



Department
for Transport

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By email: XXXXXXXXXXXXX

Dear Sir

TRANSPORT AND WORKS ACT 1992

APPLICATION FOR THE NETWORK RAIL (LONDON TO CORBY) (LAND ACQUISITION AND BRIDGE WORKS) ORDER 2020 AND DEEMED PLANNING PERMISSION

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the report of the Inspector, Julia Gregory BSc (Hons) BTP MRTPI MCMI, who held a Public Inquiry which sat between 5-7 February 2019 and closed on 19 February 2019, into the application made on 22 June 2018 by your clients, Network Rail Infrastructure Ltd (“NR”) for -

- (a) the proposed Network Rail (London to Corby) (Land Acquisition and Bridge Works) Order to be made under sections 1 and 5 of the Transport and Works Act 1992 (“TWA”).
- (b) deemed planning permission to be granted by a Direction under section 90(2A) of the Town and Country Planning Act 1990 (“the Planning Direction”).

2. The Order and Planning Direction, if made, would authorise works at Bromham Road Bridge and matters ancillary to those works; the acquisition of land and rights (including temporary possession) relating to the reconstruction of the bridge carrying Irthlingborough Road over the railway; and the attachment of apparatus to three viaducts at Sharnbrook, Irchester and Harpers Brook. The works for which planning permission is sought relate to the reconstruction of Bromham Bridge that lies north of Bedford Midland station and carries a two-lane single carriageway over the Midland Main Line. Along with a range of other consents and agreements, the Order is required to form part of a wider scheme for major rail electrification and capability enhancement.

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3. Enclosed with this letter is a copy of the Inspector's report ("IR"). The Inspector's conclusions are set out in paragraphs 8.1 to 8.59 and the Inspector's Recommendations at paragraph 9 of this report.

4. It is noted at IR 1.2 that changes were made to the application before the start of the Inquiry with the title of the Application Order changing from, 'The Network Rail (London to Corby) (Land Acquisition Level Crossing and Bridge Works) Order 201[]' to The Network Rail '(London to Corby) (Land Acquisition and Bridge Works) Order 201[]'. The changes were to remove certain plots of land which have been addressed in negotiations with objectors and secondly because the powers to close the Souldrop Level Crossing have been obtained through other means resulting in the withdrawal of that part of the Order (IR 1.3). The Inspector's recommendations are based on this revised Order.

5. After the closure of the Public Inquiry, NR also applied for planning permission from Bedford Borough Council ("BBC") for the reconstruction of Bromham Road Bridge. On 29 July 2019 permission was granted by BC under the Town and Country Planning Act 1990 for this, subject to planning conditions. The Secretary of State notes that he was only made aware that NR had sought separate planning permission for the reconstruction of Bromham Road Bridge, following an enquiry from one of the objectors to the scheme. The Secretary of State asks that in the future, NR ensure that the Secretary of State is kept up to date with all the necessary facts relating to an application he is being requested to make a decision on.

6. Once the Secretary of State became aware that Planning Permission had been granted he wrote to you on 21 November 2019, asking for confirmation of NR's intention regarding this application. A response was received on 9 December 2019, enclosing a revised draft Order entitled "The Network Rail (London to Corby) (Land Acquisition) Order". This Order excluded the powers required for the works associated with Bromham Bridge Road and matters ancillary to these works. Therefore, the modified draft Order ("the modified Order") would authorise the acquisition of land and rights (including temporary possession) relating to the reconstruction of the bridge carrying Irthlingborough Road over the railway; and the attachment of apparatus to three viaducts at Sharnbrook, Irchester and Harpers Brook.

7. Following the granting of planning permission by BBC for the reconstruction of Bromham Road Bridge, deemed planning permission under section 90(2A) of the Town and Country Planning Act is now not required. Matters relating to the request for deemed planning permission have therefore not been considered further.

8. It is the modified Order that the Secretary of State has made his decision on. In reaching that decision it was necessary to understand the context of the changes requested, including for provisions which were to be deleted. Therefore, while the reasons given in this letter are limited to the consideration given to those matters relevant to the modified Order, the wider context and other issues set out in the IR are referred to where that is necessary or helpful.

Procedural matters

9. 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 under the Order.

10. Although no longer relevant to the modified Order, on 21 May 2018, the Secretary of State issued a screening opinion letter under rule 7 of the 2006 Rules a copy of which accompanied the application, informing NR an Environmental Impact Assessment was not required in respect of the reconstruction of Bromham Bridge.

Summary of the Inspector's recommendations

11. The Inspector recommended that the Order should be made, subject to modifications, and that a Direction be made granting deemed planning permission for the works authorised by the Order, subject to planning conditions.

Summary of the Secretary of State's decision.

12. For the reasons given in this letter, **the Secretary of State has decided to make the modified Order, The Network Rail (London to Corby) (Land Acquisition) Order, with modifications. As noted in paragraph 7 Deemed planning permission is no longer required.**

Secretary of State's Consideration

13. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. Where not stated in this letter, the Secretary of State can be taken to agree with the Inspector's findings, where relevant to the Revised Order, as set out in the Report, the reasons for the Secretary of State's decision are those given by the Inspector in support of the conclusions and recommendations. All other paragraph references, unless otherwise stated, are to the Inspector's report.

14. In response to the application, the Secretary of State received 16 objections and 4 representations. Prior to the inquiry, 3 of these objections were withdrawn - Northamptonshire County Council, Bovis Homes and Cadent Gas and two representations withdrawn (IR 1.13 & 1.19). Although not formally withdrawn, 3 objections related to plots removed as part of the revised Order. The Inspector therefore treated them as no longer outstanding at the close of the Inquiry (IR 1.15). Of the remaining objections, 2 were statutory objections: Guinness Partnership (a registered provider of housing) and Govia Thameslink Railway ("GTR"); and eight non-statutory objections. Only one objector, the Cycling Campaign for North Bedford appeared at the Inquiry to present evidence.

15. With regard to the outstanding statutory objections, the Secretary of State notes:

- that although GTR's objection relates to Bromham Road bridge and the loss of parking spaces at Bedford station (IR 5.55-56) (which is not part of the modified Order), and on 23 September 2019, the Secretary of State received a letter from GTR withdrawing its objections to the TWA Order as it had reached agreement with NR over the staging and organisation of the work.

- the objection from the Guinness Partnership relates to temporary use of land: temporary use of airspace; compulsory purchase of land and to extinguish rights over land and to impose restrictive covenants (IR 5.35). Whilst these matters relate to Bromham Bridge, the Secretary of State notes from a letter dated 21 June 2019 that NR had entered into a license agreement with Guinness Partnership for temporary possession of their land and agreed heads of terms for the purchase of the land encompassed within the Order.

16. With regard to the non-statutory objections, the Secretary of State notes that these relate to works to Bromham Road Bridge (IR 1.17) which no longer form part of the application associated with the modified Order. Although not formally withdrawn, the Secretary of State considers these to be no longer outstanding. The remaining objection, is from Ian Nicholls regarding consultation and display of public notices (IR 5.52). As set out in paragraph 9 the Secretary of State is satisfied that NR complied with the publicity requirements of the 2006 Rules. Of the two outstanding representations, one is from Vodafone and relates to the telecommunications mast near Bromham Road bridge (IR 4.110) and the other is from Century Link who are not affected by the proposals (IR 4.112).

Aims and need for the Proposed Order

17. The Secretary of State notes the aims and needs for the scheme as set out in (IR 4.1-24). The Order is required as part of the wider London to Corby electrification scheme (“L2C”), which forms a principal element of the overall Midland Main Line improvement programme contributing to improvements in capacity and reductions in journey time (IR 4.2). The Secretary of State notes the scheme will deliver a material increase in capacity on the Midland Main Line between London and Corby, one of the most crowded parts of the network (IR 8.4).

18. The Secretary of State notes that the proposed Order is necessary to ensure that NR has operational infrastructure capable of delivering an electrified railway (IR 4.3). The works to Bromham Road Bridge, would allow for the accommodation of electrified lines, without which the electrification would not be possible (IR 8.6). The Secretary of State also notes that NR has already demolished Irthlingborough Road Bridge and intends to re-instate that bridge on a raised realignment to allow for overhead line electrification (“OLE”) which would require land and rights from third parties, including on a temporary basis, as provided for in the modified Order. The work will only go ahead if an alternative bridge does not go ahead in a timely fashion (IR 8.7). The Secretary of State notes further that OLE apparatus is also required to be attached to viaducts at Sharnbrook, Irchester and Harpers Brook to allow electrification to be delivered (IR 4.19, 8.8).

19. The Secretary of State notes that there have been no challenges to the aims and needs of the L2C scheme (IR 8.10). The Secretary of State agrees with the Inspector that for all the reasons that NR has given there is a pressing need to upgrade and deliver the proposed additional capacity on the Midland Main Line that the modified Order will support (IR 8.10). Overall the Secretary of State concurs with the Inspector that the need for the Order has been demonstrated convincingly and the main elements of the proposed scheme would meet the objectives (IR 8.11).

Main alternatives options considered and reasons for choosing the proposals comprised in the scheme

20. The Secretary of State notes the Inspector was content that NR had considered alternatives in developing the design of the scheme (IR 8.18). Whilst the Secretary of State notes that the predominant focus of this was on alternatives to Bromham Road bridge (which has now been removed from the application), the Secretary of State has no reason to disagree with the Inspector's conclusions.

The extent to which the proposals are consistent with national and local policy

21. The Secretary of State notes the Inspector's consideration of this matter at IR 4.48-88. The Secretary of State notes that the Inspector considered that the Order scheme, is an integral element of the L2C scheme and is fully supported by national transport policy and the National Planning Policy Framework that is directed at promoting the achievement of sustainable development and the delivery of necessary enabling infrastructure (IR 8.19). The Secretary of State is aware that since the Inspector's report was received, the Ministry of Housing, Communities and Local Government (MHCLG) published an updated version of the NPPF in February 2019. While it is recognised that the Inspector's consideration reflects the previous version of the NPPF, the Secretary of State is satisfied that those comments and considerations remain valid. The Secretary of State is content that there is nothing in the updated version of the NPPF that would affect his view of the Inspector's recommendation and so agrees with the Inspector's conclusions that the proposed scheme would be compliant with the relevant development plan, the NPPF, national transport policies and with local transport, environmental and planning policies.

22. The Secretary of State agrees with the Inspector that the electrification of the route north of Bedford and improved railway services accords with the Bedford Local Plan which includes the saved policy T9 (rail services) (IR 8.20). The Secretary of State also agrees with the Inspector that the proposals accord with the Bedford Core Strategy and linkages to local transport plans (IR 8.20).

23. The Secretary of State notes that the Inspector noted a conflict with Local Plan Policy AD39 but this was in relation to Bromham Road bridge not including provision for a dedicated cyclist/pedestrian lane (IR 8.22). Whilst the Inspector concluded that this was 'not fatal' because the scheme needed to be considered in light of the development plan as a whole (IR 8.25), the Secretary of State notes that Bromham Road bridge has been removed from the application.

24. The Secretary agrees with the Inspector in respect of Irthlinborough Bridge as Bovis have withdrawn their objection, there is nothing to suggest that part of the scheme would not comply with national and local policy (IR 8.26) and no other inconsistencies with policy have been identified (IR 8.27).

25. The Secretary of State is satisfied that the scheme proposals are consistent with national and local policies.

Impact on land Owners, Tenants and statutory Undertakers

26. The Secretary of State notes the Inspector's consideration of this matter at IR 8.28-8.32. Whilst the consideration predominantly related to Bromham Road bridge, the Secretary of State has no reason to disagree with the Inspector's conclusions. With regard to GTR, as noted in paragraph 15 this objection was withdrawn on 23 September 2019.

Changes to the Order and Adequacy of Notification

27. The Secretary of State notes that a number of changes have been made to the original application as set out in paragraph 4. The Secretary of State agrees with the Inspector that these changes reduced its scope and consequently, there are no parties who would be affected by those changes (IR 8.39). The Secretary of State is also content that although the modified Order reduced the scope further, there are no parties who would be affected by these changes.

28 The Secretary of State notes that article 10(8) of the Order has the potential to create unidentified permanent rights in relation to land that is identified as being for temporary possession. The Secretary of State notes that this provision is set out in the TWA model clauses. However, it is not clear to the Secretary of State on the level of consultation that has been carried out and whether the affected landowners and occupiers would have been made aware that the Applicant might potentially seek to compulsorily acquire new rights in relation to that land. The matter was not raised in the public inquiry and thus it is unclear whether those affected have been given an appropriate opportunity to make representations and to have the matter fairly considered.

29 The Secretary of State considers that the inclusion of this article may not satisfy Article 6 of the European Convention of Human Rights or guidance from the Ministry of Housing Communities and Local Government in relation to compulsory purchase and the Crichel Down Rules. Therefore, in the absence of information that the affected landowners and occupiers have been appropriately consulted the Secretary of State, in relation to this matter, has decided to remove article 10(8) from the modified Order.

30 The Secretary of State is making a number of other minor textual amendments to the modified Order in the interests of clarity, consistency and precision. None of amendments materially alter the effect of the modified Order or make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA

Case for Compulsory Acquisition Powers including funding

31. The Secretary of State notes the Inspector's conclusion that there is a compelling case in the public interest for the compulsory acquisition and use of land for the purposes of the Order Scheme. Further, the Inspector stated the land and rights specified are required in order to secure satisfactory implementation of the Scheme (IR 8.44). The Secretary of State also notes the Inspector's conclusions that funding is secure (IR 8.53). Whilst the scope of the Order has reduced, since the close of the Public Inquiry, the Secretary of State agrees with the Inspector and is content that in relation to the modified Order, all the land and rights

that may be required in relation to Irthlingborough Road Bridge is necessary for the implementation of the scheme and is content that funding is secure. The Secretary of State is accordingly satisfied that, having regard to the Ministry of Housing, Communities and Local Government guidance dated February 2018 on the compulsory purchase process (as updated in 2019), there is a compelling case in the public interest for the compulsory acquisition powers in the Order which justifies interfering with the human rights of those with an interest in the land that would be subject to those powers.

Secretary of State's Overall Conclusions

32. The Secretary of State agrees for all the reasons given above, the modified Order is justified on its merits and there is a compelling case in the public interest for making it. This letter constitutes the Secretary of State's notice of his determination to make the Order with modifications, for the purpose 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.

Challenges to the Decision

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

Distribution

34. Copies of this letter are being sent electronically to those who appeared at The Inquiry and to all statutory objectors whose objections were referred to the Inquiry under section 11 (3) of the TWA but who did not appear.

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 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.