



# Department for Transport

DLA Piper UK LLP  
2 Noble Street  
London  
EC2V 7EE

Martin Woods  
Head of the TWA Orders Unit  
General Counsel's Office  
Department for Transport  
Zone 1/14-18  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR

Enquiries: 020 7944 3196

E-mail: [transportandworksact@dft.gov.uk](mailto:transportandworksact@dft.gov.uk)

Web Site: [www.gov.uk/dft/twa](http://www.gov.uk/dft/twa)

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2 July 2014

Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED FELIXSTOWE BRANCH LINE (LAND ACQUISITION) ORDER**

1. I am directed by the Secretary of State to say that consideration has been given to the application made on 19 October 2011 by your client, the Felixstowe Dock and Railway Company ("FDRC"), for the Felixstowe Branch Line (Land Acquisition) 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 confer on FDRC powers to acquire compulsorily the land and rights over land required to construct and operate an additional railway line adjacent to approximately 7 kilometres of the existing Felixstowe Branch Line ("FBL"). These works were authorised by the Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 ("the 2008 Order"). FDRC did not therefore seek any new powers to construct works in this application.

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

3. For the reasons given in this letter, the Secretary of State has decided to make the Order.

### **The Order application**

4. In making this application, FDRC has complied with the publicity requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. This included serving copies of the application and the accompanying documents on the persons specified in those Rules and making the documents available for public

inspection. As also required by those Rules, FDRC published notices giving information about the application and how to make representations. In response to the application the Secretary of State received four objections but following negotiations these were all withdrawn. The application is, accordingly, unopposed.

## **Purposes of the Order**

5. FDRC said in the Statement of Aims which accompanied the Order application that the purpose of the Order was to renew the compulsory acquisition powers conferred by the 2008 Order which expired on 14 October 2013. The Order would in addition authorise the temporary possession of land at Trimley St Martin for an alternative worksite to that authorised by the 2008 Order, to which Suffolk Coastal District Council had objected on the grounds of disturbance to a nearby care home. FDRC explained further that the powers in the 2008 Order to construct the second railway track along the FBL (which were not time-limited) had been given to accommodate additional rail traffic generated by FDRC's planned expansion of the Port of Felixstowe and the general growth in rail freight movements to and from the Port. However, these works (and Phase 2 of FDRC's expansion scheme) had not subsequently been constructed because of the economic downturn caused by the global recession.

6. FDRC confirmed in its application that it remained committed to completing the expansion of the Port of Felixstowe and to the dualling of the FBL, but later than was envisaged at the time when the 2008 Order was made. To that end, on 25 August 2010 Suffolk Coastal District Council had granted FDRC planning permission for the dualling of the FBL to replace the deemed planning permission given by the Secretary of State in connection with the 2008 Order, with a new time limit of 31 December 2018.

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

7. The Secretary of State has considered FDRC's reasons for making this application. He is satisfied, firstly, that the compulsory acquisition powers in the Order are required to ensure that the dualling of the FBL can be implemented. He considers further that there is a compelling case in the public interest for granting these powers to facilitate increased capacity on the FBL for rail freight traffic generated by Phase 2 of the expansion of the Port of Felixstowe, which in turn would help to meet the demand for additional port capacity recognised by the National Policy Statement for Ports (designated in January 2012)<sup>1</sup>. He notes in this regard that, under the Section 106 Agreement between FDRC, Suffolk Coastal District Council and Suffolk County Council relating to the expansion of the Port of Felixstowe, the FBL must be dualled before Phase 2 of the expansion scheme is brought into operation.

8. The Secretary of State has considered this application against the tests for granting compulsory acquisition powers in ODPM Circular 06/2004, and the impact of granting the powers applied for by FDRC on rights protected under the European Convention on Human Rights. He is satisfied that there would be significant public benefit from making the Order, as noted above, which outweighs the effects on those who own land is required for the dualling of the FBL. He is satisfied also that the statutory procedures in connection with

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/3931/national-policy-statement-ports.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3931/national-policy-statement-ports.pdf) (see Section 3.4).

the application for and making of the Order have been followed; that FDRC has the resources to meet the cost of acquiring land under the Order and any blight claims; and that there is unlikely to be any legal impediment to implementing the Order, including in connection with the alternative worksite at Trimley St Martin for which FDRC would need to obtain temporary planning permission from Suffolk Coastal District Council.

### **The Secretary of State's overall conclusions and decision**

9. For the reasons given above, the Secretary of State has decided to make the Order, subject to a number of minor drafting amendments which would not make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA.

10. This letter constitutes the Secretary of State's notice of his determination to make the Order, with modifications, for the purposes of section 14(1) and section 14(2) of the TWA. Your client is required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

### **Challenge to decisions**

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

### **Distribution**

12. Copies of this letter are being sent to those who made and subsequently withdrew objections to this 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.

**Any 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.**