



# Department for Transport

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Our Ref: TWA/17/APP/07  
Your Ref: JEW/18136/655/PFI

27 March 2018

Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE NETWORK RAIL (KINGS MILL NO. 1 LEVEL CROSSING) (LAND ACQUISITION AND CLOSURE) 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 15 September 2017 by your client, Network Rail Infrastructure Limited (“NR”), for the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) 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: compulsorily acquire land and rights over land required in connection with the construction and maintenance of a new, ramped bridleway bridge over the Nottingham to Worksop line (the Robin Hood line) at Mansfield (which development has been separately authorised by the grant of planning permission under Part III of the Town and Country Planning Act 1990 (“the 1990 Act”) by Ashfield District Council) in the county of Nottinghamshire; to stop up the level crossing at Kings Mill Lane, Grange Farm, Nottinghamshire; to extinguish the existing bridleway over the crossing and to create an alternative bridleway in substitution which will cross the railway on a new, ramped bridge. The Order also confers powers of temporary use of land in connection with that development and the right to oversail certain land with cranes.
3. As the proposed Order does not contain any works powers, NR has not submitted an environmental statement with the Order application. Further, as planning permission has already been granted by Ashfield District Council in relation to the new bridleway bridge, NR have not sought a direction for deemed planning permission from the Secretary of State under section 90(2A) of the Town and Country Planning Act 1990.

## **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 ("the 2006 Rules"). 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 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 under the Order.

6. In response to the application the Secretary of State received no objections to the application nor any other representations. The application is, accordingly, unopposed.

### **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 close Kings Mill No. 1 level crossing and provide a suitable and convenient alternative means of crossing the railway for existing users. The main reason NR state for closure of Kings Mill No. 1 level crossing is safety. Following a fatality in 2012, NR state that despite improvements to the infrastructure at the crossing, it is regarded as a high risk.

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

9. The Secretary of State notes that the Order will facilitate the closing of Kings Mill No. 1 level crossing, extinguish the existing bridleway over the crossing and create an alternative bridleway in substitution which will cross the railway on a new, ramped bridleway bridge. The Secretary of State also notes that the development comprising the bridge was granted planning permission by Ashfield District Council in the County of Nottinghamshire on 18 December 2017 under the 1990 Act. The Secretary of State also notes that the scheme is part of the National Level Crossing Risk Reduction Programme which aims to close, re-designate or upgrade crossings across the network to help to improve safety for everyone, reduce the risk that level crossings present to the national rail network and reduce maintenance costs.

8. The Secretary of State notes that NR did apply to Nottingham County Council for a rail crossing diversion order under section 119A of the Highways Act 1980 to create the new bridleway and extinguish the public right of way over the railway and that no objections were received to that application. NR subsequently agreed with the County Council to withdraw the Highways Act Order application and to instead pursue the level crossing closure and bridleway diversion by means of a Transport and Works Act Order.

10. 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 Order would confer powers on NR for the compulsory acquisition of land and to use land temporarily in connection with the proposals. The Secretary of State is satisfied that the powers granted by the Order for rights to acquire land compulsorily and to use land temporarily are legitimate and that there is a compelling case in the public interest for granting these powers and notes that there are no objections to those powers. The Secretary of State also notes from the funding statement which accompanied NR's application that the scheme is fully funded and is therefore content that there is unlikely to be any financial or other impediment to implementing the scheme. The Secretary of State is therefore satisfied that, having regard to the Ministry of Housing, Communities and Local Government's (formerly the Department for Communities and Local Government) Guidance on the Compulsory purchase process and the Crichel Down Rules (October 2015), the compulsory acquisition powers applied for are justified.

11. For the purposes of section 5(6) of the TWA, the Secretary of State is satisfied that, in relation to the public rights of way that would be extinguished, an alternative right of way will be provided. He notes further that, as regards the extinguishment of any private right of way over the level crossings, compensation would be payable if any person suffered loss as a result.

12. In 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**

13. 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**

14. 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**

**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.**