



# Department for Transport

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Our Ref: TWA/16/APP/09  
Your Ref: CRAVENJK\161318-000839

5 December 2017

Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED NETWORK RAIL (STREAT GREEN UNDERBRIDGE) (TEMPORARY LAND ACQUISITION) ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the application made on 16 December 2016 by your client, Network Rail Infrastructure Limited (“NR”), for the Network Rail (Streat Green Underbridge) (Temporary 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 powers on NR to acquire temporary rights over third party land in connection with works to replace the existing Streat Green Underbridge (located between the stations of Wivelsfield and Plumpton on the Keymer Junction to Lewes railway line in East Sussex).

3. As the proposed order does not contain any works powers, NR has not submitted an environmental statement with the Order application or sought a direction as to deemed planning permission from the Secretary of State.

### **Summary of 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.

### **The Order application**

5. In making this application, NR 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, NR published and served notices giving information about the application and how to make representations.

6. In response to the application the Secretary of State received one objection (from a directly-affected landowner) but following negotiations the objection was withdrawn. The application is, accordingly, unopposed. South East Water made a neutral representation drawing attention to the proximity of a trunk water main.

### **Purposes of the Order**

7. NR set out in their Statement of Aims, which accompanied the Order application that the purpose of the Order is to provide NR with powers to take temporary possession of land located adjacent to the Streat Green Underbridge (carrying the railway between Wivelsfield and Plumpton stations in East Sussex over a public bridleway). The works form part of NR's maintenance programme for its South-East Route. The works to be undertaken by NR are to replace the existing wheel timber superstructure with a new concrete ballasted superstructure to maintain and improve the safe operation of NR's railway undertaking. The underbridge works would be contained within NR's existing operational land and are authorised by NR's permitted development rights. However, in order to carry out the works, NR needs to acquire temporary rights over third party land to install (and subsequently remove) a temporary access track and temporary works compound; and to provide environmental mitigation works on third party land to protect Great Crested Newts and Dormice during the works, (protected species which have been identified in the immediate vicinity of the proposed access track).

8. The underbridge works form part of a five-year planned programme of civil engineering works agreed by the Department for Transport and approved by the Office of Rail and Road, which aim to provide cost-effective, safe and reliable railway infrastructure for the benefit of railway passengers.

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

9. The Secretary of State notes that the order will facilitate the replacement of the underbridge with a new 120 year design life concrete underbridge ensuring that risks to safety and performance are minimised as well as contributing to the improved operation of the railway. The Secretary of State also notes that replacement of the underbridge will help to minimise the whole life costs by reducing future maintenance costs.

10. The Secretary of State has considered NR's reasons for making this application, and is satisfied that temporary possession of the land subject to the Order is required and is necessary to facilitate NR's replacement of the existing underbridge to maintain and improve the safe operation of NR's railway. The Secretary of State is satisfied that the powers granted in the Order for rights of temporary possession are proportionate and legitimate and that there is a compelling case in the public interest for granting these powers.

11. The Secretary of State is satisfied that the statutory procedures in connection with the application for the Order have been followed. The Secretary of State notes that the proposed Order does not authorise the construction of work or any other development. The

proposed works are to be carried out within NR's existing operational land under permitted development rights pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015 No. 596) and with prior approval granted by Lewes District Council on 16 December 2014 (Notice of Prior Approval Reference LW/14/0889) under the Town and Country Planning (General Permitted Development) Order 1995 (S.I.1995 No. 418)

12. The Secretary of State further notes that NR have stated that the project is to be fully funded through NR's Capital Renewals Budget, an element of the NR Control Period 5 Final Determination. The Secretary of State is satisfied, therefore, that NR have the resources to meet the compensation provisions set out in the Order and for the timely implementation of the bridge reconstruction, and that there are no other likely impediments to implementation, therefore justifying the acquisition of those rights.

13. The Secretary of State also notes that Natural England have confirmed they are satisfied with NR's pre-application submissions in respect of future protected species licence applications for Great Crested Newts (response 6 December 2016) and Dormice (response 10 February 2017). The Secretary of State is satisfied that in these respects too there is no likely impediment to carrying out the scheme.

14. In the light of this, the Secretary of State has decided to make the Order, subject to a number of minor drafting amendments which do not make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA.

### **Notice of determination**

15. 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 Secretary of State's determination in accordance with section 14(4) of the TWA.

### **Challenge to decision**

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

Yours faithfully

**Natasha Kopala**

## **Annex**

### **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 grounds that—

- it is not within the powers of the TWA; or
- any requirement imposed by or under the TWA 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.**