Dear Sirs,

TRANSPORT AND WORKS ACT 1992:
APPLICATION FOR THE PROPOSED NETWORK RAIL (SEAHAM LEVEL CROSSING) ORDER

1. I am directed by the Secretary of State to say that consideration has been given to the application made on 24 July 2012 by your clients, Network Rail Infrastructure Limited (“Network Rail”), for the Network Rail (Seaham Level Crossing) Order (“the Order”) to be made under sections 1 and 5 of the Transport and Works Act 1992 (“TWA”).

2. The Order, if made, would authorise the stopping up of the Seaham level crossing and the compulsory acquisition and temporary use of land in connection with the provision of a right of way to replace the level crossing. The Order would not authorise the construction of the replacement right of way since powers for that purpose are contained in the Londonderry Railway (Seaham to Sunderland) Act 1863, which authorised the construction of the railway. The new right of way would be constructed as permitted development, the details of which had been approved by the local planning authority before the Order application was made. Accordingly, Network Rail did not include with the application either a request for deemed planning permission or an environmental statement.

Representations received

3. The Secretary of State initially received five objections and a representation from Durham County Council. Three of the objections were subsequently withdrawn. The remaining objections were from local residents Mr Allen and Mrs McKenna. The outstanding objections were considered under the written representations procedure set out in rule 24 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. The principal issues raised in the objections and Network Rail’s responses are summarised at paragraphs 8 to 13 below, followed by the Secretary of State’s consideration of those issues and others which he considers material to his decision on this application.
Summary of the Secretary of State's decision

4. The Secretary of State has decided to make the Order with modifications. The reasons for his decision are given below.

Purposes of the Order

5. In its application, Network Rail explained that the proposal to stop up the pedestrian right of way over the Seaham level crossing was a consequence of a programme of signalling renewals work on the Durham Coast Line between Stranton and Hall Dene. The programme, except for the closure of the Seaham level crossing, had been completed in November 2010. This had enabled signalling control to be concentrated in a single control centre at Ryhope Grange, with potential for greater operating efficiency. Since then the only function served by the Seaham signal box had been to control the manually operated gates at the level crossing. Network Rail considered that maintaining and staffing a signal box for this sole purpose was both inefficient and unsustainable. Closure of the crossing would also increase public safety.

6. Network Rail said further that the replacement right of way would take the form of an underpass for pedestrians and cyclists and that the closure of the level crossing would not take place until the underpass was open for public use. At the time of the Order application, construction of the underpass on the western side of the railway on land owned by Network Rail had started. The Order is required to authorise the closure of the crossing and to enable completion of the scheme on the eastern side of the railway.

The representation

7. Durham County Council supported the scheme, but this was subject to a condition that the closure of the level crossing did not take place until a pavement had been provided within the existing highway between the start of the proposed underpass in Harbour Walk and the south-east bound platform of Seaham station. Following discussions with the Council, Network Rail agreed that the Order be amended to require the provision of the proposed pavement before the level crossing is closed. These works would be carried out by Network Rail on behalf of the Council using the Council’s powers under the Highways Act 1980.

The objections

8. The main issues that were raised in the objections were as follows:

(a) The justification for closing the level crossing was questioned, as it was used by many pedestrians by day and night. One objector said that they were unaware of any accidents occurring at the crossing.

(b) One objector was concerned that, compared with the well-lit and manned level crossing, the underpass would become a gathering point for youths, vandals and unsavoury types. The objector would not feel safe using it at night time.
(c) One objector was concerned that the replacement crossing might be inaccessible for those with impaired mobility, the elderly, and those using wheelchairs and prams.

(d) One objector was concerned that the extra walking distance to get from one side of the crossing to the other would be detrimental to the health of old age pensioners.

**Network Rail’s response:**

(a) The need for closure and the safety of the crossing

9. Network Rail said that closure of the level crossing would enable the full benefits of the signalling renewals programme referred to at paragraph 5 above to be realised, which was wholly consistent with the findings of the McNulty review “Realising the potential of GB rail”. It would also enable Network Rail to meet the requirements of its network licence to improve, enhance and develop the network.

10. Network Rail said that although the level crossing risk assessment score for Seaham level crossing was within tolerable limits, there had been a number of recorded instances of misuse and threatening behaviour by members of the public impatient to cross the line. Closure of the crossing would remove any danger to members of the public using the crossing and was endorsed by the Office of Rail Regulation.

(b) Security of the underpass

11. Network Rail considered that the proposed design of the replacement right of way, including removal of dense vegetation and the installation of street lighting, would not result in an environment where there would be a significant perceived fear of crime. The Seaham Neighbourhood Policing Team had expressed no concerns with the proposal, confirming that the surrounding area was peaceful and well policed.

(c) Accessibility

12. Network Rail said that the underpass had been designed to current highway standards and would be compliant with the requirements of the Equality Act 2010.

(d) Increase in walking distance

13. Network Rail accepted that as a result of closing the level crossing the increase in distance from platform to platform, or for journeys from the north-east of the station to destinations in Station Road, would be 152 metres. However, Network Rail considered that the great majority of users would benefit from the scheme. This was because Network Rail was proposing (separately from the Order) to construct a new section of footpath which would provide a continuous, shorter route from Seaham Town Centre to Station Road via the underpass; or because journeys would not be interrupted by the closure of the crossing gates for up to 10 minutes.
Secretary of State’s consideration

14. The Secretary of State has considered Network Rail’s reasons for making the Order application, the grounds of objection and Network Rail’s responses. He is satisfied that there is a compelling case for closing the level crossing to enable the full benefits of the Durham Coast Line re-signalling programme to be realised and to enhance the safety of those crossing the railway at Seaham station. He considers that Network Rail’s proposed design of the underpass is acceptable in relation to the security of those who would use it and in terms of accessibility.

15. The Secretary of State recognises that for some current users of the level crossing walking distances would increase. However, he considers that any disadvantage would be significantly outweighed by the benefits of a safer means of crossing the railway line and by the associated improvements to the rights of way network referred to in paragraphs 7 and 13 above.

16. The Secretary of State has also considered the case for authorising Network Rail to acquire land compulsorily against the policy set out in ODPM Circular 06/2004. He is satisfied that there is a compelling case in the public interest for granting the compulsory acquisition powers applied for so as to enable Network Rail to complete construction of the underpass. The Secretary of State notes from the application documents that Network Rail has the necessary funding in place to implement the Order proposals. He considers also that implementation of the powers in the Order is unlikely to be blocked by any legal impediments, given the existing powers to carry out the works and the approval of the local planning authority to the details of the underpass. The Secretary of State has therefore concluded that the tests in ODPM Circular 06/2004 for the granting of compulsory purchase powers have been met in this instance.

Secretary of State’s overall conclusion and decision

17. For the reasons given above, the Secretary of State has concluded that it is appropriate to give Network Rail the powers applied for to enable the level crossing to be closed and a replacement right of way to be provided. He has, therefore, decided to make the Order applied for, subject to the following modifications:

- to include the requirement referred to at paragraph 7 above; and
- a number of minor drafting amendments.

The Secretary of State considers that none of these modifications would make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA.

18. This letter constitutes the Secretary of State’s notice of his determination to make the Order, with modifications, for the purpose of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.
**Challenge to Decision**

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

**Distribution**

20. Copies of this letter are being sent to all those who objected to or who made a representation on the Order application.

Yours faithfully,

**Martin Woods**
RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the ground that -

- it is not within the powers of the TWA, or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days from the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.