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Dear Sirs,

TRANSPORT AND WORKS ACT 1992 APPLICATION FOR THE PROPOSED CAMBRIAN RAILWAYS ORDER

1. I am directed by the Secretary of State for Transport to say that consideration has been given to the application made on 12 March 2015 by your clients, Cambrian Heritage Railways Limited ("CHRL"), for the proposed Cambrian Railways 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 transfer from Network Rail Infrastructure Limited ("NR") to CHRL of the statutory provisions and other rights and liabilities relating to the branch line railway between Gobowen and Blodwel in the County of Shropshire (referred to in this letter as "the railway"). The Order would also authorise CHRL to sell or lease the railway with the consent of the Secretary of State and makes provision as to the operation of the railway.

3. As the Order would not provide for any development requiring planning permission CHRL did not submit an environmental statement with the Order application or seek a direction as to deemed planning permission from the Secretary of State.

Summary of the Secretary of State's decision

4. For the reasons given in this letter, **the Secretary of State has decided to make the Order, with modifications.**

Procedural matters

5. Following the application, five objections were received. Three of the objections were from local residents Mr Davis, Mr and Mrs Lingard, and Mr Thomas and Mr Clare (referred to in this letter as "the objectors"). The other two objections were received from the Office

of Rail and Road (“the ORR”) and Highways England in relation to the reinstatement of level crossings on the railway. In response to these objections CHRL accepted amendments to the Order proposed by the ORR which would prohibit the railway from crossing the A5 and A483 trunk roads on the level and to require the ORR’s consent to the operation of level crossings over the A495 and School Lane at Porth-y-Waen. Highways England subsequently withdrew its objection on 4 August 2015.

6. The Secretary of State decided that it was unnecessary to hold a public inquiry or hearing into this application as he was satisfied that the issues raised in the objections could be adequately presented and examined through the TWA written representations procedure. This procedure is set out in rule 24 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the Applications Rules”).

7. The Secretary of State has considered carefully all the representations that have been made about this application. The main issues which the Secretary of State considers relevant to his decision are addressed below, starting at paragraphs 10 to 16 with a summary of the points made variously by the ORR and by some or all of the objectors. This is followed at paragraphs 17 to 27 by a summary of CHRL’s responses to the objections. The Secretary of State’s conclusions are set out at paragraphs 28 to 40.

Background to and aims of the Order application

8. The railway between Gobowen and Blodwel was closed to passenger services in 1966 but remained in use until 1988 for freight traffic serving a stone quarry in Blodwel. After that, the railway was “mothballed” with the tracks retained for possible future freight traffic to the quarry. In 2008 Shropshire County Council acquired from NR the land on which the railway is situated. In 2009 CHRL was established by agreement between the Cambrian Railway Society Limited (“CRSL”) and the Cambrian Railways Trust (“CRT”) as a separate entity to bring forward the revival of the railway. In 2014 Shropshire Council leased the railway land to CHRL for a period of 50 years.

9. The proposed Order would pave the way for the restoration of the railway for public use as a community and heritage railway. CHRL intends to restore the railway to operational use in stages as funding becomes available. CHRL referred in the Order application and its representations to local support for its long term proposals on the grounds that restoring the railway would assist in the development of Oswestry as a tourist destination, would preserve the unique railway heritage of Oswestry, and may provide a sustainable transport option for accessing the local Orthopaedic Hospital. The Order would also release NR from the statutory obligations relating to land over which it no longer carries out any operations and in which it no longer has any legal interest.

The objections

Fitness and capacity of CHRL

10. The objectors raised that CHRL was not a fit and proper body to receive the powers that would be conferred by the Order and lacked the experience, funding and business acumen to manage this large scale and difficult project, and to fulfil its responsibilities towards the wider community. In particular, the objectors expressed concerns about the legitimacy, qualifications and alleged unprofessional attitude of the Executive Board of

CHRL and the conduct of its meetings; about the legality of existing services operated by CRSL at Oswestry on a section of railway which is not included in the Order; and about the ability of CHRL to attract and retain sufficient active volunteers with relevant qualifications and experience to maintain its low level of services, having to rely in part on the use of unemployed job-seekers.

Financial issues and feasibility of CHRL's proposals

11. The objectors considered that CHRL was not self-sufficient and would need substantial funding to restore the railway in its entirety; Shropshire Council was not able to provide this funding and public expenditure for a tourist attraction was not justified. The objectors had not seen an up to date business plan and doubted that CHRL's proposals, including a possible community service between Gobowen and Oswestry, would be commercially viable. This was, in particular, because of the costs of providing new crossings over or under the A5 and A483 trunk roads and reinstating other level crossings (without which CHRL would only be able to operate small sections of the railway); the costs of repairing bridges and installing signalling; and the costs of maintaining the track and rolling stock. The objectors said also that the proximity of other heritage railways was likely to affect the viability of CHRL's proposals. For all these reasons, the objectors considered that CHRL's aim of connecting Gobowen, Oswestry, Llyncllys and Blodwel was not feasible.

Level crossings

12. The ORR referred to its established policy that there should be no new (or reinstated) level crossings on any railway, unless there are exceptional circumstances, and confirmed that it was opposed on safety grounds to crossings of the A5 and A483 trunk roads on the level. While continuing to have concerns about safety at other level crossings on the railway, the ORR said that it would rely on its existing powers in relation to the control and protection of level crossings when the position on the risks involved at each crossing and how they could be addressed became clearer. The ORR left it to the Secretary of State to decide whether any further provision about level crossings should be included in the Order in addition to the amendments referred to at paragraph 5 above. Aside from its concerns about level crossings, the ORR confirmed that it had no objection in principle to the transfer of the general powers and obligations in relation to the railway from NR to CHRL.

13. The objectors also expressed concerns about the various level crossings that would need to be reinstated which posed safety risks to the wider community, but which were not mentioned in the Order as applied for. The objectors were concerned about whether CHRL had the ability to safely operate and maintain the crossings, referring to the present condition of the pedestrian crossing at Coney Green on the section of the CRSL railway at Oswestry; about impacts on access, including for emergency vehicles to the Cambrian Medical Centre; and whether CHRL would be able to secure the ORR's consent to reinstate all the level crossings, including on the heavily used A495 road, in the light of the ORR's policy referred to above.

Safety and security

14. The objectors raised more general health and safety concerns, given that the railway would run through the centre of Oswestry and close to a large children's play area. These included concerns about the cycleway proposed to be built alongside the railway; the

maintenance of bridges and fencing; poor security measures; and the adequacy of training for volunteers and of the risk assessments undertaken by CHRL.

Environmental and amenity issues

15. The objectors raised a number of concerns about the environmental impacts of resuming railway operations on neighbouring land, including on the new homes built close to the line, a children's play area and the footpath to be opened alongside the railway in Oswestry. The concerns included the effects of noise, vibration, pollution from smoke emissions, and the use of contaminated wooden sleepers; the risk of damage to property; and the loss of amenity and value. The objectors considered that CHRL should have submitted an environmental statement with the Order application.

Adequacy of consultation and transparency

16. The objectors said that CHRL had not carried out adequate consultation and that the consultation report submitted with the Order application was incorrect; neither had CHRL given sufficient public notice of the application. They considered that CHRL had not been open and transparent about what restoration of the railway would entail and had withheld relevant information requested by the objectors such as a business plan.

CHRL's response to the objections

Fitness and capacity of CHRL

17. CHRL said that it was a properly constituted limited company and registered charity. It had the support of Shropshire Council, Oswestry Town Council and other local organisations, as evidenced for example by the Oswestry 2020 Town Plan and the responses to consultation. The ORR, which has responsibility for overseeing heritage railways, had explicitly stated that it had no principle objection to the statutory or other powers and obligations relating to the railway being transferred to CHRL. CHRL explained further that its members were drawn in a large part from two very long standing heritage railway charities (CRSL and CRT) and that they had the necessary experience effectively to manage and restore the railway, as well as experience in fund raising and successfully applying for grants. CHRL had been successful in attracting new skills and active volunteers by working with local schools and colleges, as well as Government training initiatives, and the membership of CHRL was growing.

18. CHRL refuted allegations that there was any impropriety in the conduct of its meetings or the management of its finance. CHRL said that it was compliant with all legal reporting requirements, details of the company and its officers were publicly available, and CHRL followed the Charity Commission's guidance on running meetings. As regards the legality of the CRSL services at Oswestry, CHRL noted that the ORR was satisfied that the necessary legal powers and consents for those operations had been granted (even though the ORR could not trace its original consent) and that, when recently inspected, the ORR had found CRSL's operations to be safe. CHRL confirmed that if the Order were made it would liaise with the ORR to ensure that all necessary consents are in place and properly recorded.

Financial issues and feasibility of CHRL's proposals

19. CHRL said that it envisaged a staged expansion of its operations over a number of years, with the transfer of statutory powers from NR under the Order providing an immediate opportunity to improve its offering as a tourist attraction. CHRL had previously received financial support from various sources, including an annual turnover of approximately, £100,000, and considered that, as with other heritage railway operations, there was no reason why it should not be able to earn and secure necessary funding over a period of time to enable it progressively to implement restoration of the line. CHRL did not see the close proximity of other heritage railways as a disadvantage, rather this factor was likely to draw enthusiasts visiting neighbouring heritage railways. Neither did CHRL accept that its project was a hobby for enthusiasts without commercial prospects, referring to the "Report on the Value of Heritage Railways" by the All Party Parliamentary Group on Heritage Rail which recognised the importance of heritage railways to their local economies.

20. CHRL explained further that each phase of restoring the railway would be a separate element, which could be appraised, funded and constructed separately and be subject to its own appropriate business plan. CHRL did not accept that such a phased approach to expanding its operations was an indication that its proposals were not feasible. CHRL would work in partnership with a number of statutory bodies, businesses and other railway operators who supported its aims of restoring the railway as a whole over time. As regards the crossing of trunk roads, discussions with Highways England to date had concluded that it would be feasible to accommodate a tunnel at the A5 crossing and an overbridge at the A483. Elsewhere, the highway over-bridges remained in the control of the local authority and the cost of alterations at the Gasworks Bridge identified by the objectors as an impediment was far below previous estimates.

Level crossings

21. CHRL noted that safety at crossings of the public highway was protected by legislation, including the Level Crossing Act 1983, and that all crossings (both public and private) were subject to the scrutiny of the ORR. CHRL said that the ORR had visited the railway at Oswestry on a number of occasions and was aware of all the crossings referred to by the objectors; in particular, the ORR was satisfied as to the safety of the existing Coney Green crossing.

22. With regard to the concerns raised by the ORR, CHRL said it had presented indicative designs for the crossings of the A5 and A483 without level crossings to the ORR who had said that such a solution would be satisfactory. CHRL had further accepted without hesitation the amendments to the Order referred to at paragraph 5 above which the ORR had requested. CHRL noted the ORR's position as regards the other level crossings not identified in the Order and confirmed that, as proposals to extend its operations were worked up, it would continue to engage with and consult the ORR and other local stakeholders before considering operating any level crossings; CHRL would ensure that it properly assessed the associated risks and implemented appropriate control measures.

Safety and security

23. CHRL said that existing operations at Oswestry and Llynclys had an excellent safety record and complied with all relevant requirements. More generally, CHRL was required to operate to stringent safety standards including compliance with all health and safety legislation, and all operations were subject to the scrutiny of the ORR. CHRL explained further that volunteers in safety critical roles were trained in accordance with approved railway methodologies and were tested and observed to ensure job competency. CHRL had, since 2014, retained a safety management consultant, Green Dragon, to advise on all matters in relation to safety and was creating a new Safety, Health, Environment and Fire Focus Officer to act as a contact point for consultation and feedback on these matters.

24. While accepting that vandalism of signage and fences along the route used by walkers had been a problem, CHRL anticipated that with the opening of the new "greenway" path along the railway corridor in Oswestry the situation would improve. The fencing used along the railway was of a standard post and wire variety commonly used for security fencing and had been re-instated as and when removed or damaged.

Environmental and amenity issues

25 CHRL explained that as the Order would provide only for the transfer to CHRL of the existing powers relating to the railway and not for any new works, no environmental impact assessment or environmental statement had been required. That said, since the volume of movements along the railway would be low and would be carried out at low speed (maximum 25 miles per hour), there was no significant likelihood of adverse impacts on properties resulting from train operations. The section of line close to Charles Parry Close would be re-laid with new ballast and sleepers as part of the upgrade of the railway, which would reduce noise and vibration. Work had also already been carried out in the vicinity to improve the condition of the railway by removing overgrown trees, clearing rubbish and planting new hedgerows along the railway corridor. CHRL said also that in other respects such as pollution no evidence had been produced to show that there would be a significant impact on the environment.

Adequacy of consultation and transparency

26. CHRL said that the Consultation Report which accompanied the Order application had set out details of the consultation carried out before the Order application was made (including advertising, leafleting and a drop-in session), as required by the TWA Applications Rules. CHRL had similarly published notices of the application in accordance with those Rules. As the Order would not authorise any new works there was no requirement for site notices to be posted.

27. CHRL refuted the allegation that there had been any lack of transparency or misrepresentation about its proposals, either with the public or with its members. For example, the on-going discussions between CHRL and the ORR about level crossings had been reported to members at the AGM.

Secretary of State's consideration

28. The Secretary of State notes first that the main purpose of the Order is to authorise the transfer from NR to CHRL of NR's statutory powers and obligations relating to the railway, with the aim of establishing over time a community and heritage railway operation between Gobowen and Blodwel. He is satisfied that this is, in principle, an appropriate use for a redundant part of the national rail network, in particular because of the public benefits in terms of contributing to the tourist economy, preserving industrial heritage and, potentially, providing a local transport facility.

29. The Secretary of State notes further that the Order would not confer on CHRL any new powers to carry out works and to use land beyond those which currently rest with NR. He considers, therefore, that in coming to a decision on whether it is in the public interest to make the Order, the key issue to address is whether CHRL has the capacity to exercise NR's existing powers and to fulfil the associated obligations safely and lawfully. He has considered the representations made by CHRL, the ORR and the objectors in this light.

Fitness and capacity of CHRL

30. The Secretary of State is satisfied from the representations and evidence submitted that CHRL is an appropriate body to assume responsibility for NR's statutory powers and obligations in respect of the railway. In coming to this conclusion he has had regard, in particular, to the view of the ORR (as the national regulator of the rail industry) which has no objection in principle to the proposed transfer. He also notes that the ORR is familiar with both of the predecessor organisations (CRSL and CRT) which have operated sections of railway at Oswestry and Llynclys over a number of years. The Secretary of State notes also that CHRL has been able to attract volunteers with a range of relevant experience, has gained the support of local authorities and other organisations for its aims, and has been successful in securing funding towards the development of its proposals. He considers that these factors are relevant indicators of CHRL's capacity to assume the responsibilities which the Order would impose both in the present and in the future as CHRL's operations expand.

31. As regards the matters of propriety and legality raised by the objectors, the Secretary of State recognises that CHRL is a properly constituted and regulated company and a registered charity. He considers therefore that appropriate controls are in place to ensure that CHRL's affairs are properly managed. Furthermore, taking into account the ORR's view as to the legality and safety of the CRSL operations at Oswestry, the Secretary of State attaches no weight to the missing consent documentation referred to by the objectors in assessing the fitness of CHRL to assume the powers and obligations that would be transferred under the Order.

Financial issues and feasibility of CHRL's proposals

32. The Secretary of State recognises that restoring, operating and maintaining a heritage railway is a costly enterprise, even where there are significant levels of volunteer support. He accepts further that reinstating the railway between Oswestry and Gobowen in its entirety (a distance of 13.5 kilometres), along with the provision of two new grade-separated crossings of trunk roads, will be a substantial undertaking that is likely to take a long time to complete. The Secretary of State considers, however, that CHRL's plan for a

staged expansion of its operations as funding becomes available is a reasonable approach in the context of a heritage railway and consistent with how other similar organisations develop their systems. He considers also that the possibility that CHRL may have to operate the railway in discrete sections (until satisfactory arrangements for the level crossings on the railway have been found) does not mean that CHRL's long term objectives are unachievable. He notes in this regard that such arrangements would be comparable to the current position with CRSL and CRT carrying out separate operations at Oswestry and Llyncllys.

33. The Secretary of State considers that for the purposes of his decision on this application it is not necessary for CHRL to demonstrate the financial viability of restoring the railway in its entirety (or any particular element of the railway). He considers that it is acceptable for each element of the restoration project to be appraised at the appropriate time, for example, as and when CHRL applies for grants for the project. The Secretary of State does not therefore consider that the objectors' concerns about the feasibility of CHRL's long term objectives give grounds for refusing the Order. He considers rather that, given his conclusions above on CHRL's capacity to assume responsibility for the railway, it would be unreasonable to refuse the Order, thereby precluding the opportunity to restore the railway and potentially secure wider public benefits.

Level crossings

34. The Secretary of State has noted the concerns expressed by the ORR about the reinstatement of level crossings on the railway and confirms that the order will be modified in the manner requested by CHRL as detailed at paragraph 5 above. As regards the level crossings not specifically named in the Order, he is satisfied that no further provision needs to be included in the Order, given that the ORR considers that its existing powers are sufficient to secure the protection of those crossings before they are brought into use.

35. The Secretary of State has considered also the concerns of the objectors about the impacts of reinstating the level crossings on safety and access. As noted above, he considers that safety at level crossings would be ensured by the controls exercised by the ORR. He is satisfied also that CHRL would engage appropriately with local stakeholders about its proposals for reinstating level crossings, and notes that consultation with the local highway authority would be required under the Level Crossings Act 1983 in any event.

Safety and security

36. The Secretary of State is satisfied that appropriate and sufficient arrangements are in place (for example, the training of volunteers) to ensure that CHRL's current and future operations on the railway will be carried on in accordance with health and safety legislation; and he notes that all operations will be subject to the scrutiny of the ORR. He considers also that both bringing the "mothballed" railway back into use and establishing the "greenway" path would be likely to have a beneficial impact in terms of creating a more secure environment.

Environmental and amenity issues

37. The Secretary of State notes that the Order provides for the transfer to CHRL of existing powers relating to the railway and agrees with CHRL that it was unnecessary to

submit an environmental statement with its application since the Order would not authorise any development, including development of a sort that would require an environmental impact assessment. To the extent that environmental and amenity issues are relevant in deciding whether it is in the public interest for the Order to be made, he accepts that the nature of the operations proposed by CHRL and the measures that CHRL intend to take to upgrade the railway mean that restoring the railway should not have significant adverse impacts on the environment or on neighbouring properties. The Secretary of State notes that CHRL's rail operations would, in any event, be subject to environmental protection legislation, for example, directed at preventing nuisance.

Adequacy of consultation and transparency

38. The Secretary of State is satisfied that CHRL has fulfilled the requirements of the Applications Rules and associated guidance as to consulting on and publicising the proposals in the Order. He does not consider that there has been any impropriety or bad practice on CHRL's part such as could weigh against a decision to make the Order.

Other matters

39. The Secretary of State has considered all the other points made in the representations on this application. In his opinion, to the extent that any of those matters are relevant to his decision on this application, none of them would justify refusing to make the Order, either individually or taken together.

Secretary of State's overall conclusions and decision

40. For the reasons given in this letter, the Secretary of State is satisfied that it is in the public interest to authorise the transfer from NR to CHRL of the statutory provisions and other rights and liabilities relating to the railway between Gobowen and Blodwel. The Secretary of State has therefore decided to make the Order, subject to the amendments referred to at paragraph 5 above and some further drafting changes which do not affect the substance of the Order. The Order will be made shortly, after a notice of this determination has been published in the London Gazette.

Notice of determination

41. 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) (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

42. 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.

Distribution

43. Copies of this letter are being set to the objectors and to the ORR.

Yours faithfully,

Natasha Kopala

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 beginning with 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 3 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.