



Department
for Transport

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Tritax Symmetry
Grange Park Court
Roman Way
Northampton
NN4 5EA

Dear Sir/Madam,

PLANNING ACT 2008

APPLICATION FOR THE PROPOSED HINCKLEY RAIL FREIGHT INTERCHANGE DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the Report dated 10 June 2024 of the Examining Authority (“ExA”), comprised of Robert Jackson BA MPhil DMS MRTPI MCIM (Panel Lead), Graham Sword MA PGDip Urban Conservation Dip ILM (L5) MRTPI, and Matthew Heron BA (Hons) MA MRTPI who conducted an Examination (“the Examination”) into the application made by Tritax Symmetry (Hinckley) Limited (“the Applicant”) for the Hinckley Rail Freight Interchange Development Consent Order under section 37 of the Planning Act 2008 (“the PA2008”) dated 17 March 2023 (“the Application”);
- Late representations received by the Secretary of State following the close of the Examination.

2. Published alongside this letter, on the Planning Inspectorate website, is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of

State (“the Report”). All “ER” references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form “ER XX.XX.XX” as appropriate. References to “requirements” are to those in Schedule 2 to the draft Order as recommended by the ExA (“the ExA’s recommended Order”), set out at pages 46 - 66 of that Order. The Secretary of State notes that there is a discrepancy between the numbering of the requirements in the Report and the numbering in the ExA’s recommended Order. The requirements in this letter reference the numbering of the requirements in the ExA’s recommended Order.

THE APPLICATION

3. The Application was received on 17 March 2023 and 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 Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings held. The ExA also undertook a number of unaccompanied site inspections on 8 and 9 August 2023, 14 September 2023, and 2 and 15 November 2023, and an accompanied site visit on 16 November 2023.

4. The Development Consent Order (“the Order”) as applied for would allow for the construction and operation of a new Strategic Rail Freight Interchange on land near Junction 2 of the M69 (referred to as ‘the Proposed Development’). The Applicant also seeks compulsory acquisition, compulsory acquisition of rights and the imposition of restrictive covenants and temporary possession powers as part of the Order.

5. Works on the main part of the Application site comprise:

- 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 hardsurfaced 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 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.

6. Associated highway works comprise:

- 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.

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

CHANGES TO THE APPLICATION

8. The Secretary of State notes that during the Examination, the Applicant put forward a change to the compulsory acquisition rights sought in Plot 22. The Secretary of State understands that the change resulted in the creation of a new plot, Plot 22a, which is made up of land previously included in Plot 22. For new Plot 22a, the Applicant seeks, with the exception of interests owned by named individuals, outright compulsory acquisition of Network Rail's ("NR") interests. The Secretary of State notes that the only additional land rights holder affected by the change was NR, and it had confirmed that it had no objection to this land being subject to compulsory acquisition powers [ER 6.2.22].

9. The Secretary of State notes from the ExA's procedural decision relating to the change request dated 28 November 2023 that in coming to a decision, the ExA has reviewed the information provided and assessed the Applicant's request in line with paragraphs 109 to 115 of DCLG Guidance 'Planning Act 2008: Examination of Applications for Development Consent' and the Planning Inspectorate's Advice Note 16. The Secretary of State also notes that the ExA concluded that the amendment would be within the red line boundary of the Proposed Development and would not result in a substantially different project. However, given there would result in additional rights in land being sought, the ExA concluded that the Compulsory Acquisition Regulations Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) ("Compulsory Acquisition Regulations") are engaged. The ExA, after considering the views of both the Applicant and NR, concluded that NR's consent for its land rights to be compulsorily acquired is sufficient for the procedure set out in Regulations 5 to 19 of the Compulsory Acquisition Regulations not to be engaged. This change was therefore accepted by the ExA on 28 November 2023 [ER 8.2.1 and PD-010]. The Secretary of State agrees with the ExA's conclusions and the approach taken by the ExA on this matter, noting that the change was made at the request of NR.

10. The Secretary of State also notes that Plot 27 in Sheet 2 of the Land Plans was incorrectly left uncoloured therefore suggesting no rights would be sought in respect of this land [ER 6.2.23]. The Secretary of State is aware that the Applicant submitted a revised version of this plan to show that Plot 27 would be subject to the acquisition of rights so that the Applicant is able to deal with third-party rights listed by the ExA as Hinckley and Bosworth Borough Council, Leicestershire County Council, National Grid Electricity Transmission, Openreach Limited and the Applicant. The Applicant stated that all of these parties were aware of the Application and save for Openreach, were actively involved in the Examination. The Applicant also stated that National Grid Electricity Transmission and Openreach Limited have the benefit of protective provisions. The ExA also noted that the Applicant therefore did not consider that there are any implications under the Human Rights Act 1998 and the Compulsory Acquisition Regulations [ER 6.2.24 – 6.2.25]. The ExA concluded that while it considered that this issue not being identified until late in the Examination undesirable, 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 protective provisions, it was satisfied that that none would be prejudiced by this clarification [ER 6.2.26]. The Secretary of State agrees with the ExA's conclusions and the approach taken by the ExA on this matter.

11. Overall, the ExA concluded that none of the changes proposed by the Applicant, either individually or cumulatively, represented a change to the Application to the extent that a new application is required [ER 8.2.2]. The Secretary of State agrees.

SUMMARY OF THE EXA'S RECOMMENDATIONS

12. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad 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
- Geology and Soils
- Cumulative Effects
- Habitats Regulations Assessment
- The Planning Balance
- Equality Act 2010
- Heritage Balance
- Land Rights and Related Matters
- Draft Development Consent Order and Related Matters

13. For the reasons set out in the Report, the ExA recommended that the Secretary of State should not make an Order granting development consent for the Proposed Development as applied for [ER 8.3.1].

SUMMARY OF SECRETARY OF STATE'S CONSIDERATION

14. For the reasons set out in this letter, the Secretary of State considers that she is not yet in a position to decide whether to accept the ExA's recommendation. She is nevertheless currently minded to agree with the ExA that she should not make the Order granting development consent for the Proposed Development unless further information or evidence can be provided to demonstrate how the certain issues which the ExA identifies as weighing against the Proposed Development in the planning balance may be addressed.

15. The Secretary of State is particularly concerned by the identified increase to the highway safety risk in Sapcote due to the increased likelihood of HGV's travelling in opposite directions coinciding through the village centre and, as a result, overrunning on to the footpaths used by pedestrians.

16. The Secretary of State notes that the ExA also concluded that the Proposed Development would lead to a harmful effect on the living conditions of the occupiers of the Aston Firs Travellers site due to the proximity of the proposed acoustic barrier.

17. The Secretary of State further notes that the ExA concluded that an inadequate analysis has been undertaken of traffic aspects at two junctions and there would be a number of other adverse effects specific to the Proposed Development. These include the other Traffic and Transport effects, the effect on the landscape and visual receptors, effects from noise and vibration, the loss of a small quantity of the best and most versatile agricultural land and effects on air quality as well as some cumulative effects [ER 8.2.8].

18. The Secretary of State does however note, that the ExA found that there are a number of benefits, some of which are substantial, associated with the Proposed Development. Benefits include meeting the need for strategic rail freight interchanges ("SRFI") generally and specifically in the Leicestershire area, job opportunities and wider economic benefits, the positive effect on biodiversity, lowering greenhouse gas ("GHG") emissions and additional energy production [ER 8.2.7].

19. The Secretary of State is therefore extending the statutory deadline for the Application until 10 March 2025 to allow the Applicant and Interested Parties to make further representations on certain of these issues details of which are set out in this letter. Any initial conclusions in respect of aspects of the Proposed Development set out in the letter are preliminary, and do not necessarily represent the Secretary of State's full or final position on those matters. She will need to consider any representations received as a result of this letter and may reconsider matters set out in the ExA's Report before she makes her final decision.

20. Where not otherwise stated in this letter, the Secretary of State can be taken to be minded to agree with the findings, conclusions and recommendations as set out in the Report and for the reasons given by the ExA in support of its conclusions and recommendations.

21. The Secretary of State is content that the Proposed Development is a National Significant Infrastructure Project in accordance with section 14(1)(l) of the PA2008 and so requires development consent in accordance with section 31 of PA2008 [ER 2.2.1]. In determining this Application, the Secretary of State must therefore have regard to any relevant National Policy Statement (“NPS”), any Local Impact Reports (“LIR”) invited and submitted to the SoS before the specified deadline, any matters prescribed in relation to development of the description to which the Application relates, and any other matters the Secretary of State considers to be both important and relevant to the eventual decision [ER 2.2.3].

22. Under section 104(3) of the PA2008, the Secretary of State must decide this Application in accordance with any relevant NPS which in this case is the National Policy Statement for National Networks (‘the NPSNN’), except to the extent that one or more of the exceptions in subsections (4) to (8) applies. A revised National Networks National Policy Statement was designated on 24 May 2024 (‘the 2024 NNNPS’) but only has effect for any applications for development consent accepted for examination after the designation of the 2024 NNNPS. The Secretary of State notes paragraph 1.17 of the 2024 NNNPS and that it is potentially capable of being an important and relevant consideration in the decision-making process for applications accepted for examination before its designation but considers that it does not support a different outcome in this case. For those reasons, she has not given the 2024 NNNPS any material weight. The Secretary of State is satisfied that as set out in paragraph 1.16 of the 2024 NNNPS, for any application accepted for examination before designation of the 2024 NNNPS, the NPSNN should continue to have effect. The NPSNN therefor remains government policy in respect of the Proposed Development and continues to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent. Therefore, this Application will be decided in accordance with the NPSNN.

23. The Secretary of State has had regard to the LIRs prepared by Blaby District Council (“BDC”), Hinckley and Bosworth Borough Council (“HBBC”), Leicestershire County Council (“LCC”) and Warwickshire County Council (“WCC”) [ER 1.6.23] and any changes advised by the local authorities. The Secretary of State also notes the ExA’s assessment, set out in section 2.2 of the Report, regarding relevant legal provisions, previous Development Consent Orders, transboundary effects and other relevant policy statements and agrees these will be matters to be considered in deciding this Application.

Need and Alternatives

24. The ExA’s consideration of the principle of need for the Proposed Development is set out in section 3.2 of the ExA’s Report, and the main issues considered by the ExA during the Examination are set out at ER 3.2.66 - 3.2.86.

25. The Secretary of State notes the summary of the cases for the Applicant [ER 3.2.11 – 3.2.51] and the Interested Parties [ER 3.2.52 – 3.2.65] on need and alternatives

recorded by the ExA and has carefully considered the ExA's conclusions. She notes that the ExA concluded that on the evidence before it, there is a compelling need for the project in line with paragraph 2.10 of the NPSNN which the Application must be assessed against, and further notes paragraph 2.36 in respect of SRFIs. The ExA concluded that there was little evidence presented that there was not a need for the Proposed Development [ER 3.2.87].

26. The Secretary of State notes that the ExA carefully considered the locations of the seven alternative sites which are in areas of flood risk, remote from the strategic road network, close to residential communities and/or in countryside of particular merit, and it concludes that they have been robustly analysed [ER 3.2.88]. The Secretary of State further notes that the ExA did not indicate that it preferred any of the alternative sites to the site of the Proposed Development.

27. The Secretary of State notes the ExA's conclusion that the enablement of the construction of 105,000m² of warehouse space before the rail hub becomes operational (as allowed by requirement 12 of the ExA's recommended Order) would be in line with the precedents of similar developments. She also notes the ExA's observation that what are now paragraphs 4.86 to 4.88 of the 2024 NNNPS now supports the Applicant's approach, but remains of the view outlined at paragraph 22 of this letter that the 2024 NNNPS does not carry any material weight when determining the Application [ER 3.2.89]. She further notes and agrees with the ExA suggestion that Article 5 (authorisation of use) in the ExA's recommended Order should be amended by the insertion of the word "only" after the phrase "rail freight terminal and warehousing" to ensure that the proposed development would only be a SRFI [ER 3.2.86].

28. The ExA concluded that Need should be given substantial weight in favour of the Proposed Development [ER 3.2.90]. It also concludes that alternatives have been appropriately assessed, does not indicate that any are to be preferred to the site of the Proposed Development and that the choice of that site was reasonable [ER 3.2.82]. The Secretary of State is minded to agree.

Traffic and Transport

29. The ExA's consideration of the traffic and transport effects of the Proposed Development is set out in section 3.3 of the ExA's Report. The Applicant assessment of traffic and transport matters is contained in Chapter 8 of the Environmental Statement ("the ES") [ER 3.3.36] and the Transport Assessment is included as Appendix 8.1 of the ES [ER 3.3.37].

Construction Traffic

30. The ExA noted that concerns were raised around the increase and routing of construction traffic on the M1 J21/M69 J3 junction [ER 3.3.400]. The Secretary of State notes that the ExA concluded that both the Construction Environmental Management Plan (CEMP) set out at requirement 9 of the ExA's recommended Order and the Construction

Traffic Management Plan (CTMP) set out at Requirement 25 would allow further detailed discussions to take place in order to avoid or mitigate the issues raised in both the written representations and LIRs. Having considered the effects of the Proposed Development from construction traffic, the ExA recommended that it should carry neutral weight in the planning balance [ER 3.3.401].

Operational Traffic Modelling and Generation

31. The Secretary of State notes the description of how the Traffic Assessment is produced, its use of the Pan-Regional Transport Model (“PRTM”) and that the use of the Model was agreed with the highway authorities [ER 3.3.40]. She is aware of criticisms made of the Applicant’s overall traffic modelling and the concern that it did not use the latest versions of the Pan-Regional Transport Model (“PRTM”) on the overall traffic, particularly by CPRE Leicestershire, a consortium of land promoters predominantly consisting of Barwood Development Securities Limited and Parker Strategic Land Limited [ER 3.3.390, 3.3.398 and 3.3.402]. The ExA was content with the use of PRTM v2.2 is adequate for the Leicestershire area, noting that all models 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. In coming to this conclusion it also noted the review of the effects of the Covid-19 pandemic and changes such as the recently approved Pudge Hall Farm site [ER 3.3.403]. The Secretary of State notes that the ExA was also content with the Rugby Rural Area Model for the Warwickshire area. The Secretary of State further notes that no Interested Party put forward a different overall model for the network, and that the ExA was content with the modelling utilized by the Applicant and agreed with the three highway authorities (National Highways and Leicestershire and Warwickshire County Councils) [ER 3.3.404].

32. The Secretary of State notes the criticisms raised regarding the number of jobs that are expected to be created at the Proposed Development and traffic generation numbers. However, the ExA was satisfied with the Applicant’s explanation that there is no contradiction between the employee figures submitted and the traffic generation modelled [ER 3.3.61 – 3.3.65 and ER 3.3.405].

Sustainable Travel Strategy

33. The Applicant’s Sustainable Travel Strategy, which was updated following discussions during the Examination, sets out its strategy for public transport and active travel and analyses the opportunity to maximize the use of sustainable modes of transport to and from the Application site [ER 3.3.66 – 3.3.74].

34. The ExA notes that concerns were raised by a number of interested parties. National Highways (NH) criticised the lack of emphasis on walking as a sustainable travel model, although the ExA considered it extremely unlikely that employees would walk to the site due to the distances of the site from centres of population (apart from Elmesthorpe) [ER 3.3.407]. Blaby District Council (BDC) considered the Applicant’s aim

to reduce single car occupation from 75% to 60% over a 10-year period to be insufficiently challenging [ER 3.3.408]. The ExA also considered the proposed target for single-car occupation, which aims to improve current levels, would only relate to the vicinity of the Application site rather than where the employees live. The ExA concluded that this would make the target less challenging to achieve. The Secretary of State is aware that when challenged on this point, the ExA was of the view that the Applicant did not appropriately address the concerns raised [ER 3.3.409]. The ExA was also concerned that the Design Code permitting decked parking did little to encourage the use of alternative modes [ER 3.3.410].

35. The Secretary of State notes that the ExA considers that, for those reliant on Demand Responsive Transport, the lack of an equivalent to the six-month bus pass for commercial services given to employees in their travel subsidy, would result in a significant deficiency in the Sustainable Travel Strategy [ER 3.3.412]. She also notes that the ExA considered cycleway provision and cycle infrastructure to be adequate [ER 3.3.413 – 3.3.415]

36. On rail passenger travel, the ExA concluded that the Applicant's lack of investigation into the provision of a rail passenger station at or near the site or the re-opening of Elmhurst station shows that a sustainable travel option was not explored and also that the Applicant failed to consider Policy 5 of HBBC's Core Strategy Plan [ER 3.3.424]. The Secretary of State also notes that the ExA placed little weight on NR's evidence which confirmed that a passenger station was not needed, as the assessment of the needs case was, in the ExA's view, done on the basis of current demand and did not take account of the additional demand from employees at the Proposed Development [ER 3.3.418]. The ExA recorded that it was unable to orally question NR and that NR were unable to provide a deputy to attend the oral hearing, and that this hindered its examination of this part of the Proposed Development [ER 3.3.422]. The ExA also considered that NR's answers seemed to lack rigour and did not show an objective analysis [ER 3.3.423]. The ExA considers that due to the deficiencies in the Sustainable Travel Strategy, the Proposed Development would not accord with paragraph 5.211 of the NPSNN and that it has not been demonstrated that this is in a location that can be made sustainable (see paragraph 12 of Circular 01/2022). The ExA therefore recommended that this should carry substantial weight against the Proposed Development [ER 3.3.426].

37. The ExA set out at ER 7.4.105-7.4.107 how the Applicant could change the Sustainable Travel Strategy in order to mitigate against the impacts set out above [ER 3.3.427]. The Secretary of State invites comments from the Applicant on the revised Sustainable Transport Strategy proposed by the ExA.

HGV Route and Management Plan

38. The HGV Route and Management Plan ("HGVRP") aims to develop a strategy and plan to promote and manage routes for the HGVs associated with the Proposed Development during the operational phase and identifies "advisory HGV routes" and

“prohibited HGV routes” [ER 3.3.76 – 3.3.77]. In addition, HGVs would be “discouraged” from using local roads [ER 3.3.82]. Enforcement of prohibited HGV routes would utilise ANPR cameras and the Applicant proposed that breaches would involve three stages of management interventions: Firstly, management interventions to confirm that the occupier, its staff and suppliers are actively seeking to comply with the HGVRP. Secondly, there would be financial penalties for those considered to be ‘persistently breach’, with a maximum of £1,000 per breach (index linked). 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 [ER 3.3.89 – 3.3.93]. The Secretary of State notes that the ExA agreed with BDC that the proposed financial penalty of a ‘maximum’ of £1,000 for those who breach the HGVRP is not a significant deterrent and that it agreed with BDC’s proposal that all fines should be set at a fixed amount of £1,000 instead [ER 3.3.436].

39. The ExA considered that while the proposed fund of £200,000 to pay for additional measures to discourage HGV’s routing via any of the prohibited routes was not secured via a Planning Obligation that it should follow and its acceptability be assessed against the same policy presumptions as one [ER 3.3.90 and 3.3.438]. The ExA concluded that as it was unclear how the sum was derived and whether it is reasonably relative to the scale and effects of the Proposed Development, it should not be taken into account [ER 3.3.438].

40. The Secretary of State notes that a number of concerns were raised around the daily breach thresholds of the HGVRP. The Applicant proposed that over 10 HGVs one way per day on any of the prohibited routes would trigger an escalated assessment of the HGVRP, in which the thresholds would apply to the whole 850,000 sqm development and stages 1 and 2 would be divided proportionately between individual occupiers based on net plot area [ER 3.3.332]. Warwickshire County Council (WCC) raised concerns regarding the proportionally shared breaches and considered that instead all breaches should be investigated [ER 3.3.332]. The ExA raised concerns that the Applicant’s proposal would result in the triggers being less likely to be reached during the first phase and therefore intervention would not occur leading to undesirable travel patterns in the initial phases. The ExA also highlighted that it is unclear how the relevant net plot proportion proposal would consider HGV’s travelling only to the railport, given this would approximately be 21.6% of the total HGV movement [ER 3.3.435]. The ExA concluded that for these reasons (principally that it does not appropriately consider enforcement or deal with mitigation), the HGVRP as submitted is not fit for purpose and should therefore weigh substantially against the Order being granted [ER 3.3.441].

41. The ExA set out in section 7.4.124 amendments to the HGVRP which it considers would reduce the adverse effects so that it would then be neutral in the final planning

balance [ER 3.3.442]. The Secretary of State invites comments from the Applicant on the ExA's suggested amendments to the HGVRP.

Effect on Network

42. The Secretary of State notes that the ExA highlighted that the Proposed Development can only control traffic going to and from the Application Site as it cannot control existing 'background' traffic on the network [ER 3.3.443].

43. The ExA also noted that the Proposed Development would result in a reduction in traffic in 2036 on the B4114 (particularly in the PM peak), the B581 through Elmesthorpe, and within Burbage, but that traffic would increase 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. The ExA considered that the increase in traffic would far outweigh the benefits of the re-routing of traffic at a number of locations and, excepting the effects on individual junctions, which is addressed elsewhere, therefore recommended that the Secretary of State gives this little weight against the development in the final planning balance [ER 3.3.447].

M69 J2 (Junction 20)

44. The Secretary of State notes that both NH and LCC raised concerns around the Applicant's modelling of M69 J2 (Junction 20) and the additional arm to the roundabout. NH highlighted that the furnishing applied at the junction was incorrect as it has effectively resulted in the double discounting of trips in the 2036 with Development model, resulting in an under-estimation of traffic flows at the junction and the impact on the Strategic Road Network ("SRN") [ER 3.3.277 & 3.3.450].

45. The Secretary of State notes that NH did not have sufficient time to run the four necessary modelling scenarios in relation to the changes submitted at Deadline 7 of the Examination on the approved base model [ER 3.3.278]. LCC also raised a number of concerns, including that the VISSIM model for the junction needs to be updated due to the potential impacts on traffic flows both on and off the circulatory of the M69 J2 due to the Pegasus crossing proposed at the access road into the site and the lack of safe crossings of the M69 J2 slip roads by pedestrians/ cyclists [ER 3.3.312].

46. The ExA reported that it was not clear whether the modelling took into account the extended crossing times for equestrians which may occur due to the Pegasus crossing and was 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. It further considered that this issue should not be left to the detailed design stage [ER 3.3.457 – 3.3.458].

47. The ExA concluded that the Applicant has not demonstrated how the Proposed Development would minimize the risk of road casualties and contribute towards the overall improvement of safety of the SRN in line with paragraph 4.66 of the NPSNN [ER 3.3.459].

The ExA therefore recommended that the Secretary of State gives this matter very substantial weight against the making of the Order.

48. The Secretary of State invites comments from the Applicant to address the safety concerns raised in respect of this junction.

M1 J21/ M69 J3 (Junction 15)

49. The Secretary of State notes the disagreement between the Applicant, NH and LCC regarding the modelling conducted at the M1 Junction 21/M69 Junction 3 (Junction 15) [ER 3.3.281 & 3.3.466]. NH's concerns relate to the limitations of the LinSig model used by the Applicant on the complex junction which NH consider has the potential to overestimate the exit-arm capacity for vehicles leaving the circulatory, and as three of the four left-turn movements involve 'by-pass' slip road, these demands are "ignored" by LinSig and could exacerbate the issue [ER 3.3.282]. The Applicant responded to the concerns by providing evidence that the LinSig model had taken into account these issues in its 'M1 J21 Modelling Note' [ER 3.3.283]. However, NH highlighted that because the data submitted did not include the signal specification, it was not able to conclude how the Proposed Development might impact how the M1 J21/M69 J3 is likely to be affected. Based on the existing operational issues and the increases in demand arising from the Proposed Development, NH considered that it is likely that the Proposed Development is likely to adversely affect the safe and efficient operation of the SRN [ER 3.3.284].

50. The Secretary of State also notes that while LCC agree that the Pan Regional Transport Model ("the PRTM") is fit for purpose and the base year model review is agreed [ER 3.3.313], it raised the following concerns:

- it disagrees with the Applicant's interpretation of the strategic model outputs and considers that the Applicant fails to acknowledge any impact at this junction. LCC's view is that the strategic model shows development traffic using this junction and displacing other traffic on to the local road network ("LRN"). LCC considers that that the Applicant should provide mitigation to attract back the displaced traffic which would, potentially, reduce the need for mitigations on the LRN [ER 3.3.315];
- modelling based on an unconstrained scenario is required so that LCC is able to determine the actual impact at this junction, and that they are of the view that the Applicant is incorrectly relying on the modelling conducted for 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 Sustainable Transport Strategy [ER 3.3.316];
- the LinSig model does 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 [ER 3.3.317]; and

- LCC is of the view that the Applicant's strategy is to displace traffic onto the LRN and not to resolve the issues at this junction which is already operating above capacity [ER 3.3.318].

51. The ExA agreed with the above concerns and, whilst recognising that 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 [ER 3.3.467], concluded that the junction needed to be modelled more comprehensively and VISSIM (or similar validated model) should have been utilised [ER 3.3.470]. The ExA considered that the Applicant has provided insufficient information to prove that this junction has been adequately modelled and therefore did not demonstrate that the Proposed Development would minimise the risk of road casualties and contribute to the improvement of safety on the SRN, and would not comply with paragraph 4.66 of the [ER 3.3.471]. The ExA therefore recommended that the Secretary of State give very substantial weight against making the Order for this matter [ER 3.3.478].

52. The Secretary of State invites comments from the Applicant on the concerns raised by the relevant highways authorities on the lack of adequate modelling and safety concerns at this junction. The Secretary of State invites the Applicant to submit any further evidence in light of these concerns, and in particular requests that it provides NH with the signal specification used in its 'M1 J21 Modelling Note'.

M69 J1 (Junction 13)

53. The ExA notes that traffic would be removed from the M69 J1 circulatory by the new slip roads at M69 J2, The Secretary of State notes that queues at the A5 southbound in the AM peak would reduce by over 90% but would increase junction time at the B4109 southbound, particularly between 07:30 to 08:30 [ER 3.3.479]. Noting the lack of agreement with NH, which stated that it was unable to verify the Applicant's position, the ExA still concluded that the benefits at the junction would be reduced by the adverse effects on the delays at B4109 and so placed little beneficial weight in favour of making the Order [ER 3.3.286 and ER 3.3.480 - 3.3.481].

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

54. The ExA notes that the junctions provide the route between the M42 J10 and the Application site and traffic would use the north of the A47 before and after the lowering of the carriageway of the A5 under Watling Street Bridge [ER 3.3.482 - 3.3.483]. The ExA also noted that whilst NH had not agreed to the VISSIM modelling, it had agreed the Proposed Development could be delivered with or without additional mitigation [ER 3.3.484]. The ExA concluded that with or without the lowering of the carriageway, traffic could be accommodated at these junctions without any additional mitigation, and therefore recommended that the Secretary of State should place neutral weight to this matter in the planning balance [ER 3.3.485].

A5 Cross in Hand (Junction 27)

55. The Secretary of State notes that NH considered that insufficient modelling had been completed for this junction because the modelling was “missing geometric design information” and it failed to take into account HGV demand which, given the high HGV use, could significantly adversely affect junction operation [ER 3.3.290]. In light of this, NH questioned the adequacy of the proposed mitigation measures. It also notes that no Stage 1 Road Safety Audit (“RSA”) has been completed in line with the requirements of GG 119 of Design Manual for Roads and Bridges [ER 3.3.291].

56. The ExA reports that the Applicant proposed to commit to the work shown in Work 16 to mitigate the impact of the rise in HGV demands and to include a new provision in the Order, requirement 7 which the Applicant considered would allow it and the relevant highway authority to agree a different scheme should this be considered more appropriate [ER 3.3.489]. The ExA concluded that given the uncertainty as to whether Work 16 would mitigate the effects of the Proposed Development for the reasons set out by NH, and while requirement 7 in the ExA’s recommended Order would provide a practical way forward, this would require agreement of the parties [ER 3.3.491]. The ExA concluded that the Secretary of State should be able to have confidence that the Proposed Development would mitigate its effects when she takes her decision in order to comply with paragraph 5.213 of the NPSNN [ER 3.3.490]. Given the uncertainty described above, the ExA concluded that the Proposed Development would not mitigate its effects and therefore, in line with paragraph 5.124 of the NPSNN, recommended that the Secretary of State place limited weight against the granting of the Order for this matter [ER 3.3.492].

A5 Gibbet Hill (Junction 26)

57. The Secretary of State notes that NH believe the Planning Obligation of £344,704.83 to mitigate the impact of the Proposed Development is incorrect, with the main concerns as to the cost estimate being:

- 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; and
- 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% [ER 3.3.297].

58. NH reported 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 [ER 3.3.299]. NH's response to this is outlined at ER 3.3.299 – 3.3.301] and it concludes that a proportionate figure would be in the region of £1,500,000 to £2,000,000 [ER 3.3.302].

59. The ExA considered the concerns raised by NH to be well found and that the sum secured in the Planning Obligation is inadequate to mitigate the effects of the Proposed Development as the mitigation would not be fully funded. The ExA therefore recommended that the Secretary of State gives this little weight against the granting of the Order, in line with paragraph 5.214 of the NPSNN [ER 3.3.497 & 3.3.503].

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

60. The Secretary of State notes that LCC raised unresolved concerns regarding the ability of the junction to be constructed within the Application site and if there were any issues that were raised in the Stage 1 RSA, submitted at Deadline 8, how they would be addressed. [ER 3.3.505]. The ExA highlighted that no issues were raised in the Stage 1 RSA and was content that subject to further iterations as part of any detailed design a satisfactory design solution could be achieved for this part of the Proposed Development within the Application site. The ExA recommended that the Secretary of State gives this neutral weight in the planning balance [ER 3.3.507].

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

61. The Secretary of State notes that mitigation measures such as lengthened flares on all arms, introducing an indicative right turn from Normandy Way to Ashby Road, the provision of two lanes through the junction in a westbound direction and pedestrian crossing phasing have been proposed at this junction. However, she notes that while the Applicant's results showed that the junction performance would be better compared with the results in the TA, they are not expected to mitigate the impacts of the Proposed Development in full [ER 3.3.170]. The ExA agrees with the Applicant that retaining the pedestrian phase, despite adversely affecting the operation of the junction for motorised users, would be appropriate to ensure that the Proposed Development would facilitate non-car borne modes. The ExA recommended that the Secretary of State gives this neutral weight in the overall planning balance [ER 3.3.509].

B4669/ Stanton Lane, Sapcote junction (Junction 39)

62. The Secretary of State notes that the Stage 1 RSA highlighted at this junction visibility issues from the western pedestrian waiting point due to the existing hedgerow and the geometry of the junction. She notes that the ExA considered the Applicant's proposal at detailed design of unobstructed visibility sprays to be adequate in mitigating this issue and recommended this should be given neutral weight in the overall planning balance [ER 3.3.516 - 3.3.517].

Sapcote Village

63. LCC, Sapcote Parish Council, CPRE Leicestershire and the ExA raised significant highway safety concerns regarding Sapcote village centre that would occur as a result of the Proposed Development [ER 3.3.380, 3.3.390 and 3.3.519]. The Secretary of State notes that as a result of the Proposed Development, there would be an increase of 275 HGVs on the western side of the village centre and 262 HGVs on the eastern stretch, making it more likely that two HGV's travelling in opposite directions would coincide on the road running through the village [ER 3.3.525 - 3.3.526]. The main safety concern relates to there being insufficient room to pass and the overrunning of the narrow footways located on the north and south side of the B4669 by HGVs travelling through the village centre [ER 3.3.526]. She also notes that the bus stop located on the narrow footways results in the congregation of school children and other pedestrians, both waiting for the bus and walking throughout the village [ER 3.3.531]. The ExA considered that the combination of the numbers of pedestrians in the area and the increased likelihood of HGV's coinciding and therefore overrunning on to the footways, would result in an unacceptable highway safety risk [ER 3.3.533]

64. The ExA considered placing weight limit restrictions as a mitigation, but was advised that this would not be possible with the route being classified as a 'B' road. The ExA also concluded that the weight limit restriction requirement may not be suitable if further consultation concluded that the restriction would be inappropriate, as this would negate any development consent, and because the modelling conducted did not include a scenario where HGVs were not able to travel through Sapcote [ER 3.3.535 - 3.3.538].

65. The ExA concluded that due to unacceptable highway safety risk, it recommends that this matter weighs substantially against the Proposed Development [ER 3.5.533]. The Secretary of State is minded to agree with the ExA.

66. The Secretary of State notes that the ExA concluded that the unacceptable highway safety risk in the village of Sapcote could not be mitigated within the terms of the Application [ER 3.3.539]. However, she still invites comments from the Applicant on the ExA's conclusion on the highway safety risk at Sapcote.

Stoney Stanton

67. The ExA considers that the increased volume of traffic expected at the western junction at Stoney Stanton would not result in an unacceptable highway risk and would be helped by the proposed signalisation of the junction [ER 3.3.541 - 3.3.542]

68. In respect to the eastern junction, the ExA considers that the Applicant has not taken all reasonable steps to mitigate the impacts of the junction operating, in its view, significantly over capacity, and this is not in line with the policy expectation set out in paragraph 5.213 of the NPSNN [ER 3.3.543]. The ExA therefore considers that the impacts should have limited weight against the development, in line with the paragraph 5.214 of the NPSNN [ER 3.3.545].

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

69. The Secretary of State notes that all parties agreed that the impacts at this junction would be mitigated through the proposed works at this junction which is to be secured under a separate s278 agreement under the Highways Act 1980 [ER 3.3.546]. The ExA notes that, in a scenario where the proposed improvement does not happen, the Applicant proposes a reduced scheme (Work 17) to mitigate the effects of the Proposed Development alone secured in the ExA's recommended Order through requirement 7 [ER 3.3.547].

70. The ExA noted that although paragraph 5.290 of the 2024 NPSNN indicates that the Applicant could propose works to help provide resilience to the wider network, the 2014 NPSNN, which is the relevant NPS for this Application, does not include this suggestion and therefore recommended that the Secretary of State place neutral weight in the planning balance on this matter [ER 3.3.549].

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

71. The Secretary of State notes that the Applicant acknowledged that the mitigation proposed at this junction would not fully mitigate the impacts from the Proposed Development, and the ExA considered that this does not comply with paragraph 5.213 of the NPSNN. She also notes that the ExA therefore recommended that in respect of this matter, she should place limited weight against the Proposed Development [ER.3.3.550 - 3.3.551].

Narborough Level Crossing

72. The Narborough Level Crossing is located near Narborough Station and facilitates the travel of vehicles and pedestrians along Station Road. 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 and NR confirmed 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 [ER 3.3.553 – 3.3.554].

73. The ExA accepted that each train journey would result in a 4 minute closure assuming it did not coincide with the closure associated with another train path. The Applicant highlighted that in the worst-case scenario for barrier closure when trains make their journey, the Level Crossing would be closed for a maximum of 25 minutes and 22 seconds between 15:00 hours and 16:00 hours [ER 3.3.558]. Furthermore, the chance of overlapping between train paths, extending individual closures is also likely to increase, resulting in an increase in the chances that the traffic queue would not dissipate prior to the next closure of the crossing, resulting in queues and congestion worsening [ER 3.3.558 – 3.3.560]. The ExA concluded that due to the additional closure expected at the Level Crossing, the Secretary of State should give highway delays moderate weight against the Proposed Development [ER 3.3.562].

74. The Secretary of State also notes the ExA concerns about additional closure time and that this would unfairly impact those with ambulatory issues as they would be unable to utilise the stepped bridge over the railway [ER 3.3.561]. She notes that the ExA concluded that this impact would not advance equality of opportunity for those with protected characteristics of age or disability defined by the Equality Act [ER 3.3.561 and 5.4.10].

75. The Secretary of State invites comments from the Applicant on the concerns raised by the ExA on the impact on ambulatory impacted pedestrians at the Level Crossing.

Elmesthorpe

76. The Secretary of State notes that concerns were raised by the residents of village of Elmesthorpe that insufficient consideration had been given to the impacts on traffic effects in the village, and over the Applicant's lack of a link analysis of the traffic on the B581. [ER 3.3.563]. She also notes that concerns were raised on the position of the pedestrian crossing of the B581 in the vicinity of Bostock Close, and concerns about employees associated with the Proposed Development parking in the Elmesthorpe area and then walking along Burbage Common Road to the Application site [ER 3.3.564 – 3.3.565].

77. The ExA concluded 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. The ExA was therefore satisfied that whilst it would have been beneficial for the Applicant to set out the link analysis, it was not required [ER 3.3.566]. The ExA was also satisfied that the position of the pedestrian crossing would be safe, as confirmed by the Stage 1 RSA [ER 3.3.568]. Finally, on the concerns about parking, the ExA concluded that it is unlikely that employees of the Proposed Development would park in Elmesthorpe to then walk to the Application site, noting that there would be free car parking for employees on site and that parking restrictions could be secured at a later date, if necessary utilising the proposed £200,000 plus financial penalties fund addressed above [ER 3.3.569].

Desford Crossroads (A47/B582) (Junction 9)

78. The Secretary of State notes that a s106 Planning Obligation was not agreed between LCC and the Applicant due to the Applicant's reluctance to contribute towards the works at the Desford Crossroads; its position being that a contribution "*is not necessary or related to the Project ... the impact of the development at Desford Crossroads does not warrant any mitigation*" [ER 3.3.570]. She also notes that the LinSig capacity assessment showed that the Desford Crossroads would operate at overcapacity in the year 2036 and the Applicant's view that it would not be significant [ER 3.3.571].

79. The ExA considered that without any mitigation, the Proposed Development would result in the junction deteriorating and would therefore not be in line with paragraphs 5.213 of the NPSNN. The ExA however recommended that the Secretary of State should give

little weight against the granting of the Order for this matter, given the degree of the effect of the Proposed Development at this junction [ER 3.3.572].

Strategic Road Network Closures

80. The Secretary of State notes that in response to the concerns raised around re-routing traffic if the SRN was closed, the ExA, having considered the representation from NH and the Applicant outlined at ER 3.3.574 – 3.3.575, concluded that the operation of the Proposed Development would not materially add to the congestion which would otherwise inevitably occur [ER 3.3.573 and 3.3.576].

Rail

81. The Secretary of State notes that concerns were raised during the Examination on the impact of the rail paths on other operators and whether the limited rail capacity could be better utilised [ER 3.5.581]. She notes that the ExA considered whether the use of the train paths would prevent the increase of passengers services or the line would fall into the Government's policy of 'first come, first served' [ER 3.3.581]. The ExA noted that NR consider that sufficient network capacity is available to support the level of traffic to the Proposed Development, but the ExA considered that it is not the responsibility of the planning system to regulate rail use [ER 3.3.582 - 3.3.583].

82. In respect to the concerns raised by Friends of Narborough Station ("FONS") around ensuring the trains do not 'run away' due to the gradient and the speed at the entrance to the site, the ExA was satisfied with the Applicant's response that the gradient of the platform is 'virtually flat' and would also be subject to further detailed design approval under requirement 6. The ExA recorded that NR confirmed that the design would allow a 25mph turn out and are of standard geometry and suitable both for the proposed turnout speed and level of usage envisaged [ER 3.3.586].

83. The ExA noted that FONS also raised concerns around the impact on the potential failure of a freight train on the line, referring to an example in 2023 where a broken down freight train blocked the line between Nuneaton and Hinckley for 5 hours [ER 3.3.590]. The Secretary of State notes that the ExA was satisfied with NR's explanation that the failure of freight trains is rare and recessing facilities being available east of Leicester and in the Nuneaton area meant there is no need to recess a failed train at the Application site [ER 3.3.591].

84. The ExA concluded that they are satisfied that the Proposed Development could be satisfactorily integrated into the local and wider railway network and given the importance of this in delivering an SRFI, therefore recommended the Secretary of State to place moderate weight in favour of the Order on this matter [ER 3.3.595].

Public Rights of Way

85. The Secretary of State notes that concerns were raised by LCC, Carlton Parish Council and East Shilton Town Council about the current layout of the Public Right of Way

("PRoW") network which would not be compatible with the Proposed Development [ER 3.3.326 – 3.3.327, 3.3.370, 3.3.372 and 3.3.597]. She notes that the Applicant proposed a contribution towards the upgrading of an existing bridleway and the provision by Hinckley and Bosworth Borough Council of a permissive path close to the Application site and would provide a new bridleway to the north of Burbage Wood in order to mitigate this [ER 3.3.598].

86. The ExA noted 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 and the equivalent expectation in what became paragraph 5.282 of the 2024 NNNPS, which adds that "*where [mitigation] cannot be done, the applicant is required to provide reasoning for this*". It highlights that the Proposed Development would lead to an 33% increase in distance for pedestrians travelling between Elmesthorpe and Burbage Common Woods by permissive routes or 125% by definitive routes, with an increase of 306% for equestrians [ER 3.3.604]. Cyclists could follow either route. The ExA considers that the alternatives proposed by the Applicant would not mitigate these longer journeys and would result in severance for both pedestrians and equestrians [ER 3.3.605]. The Secretary of State notes that the ExA considered that due to the conflict of road and rail traffic, it is unsafe to re-provide the direct routes through the Application site in line with the policy test set out in the 2004 NNNPS (and NPSNN), but that it should be possible to dedicate at least a footpath through the site following detailed design [ER 3.3.606].

87. The Secretary of State notes that a new bridleway is proposed to run through 22ha of open space that would be provided to the north of Burbage Wood [ER 3.3.608]. She notes that the ExA recommended that positive weight should be given to this proposal due to the benefits that would occur for those using that area [ER 3.3.609].

88. The Secretary of State notes the ExA's consideration at ER 3.3.610 – 3.3.617 of the pedestrian level crossings that it is proposed be closed and the conclusion that the impact of all of the closures would be neutral.

89. The Secretary of State also notes that under Requirement 27 the Public Rights of Way appraisal and strategy must be submitted and approved before any works commence. LCC raised concerns that the Public Rights of Way appraisal and strategy cannot be relied upon under Requirement 27 as they only make recommendations. However, she notes that the ExA considered that appropriate arrangements could be made at the detailed design stage [ER 3.3.618].

90. Overall, the ExA recommended that the Secretary of State places moderate weight against the Proposed Development in relation to the closure and diversions of PRoWs not being mitigated, resulting in severance for pedestrians and equestrians between Elmesthorpe and Burbage Common Road [ER 3.3.619].

Overall Conclusion on Traffic and Transport

91. Taking all matters into consideration, the ExA's recommendation that in relation to Traffic and Transport matters the Secretary of State should refuse development consent due to the inadequate analysis undertaken on the impact of the Proposed Development at two junctions, the M69 J2 and M1 J21/M69 J3, and because of the unacceptable increase in highway safety risks in the village of Sapcote [ER 3.3.620 – 3.3.622]. As set out above, the ExA also recommended that other Traffic and Transport effects such as the overall increase in traffic on the networks, the Sustainable Travel Strategy as put forward by the Applicant and the severance of PRoWs also weigh against the making of the Order [ER 8.2.8]. The Secretary of State is minded to agree with the ExA's conclusion on Traffic and Transport.

Landscape and Visual

92. The ExA's consideration of the landscape and visual effects of the Proposed Development is set out in section 3.4 of the ExA's Report, The Secretary of State notes that tranquillity is also covered in this section.

93. The Secretary of State notes the ExA's summary of the case for the Applicant [ER 3.4.11 – 3.4.34] and case for the Interested Parties [ER 3.4.35 – 3.4.40] on landscape and visual effects. She has carefully considered the ExA's findings and conclusions.

94. The ExA noted concerns expressed about the removal of single veteran oak tree [ER 3.4.37] but considered it is justified and therefore has little significant weight against the making of the Order [ER 3.4.62, first indent].

95. The ExA notes that it is inevitable that there would be some adverse landscape and visual harm from a development of this size and that these effects should be avoided, minimised and mitigated as far as possible, in accordance with paragraph 5.158 of the NPSNN [ER 3.4.44]. It considered there would be considerable adverse impacts in both landscape and visual terms during construction and operation of the Proposed Development, transforming the landscape from broadly rural to commercial/industrial in nature. Although the ExA considered this would be mitigated to some extent, it concludes that substantial residual harm would remain and this would weigh substantially against the making of the Order [ER 3.4.62, second indent].

96. The ExA also considered that the combination of noise with the visual presence of the buildings would create a marked change to the experience of tranquillity for recreational users of nearby external areas including Burbage Common and along the public right of way through and around the Application site and that this adds to the overall degree of landscape and visual harm [ER 3.4.62, third indent].

97. The ExA considered that there would also be harm to the nature and function of the Green Wedge between Hinckley, Barwell and Burbidge but that in the context of the consideration of a nationally significant infrastructure project where the decision should be made primarily against the provisions of an NPS, this has only moderate weight against the making of the Order [ER 5.2.21].

98. The ExA further considered that the Applicant has had insufficient regard to satisfying the criteria of good design by minimising the adverse landscape and visual effects of the Proposed Development through appropriate design and there is therefore conflict with the objectives of paragraphs 5.157 and 5.158 of the 2014 NPSNN [ER 3.4.61]. However, it acknowledges that the detailed design and layout of the Proposed Development would be considered at a later date through requirement 6 of the recommended Order (Detailed design approval) [ER 3.4.58].

99. The Secretary of State is minded to agree with the ExA's conclusions in respect of the weight to be accorded against the making of the Order in respect of landscape and visual effects.

Noise and Vibration

100. The Secretary of State notes that the Applicant's assessment of impacts from noise and vibration is contained in Chapter 10 of the ES [ER 3.5.6]. The main issues examined by the ExA relating to noise and vibration are set out at ER 3.5.94 – 3.5.139. The Secretary of State has considered the summary of the case put forward by the Applicant [ER 3.5.6 – 3.5.52] and the concerns raised by Interested Parties on the examination issues alongside the Applicant's responses to those concerns [ER 3.5.53 – 3.5.93]. The Secretary of State has carefully considered the ExA's findings in relation to the Application [ER 3.5.94 – 3.5.139] and in particular to the ExA's consideration of the Applicant's assessment in light of the criticisms submitted during the Examination.

101. On the question of the appropriateness of the Applicant's assessment, the Secretary of State notes that the ExA, having had careful regard to the concerns raised by Interested Parties and as a result of answers and clarification provided during the Examination concluded that the Applicant's assessment is sufficient to be relied upon. The ExA was also satisfied that the Applicant's assessment accords with the requirement set out in paragraph 5.193 of the NPSNN [ER 3.5.121]. Additionally, the ExA concluded that there was a low overall level of uncertainty with the assessment [ER 3.5.122].

102. The ExA concluded that significant residual adverse effects could occur during both construction and operation at a number of receptors. However, the ExA considered that even if significant residual effects were to occur, for the reasons set out by the ExA at ER 3.5.123 - 3.5.127, the effects during the construction of the Proposed Development would not be unacceptable and that the Applicant has demonstrated that any adverse impacts would be mitigated and minimised in accordance with paragraph 5.195 of the NPSNN [ER 3.5.128]. On operational noise, for the reasons set out at ER 3.5.129 – 3.5.138, the ExA concluded that the operation of the Proposed Development would not cause an environment dominated by noise or harmful vibration, and that noise would not be highly perceptible at most times [ER 3.5.139]. Overall, the ExA considered that the measures and controls included in the ExA's recommended Order would be adequate to mostly avoid significant adverse impacts on health and quality of life in respect of noise and vibration [ER 5.2.24]. However, the ExA considered that there would be possible

significant residual effects to a relatively small number of receptors and these would typically occur during worst case scenarios, although noise is likely to be lower than predicted, and that this would weigh against the Proposed Development as this conflicts with paragraph 5.195 of the 2014 NPSNN [ER 5.2.26]. The Secretary of State is also minded to agree with the ExA's conclusions on noise and vibration impacts.

103. The Secretary of State is aware that during the examination, Dr. David Moore (Dr Moore) and Mr William David Moore (Mr Moore) raised concerns regarding the ambient noise levels used by the Applicant to assess impacts from noise as a result of the Proposed Development and the information used to assess train movements, suggesting that it has inflated ambient noise levels to reduce the magnitude of effects [ER 3.5.54 – 3.5.56]. The ExA considered the Applicant's response outlined at ER 3.5.58 – 3.5.63 and concluded that its baseline is representative and was satisfied that the methods used by the Applicant to determine ambient noise was sufficient and in line with paragraph 5.193 of the NPSNN. However, the ExA recorded that it had received a further submission from Dr Moore and Mr Moore at Deadline 8 of the examination (8 March 2024) [ER 3.5.143]. The additional submission included a third-party noise report indicating that that the daytime, night-time and 24-hour noise levels measured at Billington Lakes are all notably lower than those measured by the Applicant [ER 3.5.144 and 3.5.147]. The submission also suggests that the road noise levels used by the Applicant in its Noise Update Note are in error by 9.6Db [ER 3.5.148]. The ExA highlighted that it was unable to provide the Applicant with the opportunity to comment on this additional information and that it had not taken it into account as it considered that it would be procedurally unfair to the Applicant to do so [ER 3.5.149]. The Secretary of State therefore invites the Applicant to comment on the submissions of Dr Moore and Mr Moore listed in the ExA's report at paragraph 3.5.143.

Socio-Economic Considerations

104. The Applicant's assessment of the socio-economic impacts expected as a result of the Proposed Development is contained within Chapter 7 of the ES, and the ExA's consideration of this topic is set out in section 3.6 of the Report. The Secretary of State has noted the ExA's detailed summary of the representations made during the Examination by the Applicant [ER 3.6.12 – 3.6.35] and Interested Parties [ER 3.6.36 – 3.6.62] on socio-economic effects.

105. The ExA concluded that the Proposed Development would result in significant job creation opportunities in the Leicestershire area, and that the Applicant's proposed Employment and Skills programme would assist more local people into work [ER 3.6.65]. On housing and impacts on local social infrastructure, the ExA concluded that the existing planned housing supply provisions would be sufficient to meet local housing needs [ER 3.6.66], the existing social infrastructure is sufficient to absorb the Proposed Development and the proposal for an additional 22ha of green space to extend Burbage Common is acceptable mitigation [ER 3.6.67 and 3.6.68], and therefore the Proposed Development would not result in any negative impacts. The ExA was satisfied that the Applicant's Health

and Equality Briefing Note considered the impacts of the Proposed Development on various health and equality issues, and that apart from the effect of the Proposed Development on the occupiers at the Aston Firs Travellers site the concerns raised by Interested Parties have largely been adequately assessed [ER 3.6.70]. Therefore, on health issues generally, the ExA concluded that the Proposed Development would have limited harmful impact. The ExA considered that while the vast majority of agriculture land is graded as moderate and therefore the use of the land is in accordance with the National Planning Policy Framework, a small proportion of good agricultural land would be lost as a result of the Proposed Development which carries little weight against the granting of the Order [ER 3.6.71]. The Secretary of State is minded to agree with the ExA's conclusions on these matters.

106. On the effects of the acoustic fence on the occupiers of the Aston Firs Travellers site, the Secretary of State is also minded to agree with the ExA that:

- The acoustic fence would have a very significant, visually dominant and oppressive effect, to the considerable detriment of the living conditions and potentially the mental health of a small number of the occupiers of this site [ER 3.6.81], noting that such harm from a fence in this location would typically result in the refusal of a planning application [ER 3.6.76].
- the effects of the acoustic fence would result in the discrimination of race (as defined by the Equality Act 2010) as it would be seen as a physical dividing barrier between Gypsy and Traveller Community and the non-Gypsy and Traveller Communities [ER 3.6.79 and 5.4.11]; and
- the Proposed Development would not accord with paragraph 3.3 (and 5.195) of the NPSNN and would also be contrary to Government's Planning Policy for Travellers Sites [ER 3.6.82]. The ExA in particular highlights that 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 [ER 3.6.79].
- The Secretary of State would add that one of the key aims of the Planning Policy for Travellers Sites is to increase the number of traveller sites in appropriate locations to address under-provision and maintain an appropriate level of supply (PPfTS paragraph 4). In light of the recognised under-provision of such sites and the need to maintain an appropriate level of supply, the Secretary of State is of the view that the degradation that would occur to the Aston Firs Travellers site as a result of the Proposed Development would not be in keeping with this aim.

107. The Secretary of State notes that requirement 6 of the ExA's recommended Order (Detailed design approval) requires the Applicant to submit, before the commencement of construction, the height, position, form, construction and appearance of the acoustic barriers including provision for landscaping between the acoustic barrier and the Aston Firs Travellers site and between the acoustic barrier and the site boundary of the junction

of the A47 link road with the B4668 Leicester Road. The Secretary of State asks the Applicant whether it is able to provide any details of the acoustic barrier design now so that she is able to determine whether the negative impacts identified by the ExA can be avoided or mitigated. If the Applicant is able to submit details of the acoustic barrier design, the Secretary of State requests that the Applicant also provide evidence to justify how the harm identified by the ExA will be avoided or mitigated through the proposed design. The Secretary of State also invites the Applicant to submit details of any further measures that might be included in the Order to avoid or mitigate the potential harm to the Aston Firs Travellers site.

Air Quality and Emissions

108. The ExA's consideration of the effect of the Proposed Development in terms of air quality and emissions on human receptors is set out in section 3.7 of the ExA's Report, The Secretary of State notes that the potential effect of carbon emission on climate change is also covered in that section.

109. The Secretary of State notes the ExA's summary of the case for the Applicant [ER 3.7.18 – 3.7.34] and case for the Interested Parties [ER 3.7.35 – 3.7.40] in respect of air quality and emissions. She has carefully considered the ExA's deliberations and conclusions.

110. She notes that the ExA agrees with the Applicant's assessment of the Proposed Development's environmental effects in respect of air quality. In particular, she notes that the ExA concluded that:

- the residual effects on human receptors from dust and road traffic during the construction phase would be local, temporary and not significant in accordance with the Institute of Air Quality Management ("IAQM") and Environment Protection UK ("EPUK") guidance and can be managed through the Construction Environmental Management Plan;
- there would be 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 but the residual impacts would be local, permanent negligible and not significant in accordance with IAQM/EPUK guidance;
- there would be no 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; and
- 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 [ER 3.7.58].

111. The Secretary of State notes that, when assessing the Application in respect of carbon emissions, the ExA gave greater weight to the advice contained in the then draft NNNPS (since designated as the 2024 NNNPS) rather the NPSNN on the basis that the draft NNNPS was the Government's most recent advice in relation to carbon emissions [ER 3.7.51]. As is noted above in paragraph 22 of this letter, the Secretary of State considers that an application must be decided in accordance the relevant NPS which was designated when that application was made except to the extent that one or more of subsections (4) to (8) of section 104 of the PA2008 applies. In this instance, because the Application was accepted for examination before 24 May 2024, it is the NPSNN that is relevant, although the 2024 NNNPS may be important and relevant to the decision. In this instance she notes that the ExA concludes that the Proposed Development would comply with the relevant policies set out in both the NPSNN and the then draft NNNPS [ER 3.7.59]. The Secretary of State notes the Applicant's analysis of carbon emissions associated with the Proposed Development at ER 3.7.33 – 3.7.34 and the ExA's view that given that the residual carbon emissions would represent less than 1% of both the representative target for 2036 and the total UK's 6CB, and she is minded to agree 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 [ER 3.7.56].

112. The Secretary of State also notes that the ExA considered that:

- the Proposed Development would not affect or delay the Government's ability to meet carbon budgets and, ultimately, net zero; and
- the approximate saving of 83 million HGV road miles per annum as a result of the transfer of goods movements from road to rail would save approximately 104.783ktCO₂ per annum which should be given moderate weight in favour of making the Order [ER 3.7.58 – 3.7.59].

113. The Secretary of State also notes that the ExA recommended that the slight harm to a limited number of sensitive receptors in relation to air quality carries little weight against making the Order but the reduction in overall GHG emissions should be given moderate weight in favour of making the Order [ER 3.7.60]. The Secretary of State is minded to agree with the ExA.

Biodiversity

114. The ExA's consideration of impacts on Biodiversity is set out in section 3.8 of the Report. The Secretary of State notes that the Applicant's assessment of ecology and biodiversity issues is contained in chapter 12 of the ES and is summarised by the ExA at ER 3.8.26 - 3.8.53. The ExA reports that overall, the Applicant's assessment identified that with the mitigation and compensation measures secured by the Ecological Mitigation and Management Plan and Landscape and Ecological Management Plan, no significant negative effects are likely as a result of the Proposed Development [ER 3.8.53].

115. The Secretary of State notes the ExA's summary of the case for the Interested Parties [ER 3.8.54 – 3.8.75] on biodiversity. The Secretary of State notes that the Statement of Common Ground agreed between the Applicant and Natural England did not identify any areas of disagreement on biodiversity issues [ER 3.8.56]. The Secretary of State also notes that the Statement of Common Ground agreed between the Applicant and both Rubby Borough Council and Harborough District Council raised no objections on biodiversity and ecology grounds [ER 3.8.74].

116. However, the ExA reports that while there had been progress between the Applicant and BDC and HBBC regarding a number of issues [ER 3.8.77], the issues listed by the ExA at 3.8.59 of the Report remained outstanding. The Secretary of State is minded to agree with the ExA that all of the outstanding information requested by BDC and HBBC can be controlled, managed and monitored through the requirements in the ExA's recommended Order relating to the Construction Environmental Management Plan (requirement 9), Landscape and Ecological Management Plan (requirement 21), Ecological Mitigation and Management Plan (requirement 22), Landscape Scheme (requirement 23) Biodiversity Net Gain (requirement 31) and Woodland Management Plan (requirement 33). These requirements must be approved by the discharging local planning authority prior to the commencement of construction works in the case of the Construction Environmental Management Plan, and prior to any phase of the project in respect of the other requirements listed above. The Secretary of State is therefore minded to agree with the ExA that the matters raised by BDC and HBBC can be managed in this manner to protect features of biodiversity and ecological importance [ER 3.8.80].

117. On Biodiversity Net Gain, the Secretary of State understands that BDC's concerns relate to a lack of clear distinction between habitat creation enhancement for Biodiversity Net Gain, and habitat creation for the provision of public open space, and that HBBC made a similar point and suggested revised drafting to clarify this point [ER 7.4.128]. The ExA accepted the Applicant's argument, noting that Biodiversity Net Gain approvals would be resolved post consent [ER 7.4.130], that a distinction does not need to be made between the two habitats for creation, and that Biodiversity Net Gain assessment considers all space, formal and informal, when calculating gains and losses [ER 7.4.129]. The Secretary of State is minded to agree.

118. The Secretary of State has carefully considered the ExA's considerations and conclusions. She notes that overall, the ExA concluded that the Proposed Development would be consistent with the policies set out in the NPSNN in that it seeks to mitigate and enhance areas of ecological importance, and is also consistent with the National Planning Policy Framework and local planning policy [ER 3.8.86] and is minded to agree with the ExA's conclusions on the Proposed Development's compliance with relevant policy.

Cultural Heritage

119. The ExA's consideration of the effects of the Proposed Development in respect of cultural heritage is set out in section 3.9 of the ExA's Report. The Secretary of State notes

that where the ExA found would be occasioned to any heritage asset, it makes a finding in that section but the balancing exercise is principally undertaken in the section 5 of the Report relating to its overall conclusions on the case for development consent [ER 3.9.2].

120. The Secretary of State notes the ExA's summary of the case for the Applicant [ER 3.9.14 - 3.9.60] and case for the Interested Parties [ER 3.9.61 – 3.9.87] on effects on cultural heritage, including the Statements of Common Ground between the Applicant and each of Historic England, BDC and HBDC, which contained no outstanding matters of disagreement [ER 3.9.64 and 3.9.68]. She notes the Applicant's detailed assessment of the potential impacts on the setting of individual assets is set out in Appendix 13.2 of the ES, which concludes that the majority of those assets have no potential to be affected by the Proposed Development due to a lack of any visual or functional association with it. [ER 3.9.16]. She notes that where the Applicant has concluded there is the potential for the Proposed Development to result in effects on heritage assets, the ExA considered those assets in its Report. She has carefully considered the ExA's deliberations and conclusions on cultural heritage.

121. Having considered the effect of the Proposed Development on designated and non-designated heritage assets, the ExA finds that there would be less than substantial harm to a number of designated and non-designated assets and the loss of non-designated assets would be significant but can be mitigated by requirement 14 of the ExA's recommended Order [ER 3.9.88]. The ExA's view on the weighting of the harm to those heritage assets in the overall balance is set out in the Planning Balance section of this letter.

122. The Secretary of State notes the ExA concludes that the Proposed Development would, in relation to the effect on their settings, have 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 [ER 3.9.90].

123. The Secretary of State also notes that the ExA considered that Burbage Common is not a heritage asset [ER 3.9.91] and that the less than substantial harm to the setting of a number of heritage assets would not breach the Burbage Neighbourhood Plan and this would be at worst a minor adverse impact [ER 3.9.92].

124. The ExA considered that requirement 14 in the ExA's recommended Order is an appropriate measure to mitigate potential impacts on archaeology within the Order limits. The ExA therefore considered that this means that effects on archaeology would carry neutral weight in the overall consideration of the Application [ER 3.9.93].

125. The ExA also considered that the Proposed Development would comply with the policies set out in the relevant 2014 NPSNN, subject to the balancing exercise in section 5 of the Report. The ExA concludes that the loss of the non-designated assets, considered at ER 3.9.55 – 3.9.59, can be accommodated as their importance has been assessed and recording is an acceptable means to comply with Policy DM12 'Designated and non-designated heritage assets' of the Blaby District Local Plan (Delivery) Development Plan Document [ER 3.9.94].

126. The Secretary of State is minded to agree with the ExA's conclusions.

Water and Flood Risk

127. The Applicant's assessment of the impacts of the Proposed Development on water resource and drainage is contained within Chapter 14 of the ES, which is accompanied by a Flood Risk Assessment, a sustainable drainage statement ("SDS"), a Concept Surface and Foul Water Drainage Strategies and Concept Drainage Strategies for the A47 Link Road and M69J2 [ER 3.10.13]. The Secretary of State notes that a Preliminary Water Framework Directive Assessment was also submitted in support of the Application [ER 3.10.55].

Flood Risk

128. Secretary of State notes that the Proposed Development is situated within the Humber River Basin [ER 3.10.9]. The ExA describes the watercourses network in the vicinity of the Order limits at ER 3.10.17 – ER 3.10.20. The Secretary of State notes that while the majority of the Proposed Development will be located in a Flood Zone 1 ("FZ1") area, the new rail connection to the existing Main Line, the A47 Link Road between the M69 and the B4668 and the M69 sliproads will partially fall within Flood Zone 2 ("FZ2") and Flood Zone 3 ("FZ3") areas [ER 3.10.15].

129. The ExA was satisfied that the Applicant's Flood Risk Assessment provides an adequate basis for the SoS to make their assessment [ER 3.10.78]. The ExA was also satisfied that the Applicant has reasonably considered alternative sites [ER 3.10.85]. For the exception test, the ExA reports that given no information was provided by the Applicant as to which part of the Proposed Development falls within the FZ3a and FZ3b subcategories, the ExA has considered the parts identified by the Applicant as FZ3 areas as if they all fall within FZ3b [ER 3.10.87].

130. The ExA concluded that while the main part of the Application site would be located within FZ1 and F2, the design solution with the small intersection between FZ3 and the Proposed Development is the only one suggested as appropriate for the connection to the

Hinckley to Leicester railway line. The ExA also considered that the design of the Proposed Development on the main part of the Application site would meet the Exception test for river flood risk. The ExA also considered that the 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. In addition, the ExA recorded that the Environment Agency (“EA”) and LCC as the local lead flood authority are content that the Proposed Development would be appropriately designed and raised no concerns with the Applicant’s conclusion that the Proposed Development would be safe for its lifetime, without increasing flood risk elsewhere [ER 3.10.94]. On NH’s objections in relation to compulsory acquisition and temporary powers for the possession of land, the ExA notes that these objections relate to the drainage of the strategic road network which allows discharges in the unnamed ordinary watercourse on the eastern side of the Application site [ER 3.10.74]. The Secretary of State is minded to agree with the ExA that its proposed amendment to requirement 16 of the ExA’s recommended Order, as set out Table 11 in section 7 of its Report, would allow for appropriate arrangements to be made for the drainage of the SRN.

131. Overall, the ExA was satisfied that in the absence of any evidence to the contrary, the Proposed Development would pass both the Sequential and Exception Tests in respect of rain water, pluvial, flooding [ER 3.10.96]. The ExA was also satisfied that the Proposed Development would be acceptable in terms of groundwater and that it would have no effect either on or from coastal flooding, canals, reservoirs and similar waterbodies [ER 3.10.97]. The ExA concluded that the Proposed Development would comply with the NPSNN [ER 3.10.100] and the Secretary of State is minded to agree.

Water Framework Directive

132. The Secretary of State notes that the ExA was satisfied that the Applicant’s Preliminary Water Framework Directive Assessment provides an adequate basis for the Secretary of State to make her assessment [ER 3.10.102].

133. The ExA, noting the lack of objection from the EA and LCC as the lead local flood authority, concluded that it had no reason to dispute the Applicant’s analysis and conclusions that the Proposed Development would not have an adverse effect on any Water Framework Directive waterbody [ER 3.10.103]. The Secretary of State also notes that the ExA considered that there may be a small level of improvement as a result of the Proposed Development through the removal of agricultural activities. Overall, the ExA concluded that the Proposed Development would be Water Framework Directive compliant [ER 3.10.104], would be likely to result in a small improvement to the condition and value of the potentially affected water bodies [ER 5.2.44], and comply with the relevant requirements in the NPSNN [ER 3.10.107] and with relevant local policies dealing with effects on the water environment [ER 3.10.108]. The Secretary of State is minded to agree.

Energy

134. The ExA's consideration of the energy that would be produced on site and that which would be utilised in the operation of the Proposed Development is set out in section 3.11 of the ExA's Report.

135. In terms of generation on site, the Secretary of State notes that the Applicant proposes that some 50% of the roof area would be occupied by photovoltaic panels [ER 3.11.10] with a peak output of 42.4MW [ER 3.11.12] together with 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 with an electrical generation capacity of up to 5MW [ER 1.3.21] as a back up which the Applicant estimates would operate for less 50 hours per annum [ER 3.11.14].

136. The Secretary of State has carefully considered the ExA's deliberations and conclusions on energy. She notes the ExA's concern that by not applying for an energy NSIP, the Applicant had missed an opportunity to maximise renewable energy production [ER 3.11.30]. She further notes that the ExA's recommended Order includes a provision that prevents the construction of a generating station within the meaning of section 14(1)(a) of the PA2008 which the ExA considered provides flexibility should the definitions of the threshold for energy NSIPs be clarified in law or be changed [ER 7.4.12].

137. The Secretary of State notes that the ExA considered that the Proposed Development would produce "a significant quantum of energy from renewable sources" and this would help to deliver the Transport Decarbonisation Plan [ER 3.11.32]. The ExA considers that although the Energy Centre would be 'hydrogen ready', it should be assessed on the basis that it would be fired, at least initially, by non-renewable fuel sources [ER 3.11.33].

138. The Secretary of State notes the ExA concludes that it would have given substantial weight to the low carbon generation capacity had that been greater than the NSIP threshold but that as the capacity would be lower and predominately used on site, it considers that energy production should be given little weight in favour of making the Order [ER 3.11.34 - 3.11.35]. The Secretary of State is minded to agree.

Geology and Soils

139. The Secretary of State notes that the main part of the Application site consists of underdeveloped agricultural land with a number of farm buildings, and that the Applicant's assessment of the expected impacts on geology, soils and contamination (Chapter 16 of the ES) considers impacts on geology, soils and contamination and is supported by a number of other relevant documents [ER 3.12.6]. The Applicant's assessment is summarised at ER 3.12.7 – 3.12.11 and the case for the Interested Parties at ER 3.12.12 – 3.12.16.

140. The Applicant highlighted that further ground investigations will be undertaken to support detailed earthworks and foundation design which would be completed prior to construction works commencing following the making of the Order [ER 3.12.7]. The ExA

agreed with this approach and also highlighted that ground gas monitoring, and a ground gas risk assessment should be undertaken [ER 3.12.18].

141. The ExA concluded that the methodologies used, and studies submitted comply with paragraphs 5.117 and 5.118 of the NPSNN [ER 3.12.17]. Further, the ExA recorded that the Environmental Agency raised no concerns on how the contamination found at the Application Site will be managed to protect 'controlled waters' and also supports the inclusion of requirement 16 in the ExA's recommended Order in this regard [ER 3.12.12]. The Secretary of State notes that no concerns were raised by BDC, HBDC and the UK Health Security Agency and all matters in relation to geology and soils have been agreed in the Statement of Common Grounds between the Applicant and these Interested Parties [ER 3.12.13 and 3.12.19]. The Secretary of State is therefore minded to agree with the ExA's conclusion that given the historical use of the site, the low sensitivity to human health within the commercial development and low sensitivity of underlying aquifers there is a negligible risk that unforeseen contamination would be later identified [ER 3.12.18].

142. The Secretary of State notes that the ExA considered that the geology and soil elements of the Proposed Development do not affect the planning balance in determining the Order [ER 3.12.20]. She is minded to agree.

Cumulative Effects

143. The ExA's consideration of the cumulative effects of the Proposed Development, in combination with other developments and the interactions of various effects is set out in section 3.13 of the ExA's Report. The Applicant's assessment of cumulative and in combination effects is set out in Chapter 20 of the ES and is summarised by the ExA in paragraphs 3.13.2 – 3.13.6 of the Report. The ExA was content that the Applicant has taken into account the impacts of other major committed development schemes in the vicinity of the Proposed Development [ER 3.13.8]. The Secretary of State notes that no interested party raised any specific concern with regards to the Applicant's assessment [ER 3.13.7].

144. The Applicant's assessment concluded that the cumulative construction phase does not have the potential to result in a more significant effect than individual effects from the Proposed Development alone [ER 3.13.4] and that while weight given to cumulative operational harm would be tempered by benefits including the creation of jobs and a reduction in flood risk, significant adverse cumulative effects would remain during operation although such effects would be tempered by the benefits of the Proposed Development [ER 3.13.6].

145. The ExA concluded that cumulative construction activity would cause considerable adverse landscape and visual effects [ER 3.13.9], and that operational activity together with activity associated with other developments would cause landscape and visual effects and effects on tranquillity [ER 3.13.12]. The Secretary of State is minded to agree with the ExA's conclusions.

Habitats Regulations Assessment

146. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended (“the Habitats Regulations”), the Secretary of State as the competent authority is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in combination with other plans and projects, to have a likely significant effect on a European site forming part of the National Site Network. The purpose of the likely significant effects (LSE) test is to identify the need for an Appropriate Assessment and the activities, sites or plans and projects to be included for further consideration in the Appropriate Assessment.

147. The Applicant submitted a ‘Shadow Habitats Regulations Assessment’ (sHRA) [6.2.12.3 Environmental Statement - Appendix 12.3; [APP-199](#)] as part of its Application, dated March 2023. Natural England, in its Relevant Representation [RR-0974] agreed with the Applicant’s approach and conclusions in regard to impacts on designated sites and associated qualifying features as a result of the Proposed Development. The ExA recorded that no other party submitted any evidence or comments on this issue during the examination [ER 4.1.6 - 4.1.7].

148. The ExA noted that the Applicant’s sHRA did not identify LSE on non-UK European sites in the European Economic Area. Only UK European sites were assessed in the sHRA and no such impacts were raised by any Interested Parties during Examination [ER 4.1.6]. The Secretary of State is satisfied that only UK European sites needed to be assessed by the Applicant.

149. Natural England stated in their RR [RR-0974] that they agreed with the scope of the site search in identifying European sites to be considered at Stage 1: Screening. The site search highlighted one site (Ensor’s Pool SAC) within 15 km of the Proposed Development, and one further site (The River Mease SAC) located 18.1 km from the Proposed Development; however, as the catchment for the River Mease falls within 15 km of the Proposed Development, the SAC was included in the screening assessment. The European sites identified, and their associated qualifying features are summarised below:

- 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 *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation;
 - spined loach;
 - bullhead;
 - white-clawed crayfish; and
 - otter [ER 4.1.10].

- Ensor's Pool SAC (11km west of the Proposed Development) with white-clawed crayfish as the sole qualifying feature.

150. The conservation objectives and threats/pressures for the Ensor's Pool SAC and the River Mease SAC were used to identify potential impact pathways for likely significant effects (LSE). These include for the River Mease SAC; pollution, drainage, inappropriate weirs, dams and other structures, invasive species, water abstraction and siltation [APP-199, paragraph 1.40]. For the Ensor's Pool SAC, the impact pathway was changes in species distributions [APP-199, paragraph 1.41]. The stage 1 screening assessment concluded that there would be no potential effect pathways to any European site and its qualifying features as a result of the Proposed Development due to distance from the European sites, a lack of hydrological connection between the Proposed Development and the European sites and the nature of the Proposed Development. As no pathway exists to give rise to LSE, no in-combination effects would arise with other plans or projects [APP-199, Table 1.2 and paragraph 1.60]. This conclusion was not disputed by Natural England, or any other interested party during the Examination [ER 4.1.13 and 4.3.1], and the Secretary of State agrees with this conclusion.

The Secretary of State's Conclusion on the Habitats Regulations Assessment

151. The Secretary of State agrees with the Applicant and Natural England that there would be no likely significant effects arising from the Proposed Development, either alone or in combination with other plans or projects on the National Site Network sites identified above. As likely significant effects can be excluded beyond reasonable scientific doubt, the Secretary of State also agrees with the ExA that an Appropriate Assessment is not required and therefore will not undertake a further HRA in relation to the Proposed Development [ER 5.3.1].

The Overall Planning Balance

152. This letter does not constitute the final decision of the Secretary of State. She will consider at the time she takes the final decision the weight she will give to each of the principal issues in the planning balance.

153. The ExA's consideration of the overall planning balance is set out in section 5.6 of the Report. The Secretary of State notes that the ExA concluded that the Proposed Development would not result in the UK being in breach of any of its international obligations [ER 5.6.3]. She further notes that the ExA concluded that the Proposed Development will result in substantial benefits, which relate to the need for SRFIs and from the jobs that would be created [ER 5.6.5]. The ExA also considered that further benefits are expected from the rail aspects of the Proposed Development, Biodiversity Net Gain, GHG emissions, water and energy matters. The ExA recommended that the closure and diversion of PRowS, effects on the housing market, biodiversity (non Biodiversity Net Gain) and geology and soils should be neutral in the planning balance [ER 5.6.8 – 5.6.9].

154. The Secretary of State notes that there are three main matters the ExA concluded would fail to comply with the policy requirements of the 2014 NPSNN and weigh heavily against the granting of the Order:

- the highway safety risk at Sapcote caused by the re-routing of HGV traffic;
- the Applicant's failure to adequately assess the impacts at the M69 J2 and M1 J21/M69 J3; and
- the severe impacts on the living conditions of the occupiers of the Aston Firs Travelers site from the proposed acoustic barriers [ER 5.6.6].

155. She also notes that the ExA also recommended that the following issues should weigh against the granting of the Order:

- the other junctions identified in the Traffic and Transport section – little weight;
- overall increase in traffic on the networks – little weight;
- the Sustainable Travel Strategy (if amended in line with the ExA's recommended Order) – little weight;
- the severance of PRowWs – moderate weight;
- landscape and visual impacts – substantial weight;
- impacts from noise and vibration – moderate weight;
- loss of best and most versatile agricultural land – little weight;
- impacts on health – little weight;
- air quality impacts – little weight;
- impacts on cultural heritage– less than substantial harm to specific heritage assets; and
- cumulative effects - moderate weight [ER 5.6.7]

156. The ExA also recommended that if the Sustainable Transport Strategy and HGV Management Plan and Route Strategy are not amended in line with the ExA's recommended Order, they should also weigh substantially against the making of the Order [ER 5.6.10].

157. The ExA concluded that the due to the issues relating to Traffic and Transport and the impacts on the living conditions of the residents of the Aston Firs Travellers site, the overall harm that would occur as a result of the Proposed Development would outweigh the expected benefits of the Proposed Development and that development consent should be withheld. [ER 5.6.12 - 5.7.1]. The Secretary of State is minded to agree.

COMPULSORY ACQUISITION AND RELATED MATTERS

158. The Applicant is seeking powers 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[ER 6.2.1]. The Applicant's case for the grant of compulsory acquisition powers is set out in its Statement of Reasons dated 9 January 2024 and is accompanied by the following supporting documents:

- Document Index;
- Land Plans;
- Works Plan;
- the Applicant's draft Order;
- Explanatory Memorandum;
- Funding Statement;
- Book of Reference; and
- Planning Statement [ER 6.2.2].

159. The Secretary of State notes that, in respect of statutory undertakers, specific objections were received from NH, LCC and National Grid Electricity (East Midlands) plc. She further notes that National Grid Electricity (East Midlands) plc withdrew its objection on 10 April 2024 and that the ExA was satisfied that the protective provisions for those undertakers would ensure an appropriate balance [ER 6.4.35 – 6.4.57].

160. The Secretary of State has carefully considered the ExA's deliberations on compulsory acquisition contained in section 6.4 of the Report. The ExA concluded that because the balance does not weigh in favour of the Proposed Development, a compelling case in the public interest for granting compulsory acquisition (as required by section 122(3) of the PA2008) and similar powers has not been made [ER 6.7.1]. For the reasons set out in this letter, the Secretary of State is minded to agree with this conclusion.

161. However, the Secretary of State notes that the ExA considered that should she be minded to grant the Order, it should be subject to the amendments suggested by the ExA which are included in the ExA's recommended Order [ER 6.7.2], the ExA concluded that:

- the compulsory acquisition powers sought would accord with Sections 122(2) and (3) and 123 of the PA2008;
- in all cases relating to individual objections and issues that compulsory acquisition, temporary possession with permanent rights and temporary possession is justified to enable implementation of the Proposed Development and a compelling case in the public interest would have been made;
- in relation to Statutory Undertakers, subject to appropriate Protective Provisions being in place there would be no serious detriment occasioned by the Proposed Development;

- there are appropriate arrangements in place, which would be secured by the Order, to ensure adequate funding is in place for the Proposed Development;
- with the exception of plot 73 [ER 6.6.13 – 6.6.14], the Proposed Development would be compatible with the Human Rights Act 1998 in terms of being a proportionate interference with property, including homes, and family life;
- all owners and occupiers of land affected by the Proposed Development have been contacted, the ability to make representations in response to the notice and provision of two Compulsory Acquisition hearings enabled any affected person who wished to be heard to be heard fully, fairly and in public, ensuring compliance with Article 6 and Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”), as incorporated in the Human Rights Act 1998 [ER 6.6.2 – 6.6.3].

162. The ExA further considered that overall, the Secretary of State can be satisfied that:

- the tests in s122(2)(a) and (b), s122(3) and s127 of the PA2008 are met and, if the Secretary of State is minded to grant the Order, would be able to recommend acceptance of the compulsory acquisition compulsory acquisition of rights and temporary powers proposed in the Order;
- 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 [ER 6.7.3].

OTHER MATTERS

Equality Act 2010

163. The Secretary of State notes the ExA’s consideration of the public sector equality duty (“PSED”), which was established by the Equality Act 2010, in section 5.4 of its Report. The PSED requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; race; sex and sexual orientation.

164. This letter does not constitute the final decision of the Secretary of State and she will consider at the time when she takes the final decision whether either granting or refusing consent would have any implications in respect of the PSED. She does however

note the ExA's conclusion that, in relation to 'age', the Proposed Development would not advance equality of opportunity for those who are below the age of employment or have retired [ER 5.4.8]. She does not however agree that merely by consenting or refusing to consent a project which offers employment opportunities there would be a failure to advance the equality of opportunity for those who by definition cannot seek or are not seeking employment.

165. In relation to the expected impacts at Narborough Level Crossing and the Aston Firs Travellers Site, the Secretary of State is minded to agree with the ExA that for the reasons set out in paragraphs 72 – 75 and 106 – 107, the Proposed Development would not advance equality of opportunity for those with protected characteristics of disability or race as defined by the Equality Act 2010.

166. In taking the decision to extend the statutory deadline for the decision on the Application, the Secretary of State has complied with the PSED and has had due regard to the matters set out in section 149 of the Equality Act 2010.

167. Natural Environment and Rural Communities Act 2006The Secretary of State notes that when making her decision, she will have to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992 in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006.

Human Rights Act 1998

168. The Secretary of State notes that the expected impacts of the Proposed Development at Aston Firs Travellers Site could affect the residents' human rights: 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) and Article 8 (private and family life, home and correspondence).

NEXT STEPS

169. For the reasons stated in this letter, the Secretary of State considers that she is not yet in a position to decide whether to accept the ExA's recommendation. She is nevertheless currently minded to agree with the ExA that she should not grant development consent for the Proposed Development unless the Applicant can provide further evidence to demonstrate how the following issues identified by the ExA can be addressed to her satisfaction:

- the safety concerns raised in respect of the M1 J21/ M69 J3 (Junction 15) (paragraphs 49 - 52 above) and the lack of adequate modelling at this junction. The Secretary of State invites the Applicant to submit further evidence in light of these concerns, and in particular requests that the Applicant provides NH with the signal specification used in its 'M1 J21 Modelling Note' (paragraph 53 above);

- the increased highway safety risk at Sapcote identified by the ExA (paragraphs 63 – 66 above). The Secretary of State invites the Applicant to submit any further evidence in light of these concerns;
- the concerns raised by the ExA on the impact on ambulatory impacted pedestrians at the Narborough Level Crossing (paragraphs 72-75 and 165 above); and
- any measures that might be included in the Order to avoid or mitigate the potential harm identified by the ExA to the occupiers of the Aston Firs Travellers site (paragraphs 106-107 and 165 above).

170. The Secretary of State also invites comments on:

- the ExA's revised Sustainable Transport Strategy (paragraphs 33 – 37 above);
- the ExA's suggested amendments to the HGVRP (paragraphs 38 - 41 above);
- the submissions of Dr Moore and Mr Moore listed in the ExA's report at paragraph 3.5.143 (paragraphs 100 – 103 above); and
- the ExA's concerns relating to plot 73 and the potential for harmful effects from the construction and adjoining phases on occupiers who have yet to move out [ER 6.6.13 – 6.6.14], which the ExA concluded would be contrary to their rights under the Human Rights Act 1998 if this impacts on their peaceful enjoyment of their homes.

171. The Applicant is invited to respond to the Secretary of State (to the Planning Inspectorate project email address at HinckleySRFI@planninginspectorate.gov.uk by 10 December 2024 with any relevant information on the matters referred to in this letter summarised above. If it is not possible for the Applicant to address those within that time, the Applicant should submit an explanation of the reasons for this to the Secretary of State. If any consequential revisions to the Order are required, the Applicant is invited to submit a revised Order and schedule of amendments with its response.

172. The Applicant's response and any revised Order will then be published on the Planning Inspectorate's website and comments will be invited from Interested Parties within a further 28 days on those matters only. The Secretary of State will consider the Applicant's response and any comments on the Applicant's response from Interested Parties in reaching her decision.

173. In order to allow time for these steps to be taken, the Secretary of State is setting a new deadline of 10 March 2025 for her decision on this Application and has made a statement to the House of Commons in accordance with section 107(7) of the 2008 Act.