



# Department for Transport

Winckworth Sherwood LLP  
Minerva House  
5 Montague Close  
London  
SE1 9BB

Natasha Kopala  
Head of the Transport and Works Act Orders Unit  
Department for Transport  
Zone 1/14  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR

Enquiries: 020 7944 2474  
Email: [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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7 November 2017

Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED NETWORK RAIL (CLOSURE OF ABBOTS RIPTON LEVEL CROSSING) ORDER AND DEEMED PLANNING PERMISSION**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to advise you that consideration has been given to the application made on 20 January 2017 by your clients Network Rail Infrastructure Limited (“NR”) for–

(a) the Network Rail (Closure of Abbots Ripton Level Crossing) Order (“the Order”) to be made under sections 1 and 5 of the Transport and Works Act 1992 (“TWA”); and

(b) a direction as to deemed planning permission, to the extent that it is required for the development provided for in the Order, to be given under section 90(2A) of the Town and Country Planning Act 1990 (“the planning direction”).

2. The Order and the planning direction would authorise NR to: (a) close the Abbots Ripton level crossing over the East Coast Main Line (“ECML”) railway in Cambridgeshire; (b) extinguish the existing bridleway over that crossing, including provision of compensation for loss arising out of the extinguishment of any private rights of way; (c) provide a new alternative bridleway route to cross the railway in substitution via an existing underbridge on a private road approximately 400 metres to the south of the crossing; and (d) allow for the culverting of a minor watercourse (“the scheme”). The Order would also confer powers on NR to (e) use land temporarily in connection with the construction of the substitute bridleway and (f) to acquire permanent rights over land to construct and maintain the works authorised by the Order.

### **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 with modifications and to give the planning direction subject to the conditions set out in Annex 1 to this letter.**

## **The Order application**

4. In making this application, NR complied with the publicity requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the 2006 Rules”). This included serving copies of the application and the accompanying documents on the persons specified in the 2006 Rules and making the documents available for public inspection. As also required by the 2006 Rules, NR displayed and published notices giving information about the application and how to make representations and served notice on those whose rights over land would be extinguished or acquired under the Order.

5. In response to the application, the Secretary of State received no objections or neutral representations. The application is therefore unopposed. Three letters of support were received, on behalf of the Office of Rail and Road, Virgin Trains East Coast and Railfuture East Anglia Branch.

6. NR did not include an environmental statement with the Order application because the Secretary of State decided on 14 December 2016 under rule 7(13) of the 2006 Rules that an environmental impact assessment was not required in relation to the proposals in the Order. Nonetheless, NR did provide an Ecology Appraisal document with its application.

## **Purposes of the Order**

7. The proposals in the Order and request for deemed planning permission form part of a wider scheme of improvements to increase capacity for Long Distance High Speed (“LDHS”) passenger services on the ECML. The route has Trans European Network high speed route status and is also important for both commuter and freight services.

8. The lack of a fourth track between Huntingdon and Woodwalton in Cambridgeshire (passing over the Abbots Ripton level crossing) has been identified as a constraint to growth on the ECML. NR therefore intends to reinstate the fourth track for a distance of six miles between Huntingdon and Woodwalton. Once completed, the improvements will facilitate an increase in the capacity of LDHS trains from the current 6 paths an hour, to 8 paths an hour, which it is envisaged will be taken up by Train Operating Companies as soon as they become available.

9. NR say the need to close Abbots Ripton level crossing (which is crossed by trains travelling at up to 125mph and will see a planned increase in the number of movements of services) is justified in the interests of public safety.

10. NR also state that the closure of the Abbots Ripton level crossing will mean that they reduce the costs arising out of maintenance and inspection of the crossing.

11. The proposals also include the provision of a new Public Right of Way crossing the ECML as a replacement for the Abbots Ripton level crossing. The new Public Right of Way will cross the ECML via an existing underpass on a private road approximately 400m to the south of the existing crossing. NR has included provisions in the draft Order for the creation of (and any compensation claims arising out of the creation of) the new Public Right of Way.

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

12. The Secretary of State has considered the information contained in the Order application. In terms of the benefits of the scheme, the Secretary of State acknowledges that the safety of both rail users and members of the public using the bridleway will be improved as a result of the closure of the level crossing.

13. Pedestrians and equestrians will be diverted to cross the ECML using an existing underpass. The extent to which this would affect the distance the public using the bridleway have to travel to cross the ECML would depend on their ultimate origin and destination. The Secretary of State does not consider that this will have a significant adverse impact on users of the bridleway. It is noted in this context that; (i) NR state that the level crossing has a relatively low level of use; (ii) the existing underpass that the new Right of Way will divert to is only 400m away; and (iii) that no objections relating to the diversion have been raised. The Secretary of State therefore considers that the closure of the level crossing is unlikely to have a significant impact on user connectivity.

14. As regards the wider project benefits (which the granting of the Order would promote), the Secretary of State notes that the proposal to reinstate the fourth track of railway between Huntingdon and Woodwalton would facilitate the introduction of two further LDHS passenger services per hour (from 6 to 8). This would relieve congestion and increase capacity (available for LDHS, commuter and freight services) on the ECML, with considerable economic benefits.

15. The Secretary of State notes from the Ecology Appraisal document accompanying the application (para. 5.1.4) that no adverse effect on ecological features is predicted as a result of the scheme. The scheme is not anticipated to have any other adverse environmental effects.

16. The Secretary of State is satisfied that, subject to some minor drafting changes in the interests of clarity and consistency, the conditions attached to the request for the planning direction meet the tests in the Department for Communities and Local Government's Planning Practice Guidance, Use of Conditions (Reference: 21a-003-20140306) and in paragraph 206 of the National Planning Policy Framework.

17. The Secretary of State concludes that, the benefits of the scheme (set out in the preceding paragraphs) considered alongside the wider benefits of the capacity enhancement project on the ECML significantly outweigh any limited adverse impact that may result from the scheme.

18. For the purposes of section 5(6) of the TWA, the Secretary of State is satisfied that the scheme provides an alternative right of way in place of the public right of way crossing the railway that is to be extinguished.

19. The Secretary of State further notes that compensation would be payable to any person suffering a loss as a result of the extinguishment of any private right of way over the level crossing and the creation of the new Public Right of Way.

20. The Secretary of State is satisfied that the powers of acquisition and temporary possession or use of land are reasonable in the circumstances. There is a compelling case in the public interest to justify granting these powers to NR (sufficient to justify interfering with the human rights of those with an interest in the land affected); the powers are limited to the extent necessary to implement the scheme, and there were no objections to the proposed use of these powers during the extensive consultation carried out.

21. NR has satisfied the Secretary of State as to the availability of funding to implement the scheme.

22. The Secretary of State is satisfied that the tests of the appropriateness of granting compulsory acquisition powers, set out in the Department for Communities and Local Government's *Guidance on the Compulsory Purchase process and the Criche Down Rules 2015*, have been met.

23. The Secretary of State is satisfied for all the reasons given in this letter that it is in the public interest to authorise the proposals in the Order application. The Secretary of State has, therefore, decided to make the Order, subject to:-

- amendments to reflect the coming into force of compulsory acquisition provisions of the Housing and Planning Act 2016; and
- a number of other minor drafting amendments,

which together do not make a substantial change in proposals such as would require notification to affected persons under section 13(4) of the TWA; and to give the planning direction, subject to the conditions set out in Annex 1 to this letter.

### **Notice of determination**

24. This letter constitutes the Secretary of State's notice of his determination to make the Order for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish a notice of the determination in accordance with section 14(4) of the TWA.

### **Challenge to decision**

25. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at Annex 2 to this letter.

Yours faithfully,

**NATASHA KOPALA**

**CONDITIONS WHICH THE SECRETARY OF STATE INTENDS TO ATTACH TO THE DIRECTION AS TO DEEMED PLANNING PERMISSION**

**INTERPRETATION**

In the following conditions:

“the development” means the development authorised by the Order, to the extent to which deemed planning permission is required (namely for the construction of a culvert within plot 7 as indicated on the deposited plan as defined in the Order); and

“the Order” means the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017.

**Time limit for commencement of development**

1. The development must not commence after the expiration of 5 years from the date on which the Order comes into force.

**Reason:** To set a reasonable time limit for the commencement of the development.

**Implementation in accordance with planning drawing**

2. The development must be carried out in accordance with the planning drawing numbered 141731-NWR-GRG-ECV-000001 submitted with the application to the Secretary of State.

**Reason:** To ensure compliance with the approved plan and for the avoidance of doubt.

END.

## **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.

## **CHALLENGES TO DEEMED PLANNING PERMISSION GIVEN IN CONNECTION WITH A TWA ORDER**

There is no statutory right to challenge the validity of the Secretary of State's direction that planning permission be deemed to be granted for development for which provision is included in the Order. Any person who is aggrieved by the giving of the direction may, however, seek permission of the High Court to challenge the decision by judicial review.

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