

25th September 2026
Our Ref: 26/00671/WMI
Your Ref:

Please ask for: Planning Team
Phone: [redacted]
Email: [redacted]@sstaffs.gov.uk

The West Midlands Interchange Case Team
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN
wminterchange@planninginspectorate.gov.uk

Dear Sir/Madam,

Reference: 26/00671/WMI

Proposal: Planning Act 2008: Proposed Non-Material Change to the West Midlands Rail Freight Interchange Order 2020 (as amended by The West Midlands Rail Freight Interchange (Correction Order 2020) and The West Midlands Rail Freight Interchange (Amendment) Orders 2023 and 2025 (The Order) to:

- replace the original wording at Article 44 (3) to reflect the Supreme Court's ruling in Hillside;
- amend Requirement 35 (b) (and Requirement 34) so that the completion of the rail terminal works alters to prior to the earliest of-
  (a) the occupation of more than 186,000 square metres of warehousing; or
  (b) the sixth (change to fifth) anniversary of the first occupation of more than 47,000 (change to 150,000) square metres of warehousing;
- update the illustrative phasing plan included in the 2018 Environmental Statement, to align with the current infrastructure delivery programmes; and
- amend triggers for the delivery of various highway infrastructure works, as set out within Requirement 25.

Address: West Midlands Interchange, Watling Street/Wolverhampton Road, Gailey

I write to you on behalf of South Staffordshire District Council regarding the abovementioned application.

Proposal

It is noted that the proposed amendments, sought through this Non Material Change (NMC) application, include:

1. Amend Article 44 of the Order to clarify the interaction between planning permissions granted by the LPA pursuant to an application made under the Town and Country Planning Act and

approvals made pursuant to the Order, to ensure that neither consent could prevent the lawful implementation of consented development. This change is made to ensure certainty in light of the Supreme Court's judgement on Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30 ("Hillside");

2. Changes to the warehousing floorspace occupation and timing trigger set out in Requirement 35 (b) (and Requirement 34) of the Order relating to when the rail terminal works are required to be completed; and
3. Provide an update to the Table included with Requirement 25 as set out in the draft Amendment Order to reflect previously agreed changes and additional further changes being proposed in discussion with the relevant highway authorities.

Assessment

It is noted that the Department for Communities and Government document 'Planning Act 2008: Guidance on Changes to Development' (paragraph 11) notes that there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. Paragraphs 12 to 16 provide four
examples of such characteristics:

i. A change should be treated as material if it would require an updated Environmental Statement (from that at the time the original Development Consent Order was made) to take account of new, or materially different, likely significant effects on the environment;

ii. 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 license in respect of
European Protected Species is also likely to be indicative of a material change;

iii. A change 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 Development Consent Order; and,

iv. The potential impact of the proposed changes on local people will also be a consideration in
determining whether a change is material. In some cases, these impacts may already have been identified, directly or indirectly, in terms of likely significant effects on the environment. But there may be other situations where this is not the case and where the impact of the change on local people and businesses will be sufficient to indicate that the change should be considered as 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.

Assessing the proposed amendments, in turn, against the characteristics, as detailed:

1. The introduction of the 'Hillside Clause', as drafted by the applicant, is acknowledged to provide a broad protection, for development granted planning permission under the Town and Country Planning Act 1990 (TCPA), within the Development Consent Order (DCO) boundary, ensuring such would not constitute a breach of the DCO. This would ensure that any inconsistencies between a TCPA permission and the DCO would not render the latter as being incapable of implementation, with reference to the legal precedent set by Hillside.

   In broad terms, the higher degree of flexibility that the proposed amended wording offers, is considered reasonable and necessary, as it will allow for ancillary development and minor design evolutions to be considered, which were beyond the foresight of the original DCO. Enabling such to be determined via the TCPA route, rather than the need for NMCs, will greatly improve the determination speed for such changes, whilst allowing for a degree of control to be retained.

   The potential areas of concern, however, are that paragraph 6 (b), seeks to prevents TCPA enforcement action, where development is carried out pursuant to a planning permission, despite inconsistency with the DCO. Such could result in the reduced ability for the LPA to address conflicts through planning enforcement, introducing uncertainty as to how disputes regarding competing consents would be resolved and place a potentially significant limitation on the ordinary operation of Part VII of the TCPA. The applicant's submission is silent upon the need for this amendment and as such, you may wish to seek justification as to why such a wide exclusion from enforcement is necessary.

   Beyond the above point, a further potential implication of the above is that the amendment could allow for the developer to exceed the floor area limits, as established by the DCO and associated ES. Specifically, paragraph 6 states that where development carried out under a TCPA planning permission is inconsistent with the exercise of any power, right or obligation under the Order or the authorised development, that inconsistency is to be disregarded. Paragraph 7 then goes further by providing that development implemented under a TCPA permission, within the Order limits, is deemed not to be a breach of, or inconsistent with, the Order. In principle therefore, the applicant could, with the wording as drafted, argue that any additional floorspace beyond the parameters established within the DCO is lawfully authorised by the TCPA permission and any inconsistency with the DCO floor area cap is to be disregarded under paragraph 6 and the additional floorspace is expressly deemed not to breach the DCO by paragraph 7.

   If the applicant's position is that the amendments are merely procedural and would not permit exceedance of DCO parameters or ES limits, the LPA would request that the applicant provides a clear legal explanation and potentially additional drafting to make this explicit. Without such clarification, there is a reasonable argument that the amendment could dilute the effectiveness of DCO floorspace caps and other environmental assessment parameters that were fundamental to the original consent.

- It is acknowledged that the SoS is the Competent Authority for consideration of this application. The LPA considers that the 'Hillside Clause' and other amendments proposed via the NMC, would not directly result in a change to traffic flows, albeit the concern regarding potential floor space exceedance, as detailed above, could raise the need an updated HRA, to consider NOx deposition, further reinforcing the need for clarity on this point.

- For all 3 noted matters, no additional land, not originally forming part of the DCO, is to be included within the site.

- No new impacts upon the reasonable amenity of residents are considered to arise as a consequence of the proposed 'Hillside Clause' amendments.

2. The DCO currently requires:

Rail Infrastructure
35. The undertaker must complete the rail terminal works prior to the earliest of—
(a) the occupation of more than 186,000 square metres of warehousing; or
(b) the sixth anniversary of the first occupation of more than 47,000 square metres of warehousing.

The NMC seeks to amend such to read:

35. The undertaker must complete the rail terminal works prior to the earliest of—
(a) the occupation of more than 186,000 square metres of warehousing; or
(b) the fifth anniversary of the first occupation of more than 150,000 square metres of warehousing.

The Examining Authorities Report (EAR) is silent on the specific need / justification for use of the 47,000sq m 6 year trigger, rather, the report details why from a commercial viewpoint, allowing for the applicant to occupy up 186,000 sq. m of warehousing, prior to the delivery of the RFT is reasonable and compliant with the NPSNN , whilst continuing to note that "*the position remains that the potential effects of the development of more than 186,000 sq. m of warehousing without the rail connection and terminal are unknown. Hence, neither I nor the SoS have sufficient information on which to come to a conclusion as to whether or not those potential traffic and environmental effects are acceptable. It would, therefore, be wrong to issue a DCO which would enable more than 186,000 sq. m of warehousing to be constructed and occupied before the Rail Terminal works are completed and the Initial Rail Terminal is available for use".*

It is clear from the above that the identified need for delivering the RFT, prior to occupation of 186,000 sq. m, arose from a highway capacity requirement. Although not stated within the EAR, it is understood that the 6 year, post 47,000 sq. m additional trigger, was proposed by the applicant, to address resident concerns that the RFT would not be delivered in a timely manner. Although not arising due to a specific planning reason therefore (ensuring no adverse

impact under assessment matters i and ii), the amendment would have an impact upon local people (assessment matter iv), in that they previously considered this trigger necessary and continue to raise objections on the point that amending this trigger would delay the delivery of the RFT. The Local Planning Authority seeks assurance from the Secretary of State in this regard that the primacy of the Rail Freight can be assured to be delivered in a timely fashion as this element of the scheme (the timely primacy of the rail freight connection) was justification for the location of the scheme at that location.

3. The proposed changes to Requirement 25 (1) of the DCO, relate to the implementation of various highway works, are, as detailed within figure 3.3 of the applicant's 'Statement for Proposed Non-Material Change, which, in summary seek:

- The completion of the A5 access roundabout, including works to Avenue Cottages junction, to be completed, prior to the first occupation of any warehouse, other than those served from Vicarage Road, instead of prior to the occupation of any warehouse, other than 47,000 sq. m of warehousing from Vicarage Road;
- The completion of the A5/A449 link road, prior to occupation of 186,000 sq. m or 5 years post occupation of 150,000 sq. m, instead of 187,000 sq. m or the fifth anniversary of 47,000 sq. m;
- The closure of Cratheford Lane to westbound traffic, to be completed on or before the completion of A449 roundabout works, instead of prior to the occupation of 140,000 sq. m or the fifth anniversary of the occupation of more than 47,000 sq. m;
- The provision of a HGV turning area on Station Drive, altering from within 6 months of completion of the Vicarage Road access, to 9 months post first occupation of any warehouse floorspace served from Vicarage Road;
- The provision of the A449 laybys, to include the closure of existing reservation gaps and field accesses, altered from completion of the A5 access, to now include prior to the commencement of any works for the construction of the A5 access (noted that these works have now been completed); and
- The A449 Roundabout to be delivered, prior to the occupation of 186,000 sq. m of warehouse floorspace or within 5 years of occupation of 140,000 sq. m, instead of prior to the first occupation of 140,000 sq. m or the anniversary of the occupation of more than 47,000 sq. m;

In terms of assessment matters i, this is for the relevant highway authorities, as identified, to consider in terms of impact upon the network. In terms of matters ii and iii, such is discussed above. Lastly, in terms of matter iv, as previously noted the proposal would have an impact upon local people, in that residents consider these triggers necessary, in terms of preventing adverse impact to the local highway network. There is perceived harm to the existing highway network, resulting from delays in the delivery of mitigation measures, resulting in traffic travelling through surrounding villages and inadequate road networks.

We trust the above is useful however please do not hesitate to contact us if you wish to discuss further.

South Staffordshire Council

Kind Regards,

[redacted]

Corporate Director of Place and Communities

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Friday, 25th September, 2026

Dear Sir/Madam,

Re: 26/00672/WMI

Please find attached accompanying letter from South Staffordshire District Council on the below.

Proposal: Planning Act 2008: Proposed Non-Material Change to the West Midlands Rail Freight Interchange Order 2020 (as amended by The West Midlands Rail Freight Interchange (Correction Order 2020) and The West Midlands Rail Freight Interchange (Amendment) Orders 2023 and 2025 (The Order).

The contents of the letter are self-explanatory however the Council wishes to make clear that the Secretary of State needs to satisfy themselves that the primacy of the rail freight terminal as part of this scheme is not diluted and that the potential delay to the delivery of the rail freight terminal and its subsequent operation does not dilute the rail based focus of the scheme which was central to its justification in this location.

Yours faithfully,

[redacted]

Corporate Director of Place and Communities