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Our Ref: TWA 8/1/7  
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3 July 2014

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED DAVENTRY INTERNATIONAL RAIL FREIGHT INTERCHANGE ALTERATION ORDER**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Examining Authority, Paul Hudson BA MA MSc MRTPI FRGS, who conducted an examination into the application made on 22 February 2013 by your clients Rugby Radio Station Limited Partnership and Prologis UK Limited ("the applicant") for the Daventry International Rail Freight Interchange Alteration Order ("the Order") under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008 ("the 2008 Act").

2. The examination of the application began on 8 July 2013 and was completed on 8 January 2014. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by a series of hearings held at Crick between 30 August and 27 November 2013.

3. The Order would grant development consent for the expansion of the existing Daventry International Rail Freight Terminal ("DIRFT") which currently comprises two rail connected warehouse developments known as "DIRFT I" and "DIRFT II". The project involves the construction and operation of a new rail link from the existing DIRFT to a replacement interchange, together with new transshipment sidings, container storage, a Heavy Goods Vehicle ("HGV") reception area, up to 731,000 square metres of rail served storage, operational facilities, a lorry park and a strategic open space to provide a buffer between the development and the settlement of Lilbourne. The Order would also, among other things, authorise the compulsory acquisition of rights over land and alterations to the highway network. The project is referred to in this letter as "DIRFT III".

4. Enclosed with this letter is a copy of the Examining Authority's report. The proposed development is described in chapter 2 of the report. The Examining Authority's findings and conclusions are set out in chapters 4 to 7 of the report, and his overall conclusions and recommendations are in chapter 8.

### **Summary of the Examining Authority's recommendations**

5. The Examining Authority recommended that the Order be made in the form set out in Appendix F to his report.

### **Summary of Secretary of State's decision**

6. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for DIRFT III.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

### **Secretary of State's consideration**

7. The Secretary of State's consideration of the Examining Authority's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Examining Authority's report ("ER") and references to requirements are to those in Schedule 2 to the Order, as set out in Appendix F to the ER.

### **Legal and policy context**

8. The Secretary of State agrees with the Examining Authority that, since no National Policy Statement ("NPS") has yet been designated for strategic rail freight interchanges ("SRFIs"), he is required to decide this application in accordance with section 105 of the 2008 Act (decisions in cases where no national policy statement has effect) (ER 3.1). For the purposes of section 105, he agrees with the Examining Authority's assessment, at ER 3.2-20, of the legislation and policy that are relevant and important matters to be taken into account in deciding this application.

9. The Secretary of State agrees with the Examining Authority that at the national level DIRFT III is supported by the "Logistics Growth Review – Connecting People with Goods" and the "Strategic Rail Freight Interchange Policy Guidance" published in November 2011. These documents recognise that the development of SRFIs is critical to the expansion of rail freight and will support the transfer of freight from road to rail. He agrees further that in determining this application he should give some weight to the draft NPS for National Networks published in December 2013<sup>1</sup> which confirms the November 2011 policy on SRFIs (ER 3.8–13). Like the Examining Authority, he has taken into account also the support for SRFIs in paragraph 31 of the National Planning Policy Framework ("NPPF") and the presumption in favour of approving development proposals for unallocated sites where the development plan is absent, silent or relevant policies are out of date, unless material considerations indicate otherwise (paragraph 14 of the NPPF)

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/263720/consultation-document-draft-national-policy-statement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263720/consultation-document-draft-national-policy-statement.pdf).

(ER 3.14-16). The Secretary of State is satisfied also that the project does not conflict with the aims of the new Planning Practice Guidance launched by the Department for Communities and Local Government on 6 March 2014.

10. At the local level, the Secretary of State notes that the current development plan policies contained in the Daventry Local Plan (June 1997) and the Rugby Core Strategy (June 2011) do not expressly support DIRFT III; and that the former includes saved policy EM 16 which provides that planning permission will not normally be granted for business and general industrial development in open countryside (ER 3.17-19). However, he notes that the emerging West Northamptonshire Joint Core Strategy, which is currently at an advanced stage of the Examination process, provides up to date policy support for the principle of further rail connected storage and distribution uses at the DIRFT site (ER 3.20, 4.23).

### **Need for the development**

11. The Secretary of State has taken into account the applicant's Need Assessment and Planning Statement, including the assessment of the market demand for rail related warehouses and the constraints of the existing facilities at DIRFT I (ER 4.4-6). He has considered also the applicant's assessment of the DIRFT III proposals against the policy guidance referred to at paragraph 9 above (ER 4.7-19). The Secretary of State agrees with the Examining Authority that there is a clear need for the proposals in the application; that they match well with the criteria set out in the SRFI Policy Guidance in terms of scale, design and location; and that the proposals are compatible with the objectives of the West Northamptonshire Joint Core Strategy. He agrees also that the applicant has convincingly demonstrated that there are no other realistic opportunities for expanding the existing DIRFT apart from the application proposals (ER 4.20–23, 5.3).

### **Transport impacts, including in combination effects**

12. The Secretary of State agrees with the Examining Authority that the applicant had properly considered the relationship between DIRFT III and the adjacent proposed Sustainable Urban Expansion ("SUE") of Rugby during the preparation of the application, as set out in the applicant's Environmental Statement (ER 4.24-26, 5.3).

13. The Secretary of State agrees with the Examining Authority that, taking into account the volumes of rail traffic which DIRFT III is predicted to handle and Network Rail's plans for increasing capacity on the rail system, there are no overriding impediments to the project in terms of the likely availability of freight paths to accommodate that traffic (ER 4.27-32). He agrees also that the applicant's proposals in respect of rail connections to DIRFT III are adequate, for the reasons given by the Examining Authority (ER 4.33-36).

14. The Secretary of State has considered the potential impacts of traffic generation on local transport infrastructure, including the in combination effects of the Rugby SUE and the Rugby Gateway development, as detailed in the applicant's transport assessment and summarised at ER 4.51-55. He notes in this regard that a Statement of Common Ground had been agreed between the applicant, the local highway authorities and the Highways Agency and that there were no outstanding areas of disagreement in relation to the transport assessment (ER 4.46).

15. The Secretary of State agrees with the Examining Authority's conclusion that, taking into account the proposed range of highway improvements away from the main site, the applicant's strategies for encouraging more non-car journeys to work and the Construction Environmental Management Plan ("CEMP"), the project would overall be likely to have a negligible to slight adverse impact on road users in the vicinity of the development, both during implementation and following completion (ER 4.56, 4.58-60). He is satisfied that, if there were unforeseen transport consequences arising from the implementation of DIRFT III, appropriate arrangements for securing additional mitigation measures are in place in the Development Consent Obligation given by the applicant to the local authorities (ER 4.57). He further agrees with the Examining Authority that the applicant's proposals for modifying footpaths and bridleways to accommodate DIRFT III are acceptable (ER 4.70-73).

16. The Secretary of State agrees with the Examining Authority that the applicant has properly assessed the traffic impacts of the project, has identified appropriate mitigation measures, and has satisfactorily addressed the remaining concerns about traffic generation raised during the examination and summarised at ER 4.61-69. He is accordingly satisfied that the traffic impacts of DIRFT III are acceptable and agrees with the Examining Authority that there is no reason for refusing development consent for the project on these grounds (ER 4.74, 5.3).

### **Heritage impacts**

17. The Secretary of State has noted the assessment of the likely impacts of DIRFT III on heritage assets in the vicinity at ER 4.79-83. He agrees with the Examining Authority that the main adverse impact would be the loss of 43 hectares of early medieval ridge and furrow at the application site. However, he is satisfied like the Examining Authority that the applicant's proposals for retaining 16 hectares of ridge and furrow within the Lilbourne Meadows open space would preserve one of the best surviving elements of this type of earthwork and would strike an appropriate balance in the context of the development proceeding (ER 4.87). In other respects, the Secretary of State agrees with the Examining Authority that the impact of the project on heritage assets after completion would be acceptable, for the reasons given by the Examining Authority (ER 4.85-89).

### **Landscape and visual impacts**

18. The Secretary of State agrees with the Examining Authority that, having regard to the current circumstances (described at ER 4.90-97) and the applicant's assessment of landscape and visual impacts in the Environmental Statement (summarised at ER 4.98-104), the key issues to consider are the quantity and design of warehousing, the impacts of the development on nearby settlements and the effect of lighting. In relation to warehousing, he considers that the approach adopted in the application of setting maximum quantities and heights of buildings through the framework plans and the schedule of parameters is acceptable. He agrees further with the Examining Authority that elements of the Design and Access Statement, particularly the design guide, must be incorporated in the Order so as to ensure that warehousing at DIRFT III meets the same high standards of design, landscaping and maintenance of common areas achieved at DIRFT II (ER 4.107-113).

19. With regard to the impact of DIRFT III on settlements, the Secretary of State notes that the existing and proposed buildings at DIRFT I and II would effectively screen the settlements to the south from the new buildings as they are developed at DIRFT III (ER 4.114). As for Lilbourne, the closest settlement to the north, he agrees with the Examining Authority that the proposal for the creation of a ridge within the Lilbourne Meadows open space would offer the prospect of substantial amelioration of both visual and noise impact from DIRFT III. In other respects, he is satisfied that the range of mitigation measures proposed to deal with impacts on adjacent settlements are sufficient (ER 4.115-121).

20. The Secretary of State has considered the concerns about the effects of lighting from DIRFT III on surrounding areas compared with the current circumstances. He notes that the applicant intends to seek much lower levels of night-time lighting than at DIRFT I and agrees with the Examining Authority that the implementation of requirement 16 would offer the best prospect of keeping adverse impacts from lighting to the absolute minimum. (ER 4.122-127).

### **Ecological impacts**

21. The Secretary of State has considered the ecological impacts of the development and the proposed mitigation measures as summarised at ER 4.128-153. He notes that there was a substantial degree of agreement with the statutory nature conservation bodies on these matters and, in particular, that letters of comfort have been issued by Natural England in response to draft protected species licence applications in respect of bats and great crested newts (ER 4.149, 153). The Secretary of State agrees with the Examining Authority that the ecological impacts have been properly assessed and that the proposed mitigation is adequate. He is, overall, satisfied that the adverse impacts of DIRFT III on the ecology of the area are limited and that the loss of habitat would be more than compensated for by the new high-quality habitats to be established at Lilbourne Meadows (ER 4.154-157, 5.3).

22. The Secretary of State confirms that, in coming to a conclusion on these matters, he has had regard to the conservation of biodiversity as required by section 40 of the Natural Environment and Rural Communities Act 2006. He also agrees with the Examining Authority that the development would not result in a likely significant adverse effect on any European designated site and that no appropriate assessment is therefore required under regulation 61 of the Conservation of Habitats and Species Regulations 2010 before deciding whether to give consent for the project (ER 4.148).

### **Drainage and flooding**

23. The Secretary of State notes that the applicant's improvement proposals for the Clifton Brook and its tributary and the proposals for handling surface water drainage within the site had been agreed with the Environment Agency; and that the encroachments of the development into the flood risk area would be small and were for essential infrastructure. He therefore agrees with the Examining Authority that the applicant's proposals deal satisfactorily with flooding and drainage consequences (ER 4.167-170, 5.3).

### **Traffic management**

24. The Secretary of State agrees with the Examining Authority that the applicant's proposed arrangements for traffic circulation within the main development site, on-site parking, traffic calming measures in Clifton-upon-Dunsmore and Kilsby, and improved pedestrian and cycle links along the A5 and A428 are adequate (ER4.171-174). He has noted also the concerns of parish councils surrounding the application site about problems relating to freight operations in the area, particularly overnight parking by HGVs in laybys along the A5 and A428 and on industrial estates (ER 4.175-181). The Secretary of State agrees with the Examining Authority that the provision of lorry parking within the development site would help to address the additional parking requirements generated by DIRFT III (ER 4.182-183). He agrees further that the problems caused by HGV parking beyond the application site and inadequate maintenance of laybys are matters for the local highway authorities and the Highways Agency to pursue (ER 4. 184-185).

### **Construction impacts**

25. The Secretary of State agrees with the Examining Authority that, given the agreements between the applicant and the Highways Agency and Environment Agency, the construction arrangements for the major structures referred to at ER 4.188 are appropriate (ER 4. 189). More generally, he is satisfied that construction impacts can be adequately controlled by the preparation of a CEMP for each stage of the development, and by the provisions of the requirements relating to earthworks, construction hours, noise, vibration and contamination risk (ER 4.190-194).

### **Noise and vibration**

26. The Secretary of State has noted the assessment of likely noise and vibration impacts during construction and operation of DIRFT III, and the proposed mitigation measures, summarised at ER 4.195-205. He has noted also that a Statement of Common Ground covering these issues had been agreed between the applicant and the two planning authorities (ER 4.206). He agrees with the Examining Authority that noise and vibration impacts as a result of the development are likely to be limited and could be adequately controlled through the requirements. He is satisfied further that the tests in paragraph 123 of the NPPF in relation to avoiding significant adverse noise impacts, and minimising others, as a result of the new development would be met (ER 4.208, 5.3).

### **Air quality**

27. The Secretary of State has noted the applicant's assessment that the air quality impacts of the development with mitigation in place were likely to be at most of negligible significance during both the construction and operational stages. He agrees with the Examining Authority that preparation of the CEMP for each stage of the development would provide sufficient controls should any problems arise (ER 4.209-213, 5.3).

### **Utilities**

28. The Secretary of State agrees with the Examining Authority that there appear to be no utility constraints on future development of the site (ER 4.214-216, 5.3). He has noted also that there were no unresolved representations in relation to the impact of the development on underground pipes and cables.

## **Ground contamination**

29. The Secretary of State is satisfied that requirements 32 and 33 would ensure that any ground contamination risks would be appropriately managed (ER 4.223).

## **Infrastructure Planning (Environmental Impact Assessment) Regulations 2009**

30. The Secretary of State agrees with the Examining Authority that the Environmental Statement included in the Order application meets the definition given in regulation 2(1) of the above Regulations (ER 1.6). He is satisfied also that, taken with the supplementary environmental information submitted during the course of the examination, he has sufficient information for the purposes of his decision on this application. The Secretary of State confirms for the purposes of regulation 3(2) of the above Regulations that he has taken into consideration all the environmental information submitted in connection with this application. For the purposes of regulation 23(2)(d)(iii) of those Regulations, the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the adverse environmental impacts of the scheme are the Lilbourne Meadows open space, the CEMP and the requirements.

## **Overall conclusion on the case for Development Consent**

31. The Secretary of State agrees with the Examining Authority that, balancing the adverse impacts of the proposed development referred to in the preceding paragraphs against the need for and other benefits of the development, there is a clear justification in favour of granting the development consent for DIRFT III (ER 5.4).

## **Compulsory acquisition**

32. The Secretary of State notes that the Order would provide powers for the compulsory acquisition of rights only for the purposes of realigning Danes Way and relaying a private rising main in connection with works to regrade the Clifton Brook; and that no objections to those powers were received (ER 6.1, 6.10-12, 6.20). He confirms that in considering whether to confer those powers he has had regard sections 122 and 123 of the 2008 Act, relevant guidance and the Human Rights Act 1998.

33. The Secretary of State agrees with the Examining Authority that the applicant has the financial resources to meet any compensation arising from the acquisition of rights; that the land subject to the compulsory acquisition of rights is required either for the development, or to facilitate it, or is incidental to it; that there is a compelling case in the public interest for the rights to be acquired compulsorily; and that the interference with the rights of those affected by the powers is proportionate to the benefits that the project would bring (ER 6.21, 6.31). He is satisfied also that the examination process ensured a fair and public hearing. He has therefore concluded that the powers sought by the applicant to acquire rights compulsorily should be included in the Order.

34. The Secretary of State notes that for the purposes of section 135(2) of the 2008 Act, the Highways Agency has consented to the use of Crown land for the purposes of the project (ER 6.5). He is satisfied also that Mr Atkin's claim that the Crichel Down rules should be applied to land previously held by his family and which the applicant intends to use for the project is not an impediment to making the Order given the rejection of Mr Atkin's claim by the High Court (ER 6.6).

### **Draft Development Consent Order**

35. The Secretary of State has carefully considered the issues raised by the application for this Order as this is the first SRFI project to be authorised under the 2008 Act and the nature of the proposals are different in a number of respects from linear transport projects. His conclusions on the Order are set out below following the sequence of the provisions as they appear in the draft Order at Appendix F to the ER.

#### Article 3 (development consent granted by the Order) and Schedule G (permitted works)

36. The Secretary of State agrees with the Examining Authority that the provisions for authorising a separate range of works in addition to the "authorised development" (as defined in the Order) are inappropriate for the reasons given by the Examining Authority at ER 7.39-42. In particular, he agrees that other provisions of the Order should provide sufficient flexibility to accommodate the sorts of minor works described in Schedule G, and he shares the Examining Authority's concern that those minor works would be separate from the "authorised development" and thus would not be subject to the requirements. He has therefore concluded that the provisions for "permitted works" should be omitted from the Order, as recommended by the Examining Authority.

#### Article 5 (authorisation of use)

37. The Secretary of State agrees with the Examining Authority that paragraph (2), which would put beyond doubt that implementing a planning permission within the Order limits would not constitute a breach of the Order, is appropriate to remove the risk of criminal sanctions (ER 7.28-30). While he considers that the risk that a planning authority would grant planning permission for development which conflicted significantly with the terms of the Order is remote, he accepts that in the particular circumstances of DIRFT III this provision is acceptable for the avoidance of doubt and to prevent the possible sterilisation of land within the Order limits. In coming to this view, he has taken into account the commercial nature of this project; the long period of time over which the project would be implemented during which the Order would continue to regulate the authorised development within the Order limits; and the risk that development to meet future business needs, and which could not be authorised under the 2008 Act, might otherwise be thwarted.

38. In accepting this provision, the Secretary of State is satisfied that it would not entitle developers to construct or alter a nationally significant infrastructure project, as defined in the 2008 Act, without development consent, and that the provision is within the powers of the 2008 Act. He is also clear that the Order, even without article 5(2), does not limit other development within the Order limits (that is not in breach of the terms of the Order) where appropriate planning permission is granted under the Town and Country Planning Act 1990. The Secretary of State is satisfied that the provision would not permit

unregulated development, as planning permission is still required, and he has amended it to make clear that the exclusion of criminal liability would apply only to planning permission granted on application. The Secretary of State does not, however, consider that the provision is likely to be relevant to or appropriate for other types of linear transport infrastructure authorised under the 2008 Act.

#### Article 7 (benefit of Order)

39. The Secretary of State agrees with the Examining Authority that in the circumstances of a multi-occupancy, commercial development such as this it is reasonable not to require the Secretary of State's consent to transfer the benefit of the Order in relation, for example, to the construction of warehouses (ER 7.7-9). Article 7 has, however, been redrafted to clarify that the provisions as to the certification of plans and detailed design approval are duties rather than benefits.

#### Article 8 (application and modification of legislative provisions)

40. The Secretary of State agrees with the Examining Authority that paragraphs (3) and (4) should be deleted from the Order (as shown in Appendix F to the ER) for the reasons given by the Examining Authority at ER 7.32-38. In particular, he considers that it is inappropriate and unacceptable for the Order, as secondary legislation, to seek to circumvent the provisions set out in the 2008 Act for amending development consent orders. For the same reason, he does not consider that it is appropriate for the Order to alter the provisions in the 2008 Act as to "the appropriate authority" for agreeing to modify or discharge development consent obligations. He has therefore decided to delete paragraph (3) (formerly (5)) in the form of the Order recommended by the Examining Authority.

#### Article 13 (public rights of way – diversion and stopping up)

41. This provision has been modified in the interest of clarity and, in particular, because it is not appropriate for the permanent diversion routes specified in Schedule E (public rights of way to be stopped up) to be altered simply by agreement with the relevant highway authority. Any such alteration would require statutory authorisation.

#### Article 14 (status of public rights of way created)

42. This provision has been deleted because the status of new public rights of way is defined in column (4) of Part 1 of Schedule E (public rights of way to be stopped up).

#### Schedule B (requirements)

43. The Secretary of State agrees with Examining Authority's assessment of the requirements at ER 7.10 and 7.46-51 for the reasons he has given, subject to the following qualifications.

#### *Paragraph 1 (interpretation)*

44. The Secretary of State does not consider that it is appropriate to permit significant elements of the development to commence before relevant approvals have been obtained

from the planning authority under the requirements as appears to be intended by the definition of “commence”. For example, the effect of the definition would be to allow demolition work, site clearance and temporary fencing to be carried out before the CEMP had been approved under requirement 13, or the ecological management plan under requirement 10. Furthermore, the definition as drafted could have the unintended effect, taken with requirement 2, of preventing material operations being carried out 5 years after the Order comes into force. The definition has therefore been deleted.

### *Tailpiece clauses*

45. The Secretary of State agrees with the Examining Authority’s conclusions at ER 7.50-51 as to the acceptability or otherwise of proposed tailpiece clauses. He has however made some minor drafting changes to requirements 9(1), 9(3) and 26 to ensure that the tailpiece clauses would not permit those requirements to be circumvented.

### General

46. The Secretary of State has made several further drafting changes to the Order in the interests of clarity, consistency and precision. He considers that these changes do not substantively alter the effect of the Order.

### **Development Consent Obligation**

47. The Secretary of State has noted the provisions of the Development Consent Obligation offered by the applicant to Daventry District Council, Northamptonshire County Council, Rugby District Council and Warwickshire County Council. He agrees with the Examining Authority that it meets the tests in paragraph 204 of the NPPF (ER7.52-53).

### **Secretary of State’s overall conclusions and decision**

48. For the reasons given in this letter, the Secretary of State considers that there is a clear need for DIRFT III which is supported by national policy guidance on SRFIs. He is satisfied that the benefits of the project outweigh the residual adverse impacts, taking into account the mitigation measures secured by the Order, and that those impacts are acceptable. He is further satisfied that there is a compelling case in the public interest for conferring the compulsory acquisition powers sought by the applicant; and that the Order as modified is appropriate for the implementation of the project.

49. The Secretary of State has accordingly decided to accept the Examining Authority’s recommendation at ER 8.4 and is today making the Order granting development consent and imposing the requirements as proposed by the Examining Authority, but subject to the modifications referred to at paragraphs 36 to 46 above. He confirms that, in reaching this decision, he has had regard to the Local Impact Reports submitted by Daventry District Council and Northamptonshire County Council, any matters prescribed by Regulations under the 2008 Act that are relevant to the proposed development, and any other matters which he considers important and relevant to his decision, as required by section 105 of the 2008 Act.

### **Challenge to decision**

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

**Publicity for decision**

51. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

**Martin Woods**

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The Daventry International Rail Freight Interchange Alteration Order is being published on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/east-midlands/daventry-international-rail-freight-terminal/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**