



# Department for Transport

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Our Ref: TWA/20/01/01

3 March 2021

Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992:**

### **APPLICATION FOR THE PROPOSED NETWORK RAIL (FERRYBOAT LANE FOOTBRIDGE RECONSTRUCTION) (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 31 March 2020 by your clients, Network Rail Infrastructure Limited (“NR”), for the proposed Network Rail (Ferryboat Lane Footbridge Reconstruction) (Land Acquisition) Order (“the Order”) to be made under sections 1 and 5 of the Transport and Works Act 1992 (“TWA”).

2. The proposed Order, if made, would confer powers on NR to acquire land compulsorily, take temporary possession of land and use land temporarily in connection with the construction and maintenance of a new, ramped footbridge over the Penistone to Doncaster railway (“the railway”), at Mexborough, in the Metropolitan Borough of Doncaster, to replace a level crossing and stepped footbridge (“the development”).

3. As the Order does not provide for any development requiring planning permission, NR did not submit an environmental statement with the Order application or seek a direction as to deemed planning permission from the Secretary of State.

### **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 with modifications.**

### **Procedural matters**

5. NR 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 rule 14(10) of the Rules, which would have required NR 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 24 March 2020, the Secretary of State sent a letter to the NR

setting out that he was content to make this direction. The application documents were, however, made available online and a telephone number was provided, when the application documents were 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 further notes that NR provided evidence of compliance with the relevant Rules by way of affidavit, enclosing the appropriate annexes, on 8 October 2020. The Secretary of State is therefore satisfied that NR has fulfilled the requirements of the Rules and associated guidance in relation to consulting and publicising the proposals of the Order. On that basis, he is able to confirm that he is satisfied that NR has complied with the relevant Rules and to make a determination on the application.

6. In response to the application, the Secretary of State received one letter of objection from a local resident/landowner. There were no letters of support or other representations.

7. The Secretary of State decided that it was unnecessary to hold a public inquiry or hearing to this application as he was satisfied that the issues raised in the objection could be appropriately presented and examined through the written representations procedure. This procedure is set out in rule 24 of the Rules. NR and the objector were notified of the Secretary of State's decision to follow the written representations procedure in the Department's letter dated 9 June 2020. The written representations procedure was concluded on 8 October 2020 and the outstanding objection was withdrawn on 3 December 2020. The application is, accordingly, unopposed.

### **Purposes of the Order**

8. The main purpose of the proposed Order is to provide NR with powers to compulsorily acquire land located between Mexborough and Old Denaby in the Metropolitan Borough of Doncaster. The land is required for works to construct a ramped footbridge to replace an unsafe level crossing over the railway and to replace an existing stepped footbridge across the railway which has passed the end of its operational life. The Order would also authorise the temporary possession of land in connection with the development and to confer temporary air rights to oversail cranes and for construction access.

9. The Secretary of State notes that the works for the new footbridge, following demolition of the existing one, are authorised by planning permission granted by Doncaster Metropolitan Borough Council ("DMBC") on 6 April 2018 (reference 17/02551/FUL). The diversion and extinguishment of the existing footpaths from the level crossing and the existing stepped footbridge to over the new footbridge are not included in the proposed Order, as separate applications have been made under the Highways Act 1980. An objection was received to those applications but was subsequently withdrawn on 3 December 2020 and the applications are currently before DMBC for approval. The Secretary of State notes that NR confirmed by e-mail dated 19 January 2021 that DMBC will look to confirm these applications once the new footbridge is in place. The Secretary of State does not have any reason to believe that these applications will not be confirmed and is therefore content that this does not present an impediment to the implementation of the Order.

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

10. The Secretary of State notes the purpose of the scheme as set out in paragraph 8 and that negotiations took place with the one person who objected to the Order through the written representations procedure. The objection related to concerns regarding the service

of notice on the objector, rights of access on land, time to implement the planning permission granted to commence works, and the absence of the necessary orders under the Highways Act to divert and extinguish existing public rights of way. The Secretary of State notes that, following negotiations between NR and the objector, the outstanding objection has now been withdrawn.

11. The Secretary of State notes that NR consider the level crossing to be unsafe and was shut down around five years ago for that reason. The Secretary of State has considered the aims of the Order and recognises the benefits of the development as set out by NR such as providing a new, safe, Equalities Act compliant crossing of the railway suitable for all foot users, including those with pushchairs and mobility scooters.

12. The Secretary of State notes from the funding statement submitted by NR with the application that the cost of implementing the replacement footbridge, including land acquisition, will be met from NR's CP5 Level Crossing Reduction Fund and NR's CP6 London North East & East Midlands Routes Structures Asset Management Funding. The Secretary of State has considered the Crichel Down Rules (2015) and is satisfied that planning permission for the development has been granted, that NR have the funding resources to meet the compensation provisions set out in the Order and that there are no financial or other likely impediments to implementation of the Order. The Secretary of State is satisfied that there is a compelling case in the public interest for the compulsory acquisition and temporary possession and use of land for the purposes set out above, and that the land and rights specified are required in order to secure satisfactory implementation of the development.

### **Secretary of State's overall conclusions and decision**

13. The Secretary of State has had regard to all matters set out above and has determined in accordance with section 13(1) of the TWA to make the Order under sections 1 and 5 of the TWA, subject to a number of minor drafting amendments which do not make any substantial change in the proposal such as would require notification to the affected persons under section 13(4) of the TWA.

### **Notification of determination**

14. 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 (2) of the TWA. Your clients are required to publish newspaper notice of the determination in accordance with section 14(4) of the TWA.

### **Challenges to the decision**

15. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at 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 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 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.**