



# Department for Transport

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Date: 13 October 2020

Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992 APPLICATION FOR THE PROPOSED WEAR VALLEY RAILWAY (TRANSFER) ORDER**

1. I am directed by the Secretary of State for Transport to say that consideration has been given to the application made on 1 July 2020 by your client, Weardale Railway Limited (“the Applicant”) formerly<sup>1</sup> known as SWINMADCO57 Limited for the proposed Wear Valley Railway (Transfer) 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 Weardale Realisations CIC (“the Transferor”), formerly known as Weardale Railways CIC, to the Applicant of certain statutory provisions and other rights and liabilities relating to the railway between Bishop Auckland and Eastgate in the County of Durham (referred to in this letter as “the railway”). The Order would also authorise the Applicant 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. The Order does not authorise the acquisition of land or any works powers.

### **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.**

### **Procedural Matters**

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<sup>1</sup> This word replaces “formally” that appeared in the original letter sent to the Applicant, which has been corrected because of a typographical error.

5. The Applicant applied for a waiver direction under rule 18 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the Rules”) to disapply the requirement of rule 14(10) which requires the Applicant to make application documents publicly available for inspection. This was because the COVID-19 pandemic imposed movement restrictions and meant that public buildings were not open for the display of documents. On 6 May, the Secretary of State sent a letter to the Applicant setting out that he was content to make this direction. The application documents were available on the Applicant’s website and a telephone number was provided when publicised to which members of the public could call and request a hard copy of the application documents free of charge. The Secretary of State is therefore satisfied that the Applicant has fulfilled the requirements of the Rules and associated guidance in relation to consulting and publicising the proposals of the Order.

6. In response to the application no objections, no representations or letters of support were received in respect of the application by the Secretary of State.

7. Due to the COVID-19 related restrictions, the Secretary of State notes from the correspondence dated 26 August 2020 the difficulty that was experienced in respect of obtaining a signed affidavit pursuant to rule 10(8) of the Rules, citing evidence of compliance with rule 13, 14 (1) to (8) and 15 of the Rules. The Secretary of State responded on 18 September 2020 setting out that he was content to proceed with the application on the basis of the receipt of electronic affirmation, enclosing the appropriate annexes to demonstrate compliance with the relevant Rules. The confirmation of the electronic affirmation together with the appropriate annexes was received on 24 September 2020. It was on that basis the Secretary of State is able to confirm that he is satisfied that the Applicant has complied with the relevant Rules and to make a determination on the application.

### **Background to and aims of the Order application**

8. The railway is around 19 miles<sup>2</sup> in length and is situated in County Durham. It was closed to passenger services in 1953 and to freight traffic in 1993. Since 1993, the line has been used to operate heritage rail services, which ended in 2019.

9. The Applicant has set out in their Statement of Aims which accompanied the Order application that the purpose of the Order is to provide for the transfer of certain statutory provisions, rights and liabilities relating to the railway from the Transferor to the Applicant. This would allow the Applicant to obtain the regulatory approvals and undertake the infrastructure investment necessary to gradually restore heritage services along the railway, beginning with small-scale events and progressing to larger events.

10. The Applicant is wholly owned by the Auckland Project (“TAP”). TAP is a registered charity which owns and operates Auckland Castle alongside a number of other visitor attractions and enterprises in Bishop Auckland. The Applicant was established by TAP with the primary aim of operating the railway. On 13 March 2020,

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<sup>2</sup> The words “around 19 miles” replaces “7 miles” that appeared in the original letter sent to the Applicant, which has been corrected because of a typographical error.

the Applicant took possession of the physical railway assets and business relating to the railway from the Transferor, which was financed by a loan from TAP.

## **Funding**

11. The loan arrangements set out in paragraph 10, helped the Applicant to purchase the railway physical assets and will be used to cover operational costs, railway track repairs and maintenance and capital expenditure. The Secretary of State notes that the Applicant set out in their funding statement that the loan amount is higher than the anticipated project implementation costs. The Secretary of State also notes from the Applicant's funding statement that Durham County Council has committed to funding bridge repairs associated with the railway, up to the value of £2,128,000 in relation to structures that are the responsibility of the Applicant.

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

12. The Secretary of State notes that the main purpose of the Order is to authorise the transfer of the undertaking in relation to the railway, with the intention of restarting heritage operations on the railway.

13. The Applicant has set out that the planned reopening of the railway to heritage operations is likely to create economic and social benefits for the local area, including job growth, contributions to the tourist economy, and educational benefits through the railway's cooperation with schools and with the Locomotion museum.

14. The Secretary of State notes that the Applicant sent details of the application for the Order and sought feedback from Durham County Council, on 7 May 2020. The Council confirmed it was content with the draft Order on 9 June 2020.

15. The Secretary of State notes that the Applicant set out in its Application Summary of Consultation document that they have corresponded with Network Rail Infrastructure Limited and the Office of Rail and Road in relation to the Order and that neither raised any objection or issue. The Secretary of State notes that he has also not received comments from either party in relation to the Order application.

16. The Secretary of State further notes that no objections or representations were received after the submission of the application. The Secretary of State agrees on the benefits that the reopening of the railway is likely to bring, as set out in paragraph 13, and is satisfied that the Applicant has funding available to meet the obligations associated with the Order.

17. The Secretary of State is therefore satisfied that it is in the public interest to transfer the statutory provisions, rights and liabilities pertaining to the railway to the Applicant. 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 so as to require notification to affected persons under section 13(4) of the TWA.

**Notice of determination**

18. 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**

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

Yours sincerely

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 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 three 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.**

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