



Department for Transport

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22 JUNE 2022

XXXXX

Dentons UK and Middle East LLP
One Fleet Place
London
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Dear XXXXX,

TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED NETWORK RAIL (OXFORD STATION PHASE 2 IMPROVEMENTS (LAND ONLY) 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 Report of the Inspector Mr Kevin Gleeson BA MCD MRTPI, who held an Inquiry between 7 December 2021 to 9 December 2021, into the application made on 4 June 2021 by your client, Network Rail Infrastructure Limited (“NR”), for the Network Rail (Oxford Phase 2 Improvements (Land only)) Order (“the Order”), to be made under sections 1 and 5 of the Transport and Works Act 1992 (“TWA”).
2. Enclosed with this letter is a copy of the Inspector’s Report. All “IR” references in this letter are to the specified paragraph in the Inspector’s Report.
3. The Order as applied for would confer powers of compulsory acquisition on NR for the purpose of acquiring land and rights and use of land to facilitate the improvement and upgrade works to create a new western entrance to Oxford Station, additional railway track and platforms, new rail bridges, highway improvements and associated works. These are collectively referred to as the Oxford Station Phase 2 Improvements (“the OSP2 project”).

Summary of Inspector’s Recommendations

4. The Inspector recommended that the Order should be made, subject to modifications.

Summary of Secretary of State's decision

5. For the reasons given in this letter, **the Secretary of State has decided to make the Order with modifications.**

Procedural Matters

6. In making the 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 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 land would be compulsorily acquired and those whose rights over land would be extinguished under the revised Order. Changes to the Order were proposed by NR after it was submitted and prior to the Inquiry. The Inspector noted that a number of the changes were minor drafting improvements and updates together with substantive changes as set out at IR 91-102 ("the revised Order"). It is this revised Order on which the Secretary of State has made his decision.
7. In response to the application the Secretary of State received a total of 28 objections. Out of the 28 objections, the Secretary of State notes that thirteen objections were from Statutory Objectors with a qualifying interest in property. Twenty-three objections were withdrawn prior to the Inquiry of which four were reclassified: three as representations and one as an expression of support. As a result, there were five objections outstanding at the start of the Inquiry, two of which were withdrawn during the Inquiry leaving three objections unresolved at the close of the Inquiry (IR 3) from: Mr David Bradbury, Select Service Partner Limited and Rail Gourmet UK Limited (identified in the DfT Schedule of Objections as one objection, but treated as two separate objections during the Inquiry) and the Midcounties Co-operative ("the Co-op"). There was also a total of 5 representations and 4 letters of support (IR 4).

The Secretary of State's consideration and decision

8. The Secretary of State notes the revised Order is a "land only" order seeking powers for NR to acquire land and rights, and to temporarily possess land, to facilitate the delivery of the OSP2 Project. It would also extinguish or suspend third party interests in the land and stop up and discontinue a disused level crossing (IR 22).
9. The revised Order therefore does not contain any works powers or seek deemed planning permission. The OSP2 Project is permitted development under Part 18 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. An application for prior approval for the OSP2 Project was considered by the Oxford City Council Planning Committee on 9 November 2021. The formal decision notice was issued by Oxford City Council on 26 November 2021 (21/02007/PA18) (IR 23).

10. Careful consideration has been given to all of the arguments put forward by, or on behalf of, the parties. 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 as set out in the Report. The reasons for the Secretary of State's decision are those given by the Inspector in support of their conclusions and recommendations.

Aims and Need for the Order

11. The Order Land, within the TWA application as submitted, comprised a total of 40 plots with permanent acquisition sought in respect of 26 of those plots. Temporary use only was sought in respect of the remaining 14 plots (IR 19).
12. The Inspector set out that the purpose of the revised Order is to facilitate improved capacity and capability in the "Oxford Corridor", the part of the rail network between Didcot North and Aynho Junction. All of the proposed works forming part of the OSP2 Project are within Oxford where Oxford City Council is the local planning authority and Oxfordshire County Council is the highway authority (IR 21).
13. The Secretary of State notes NR's objectives for the OSP2 Project as set out at IR 25. NR considers the need for the OSP2 Project to be both compelling and pressing (IR 26) as it considers that the rail infrastructure in the Oxford Station area is at, or is near, capacity (IR 29-30) and currently has insufficient platform capacity to accommodate the increase in passenger services planned for 2024 (IR 27-28). The Secretary of State further notes, as set out in IR 134, that through enhanced infrastructure, the OSP2 Project would provide benefits for freight and passenger services and allow the potential of East West Rail ("EWR") to be realised (IR 31). The OSP2 Project also aims to improve conditions for passengers. Accessibility and road safety, particularly for cyclists and pedestrians, would be improved along with extensive public realm improvements (IR 134).
14. The Secretary of State acknowledges the Inspector's conclusion that the OSP2 Project would provide a catalyst for development opportunities (IR 135). These development opportunities would include within the vicinity of the station, growth within the city centre and housing and employment growth within the county of Oxfordshire and the wider region including the Oxford-Cambridge Arc (IR 135). The Secretary also notes the Inspector's conclusion that the OSP2 Project will contribute to decarbonisation by encouraging a move away from the private car and through increased rail freight capacity (IR 135).
15. The Secretary of State notes the only objection to question the need for the OSP2 Project was that from the Co-op. The Co-op questioned the need for improvements to the station in light of the reduction in the use of the station during the pandemic (IR 125, 132). The Secretary of State notes the Inspector's conclusion that the reduction in the use of the station was adequately addressed by NR, and that, while acknowledging that the long-term impact of the pandemic on travel patterns is not understood there remains a requirement for additional platform capacity at Oxford Station to support the introduction of new services

including EWR. The Inspector also concluded that there had been little impact on rail freight movements through the station during the pandemic (IR 133).

16. Overall, the Secretary of State agrees with the Inspector that the aims and objectives for the OSP2 Project have established the overriding purpose of the Order and that through the enhanced infrastructure, the OSP2 Project would provide benefits for freight and passenger services in a strategically important rail corridor including the introduction of EWR (IR 134).

The main alternatives to compulsory acquisition

17. The Secretary of State notes that the Inspector set out that the surrounding land uses tightly constrain Oxford Station (IR 45) meaning any expansion of the station requires the acquisition of land outside of NR's ownership. The Inspector concluded that NR had undertaken robust project development and optioneering over many years in order to reduce land take from third-parties, while meeting the objectives of the OSP2 Project (IR 136). The Inspector highlighted that to avoid any acquisition of the nursery building NR considered the alternative of moving the lines to the east but concluded that this would be both technically challenging and costly and for those reasons such an option was ruled out (IR 137).
18. Like the Inspector, the Secretary of State is content that the main alternatives to compulsory acquisition have been adequately considered and that NR has engaged with both Select Service Partner Limited ("SSP") and the Co-op to address their concerns and limit the need for compulsory acquisition (IR 137).

The Likely Impacts

19. The Secretary of State notes from IR 138-142 that there would be some construction and operational impacts from the OSP2 Project but that the Inspector was content that these would be addressed through conditions in the prior approval letter granted by Oxford City Council. The revised Order does not seek consent for the works comprising the OSP2 Project, the impacts of which were considered as part of NR's application to Oxford City Council. However, the Secretary of State has had regard to these impacts in his decision on the application for the revised Order and this is summarised below.

The Likely Impact on the Local Road Network

20. The Secretary of State notes that in its response to the prior approval, Oxfordshire County Council acknowledged that the OPS2 Project would have a negligible impact on the local highway network (IR 143). The Secretary of State notes that the initial concerns that had been raised by the County Council have been addressed by NR and that the County Council subsequently withdrew its objection. The Secretary of State also notes that a deed of agreement between NR and the County Council has been created which provides the County Council with the assurances it required (IR 57).
21. The Secretary of State also notes that a transport assessment was produced by NR for the prior approval application granted by Oxford City Council which

concluded that there were no unacceptable transport or highways impacts. However, in addition to this, the Secretary of State acknowledges that NR concluded that there would be a slight temporary impact during construction mainly on bus routes but that it would be beneficial in terms of sustainable travel and neutral in terms of vehicular travel (IR 60).

22. The Secretary of State notes that there will likely be temporary road and footpath closures during construction (IR 61). The Secretary of State however notes NR has planned for alternative access arrangements during the construction period (IR 61-64). The Inspector concluded that provision has been made for access to be continuously maintained along Roger Dudman Way ("RDW") and to Venneit Close with final details to be addressed later. Noting the objection and representation regarding access, the Inspector concluded that NR's proposals were reasonable and appropriate for this stage of the project (IR 145). The Secretary of State agrees with this conclusion.

The Likely Impact on Oxford University

23. The Secretary of State notes that objections made by the Chancellor, Masters and Scholars of the University of Oxford (the University) and Oxford University Fixed Assets Limited were withdrawn during the Inquiry as NR and the University agreed to a compromise agreement which addresses the University's concerns. In addition to the agreement, the Secretary of State is satisfied that the Land Plans have been amended to reflect that NR would permanently acquire the land required to implement the Sheepwash Bridge realignment and replacement, thereby avoiding the University's permanent liability in respect of the replacement bridge, whilst granting rights to the University over the new bridge (IR 146).

The Likely Impact of any Removal of the Osney Lane to Mill Street Bridge During Construction

24. The Secretary of State notes NR's position that the construction works would not require removal of the Osney Lane to Mill Street bridge but that it is necessary for it to be temporarily closed for approximately 4-8 weeks whilst the pier of the footbridge on the western side of the railway is reconstructed (IR 70-71). Addressing a number of initial objections to the proposed Order, NR also confirmed that the closure of the footbridge would be temporary whilst these works are undertaken and not permanent (IR 70, 148). The Secretary of State notes concerns that the closure should be as brief as possible (IR 129-130) and the Inspector's view that based on the information available at this stage of the OSP2 Project, NR has done all it can to demonstrate that the temporary closure of the footbridge would be for as short a time as possible (IR 147). Whilst the Secretary of State notes that there is no public right of way over the footbridge and the acceptability of the revised Order is not contingent on this matter (IR 71), he has no reason to disagree with the Inspector's conclusions on this matter (IR 147-148).

The Likely Impact on the Co-op Children's Nursery

25. The Secretary of State acknowledges and has taken into account that the OSP2 Project would involve land take from the Co-op Children's Nursery building (IR 72).

The Secretary of State recognises Co-op's objection to this, and that NR has considered alternative designs (IR 73-79), including one posed by Co-op (IR 73), but found that they are not practicable or reasonable solutions. As a result, the land take cannot reasonably be avoided. The Inspector's Report states the alternative solutions that were considered by NR (IR 149-152). The Secretary of State notes the Inspector's conclusions which state that although agreement has not been reached with the nursery about the likely impacts, NR provided a signed undertaking after the close of the Inquiry to Kenmare Estates and the Co-op to facilitate the temporary relocation of the nursery and its return to its existing premises (IR 153). The Inspector concluded that the measures which NR is proposing would minimise, as far as possible, any adverse impact on the operation of the nursery (IR 153). The Secretary of State is satisfied with these conclusions.

The Effects of the Scheme on Statutory Undertakers, Statutory Utilities and Utility Providers

26. The Secretary of State is satisfied that objections from statutory undertakers were withdrawn and noting the protective provisions in the revised Order, agrees with the Inspector that there should be no adverse impact on the interests of such bodies (IR 154).

Case for Compulsory Acquisition Powers including funding

27. The Secretary of State has considered NR's reasons for making the application and is satisfied that compulsory acquisition of the land subject to the revised Order is required and is necessary to facilitate the OSP2 Project. The Secretary of State also agrees with the Inspector that NR has demonstrated that there is a compelling case in the public interest for making the revised Order to enable the compulsory acquisition of land and rights to deliver the OSP2 Project (IR 155). The Secretary of State also acknowledges that the need is immediate to meet the December 2024 timescale for the enhanced Train Service Specification including EWR (IR 82).

28. The Secretary of State notes that one further prior approval and one further planning permission are likely to be required before the OSP2 Project can proceed in full (IR 157). The former relates to a crash barrier at the base of the reconstructed west pier of the Osney Lane footbridge (IR 85) and the latter to the reconstruction of the eastern wall of the Co-op nursery building to accommodate the re-alignment of the retaining wall (IR 84). The Inspector considers that both are minor and appear uncontroversial with the likelihood being that each would be approved (IR 157).

29. Overall, the Secretary of State accepts the Inspector's conclusions: that interference with Article 1 of the First Protocol of the Human Rights Act is engaged but that the interference would be proportionate, lawful, limited in extent and mitigated as far as possible (IR 156); that there is no indication that any of the outstanding requirements would not be achievable (IR 157); that funding arrangements are in place (IR 158); that justification has been provided for the inclusion of each plot in the revised Order (IR 159); and that no evidence has been provided that any land take or rights sought is excessive or unnecessary (IR 159).

In coming to these conclusions, the Secretary of State has had regard to the Guidance on Compulsory Purchase Process and The Crichel Down Rules, July 2019.

Other Matters

Public Rights of Way

30. The Secretary of State notes that the revised Order provides for the stopping up of the former Oxford Station Emergency level crossing and extinguishes all rights of way over that level crossing (IR 90).
31. Section 5(6) of the TWA provides that a TWA order “shall not extinguish any public right of way over land unless the Secretary of State is satisfied – (a) that an alternative right of way has been or will be provided, or (b) that the provision of an alternative right of way is not required.” The Inspector concluded that as the level crossing is disused (being both redundant and physically blocked from use on safety grounds) (IR 90) the provision of an alternative right of way is not required (IR 90, 161). The Secretary of State notes that the County Council confirmed its support for formalising the closure and that there was no other opposition to it (IR 161). The Secretary of State agrees with the Inspector’s conclusion that closure is acceptable and an alternative right of way is not necessary.

Remaining Objections

David Bradbury

32. The Secretary of State notes the consideration of Mr David Bradbury’s concerns as set out at IR 103-106 that compulsory acquisition is excessive and premature, on the basis that the access via Walton Well Road may not be necessary, and therefore rights sought along RDW may not be required. The Inspector concluded that the issue of temporary closures of RDW and the need to maintain access to properties in RDW and Venneit Close has been appropriately addressed given the stage that the OSP2 Project has reached. The Inspector considered that the measures are neither excessive nor premature and provide an appropriate degree of flexibility at this point. The Inspector also highlighted that article 12(9) of the Order (and the agreement with Oxford University) would ensure that the rights over the southern end of RDW would not be extinguished until the new Cripsey Road junction has been completed (IR 162). The Secretary of State agrees with the Inspector’s conclusions.

Rail Gourmet

33. The Secretary of State notes the Inspector’s conclusion that Rail Gourmet’s objection does not demonstrate that its interest at Oxford Station are subject to compulsory acquisition and NR has stated that Rail Gourmet’s interests are not within the Order limits. Given this, the Secretary of State agrees with the Inspector that Rail Gourmet’s grounds of objection are without substance and that its objection to assurances about rent arrears are not relevant to consideration of this Order application (IR 163).

Select Service Partner Limited (“SSP”)

34. The Secretary of State notes that SSP holds leases for the units in Oxford Station occupied by Delice De France, M&S Simply Food, Upper Crust and Pumpkin café and that their objection relates to alleged compulsory acquisition. However, with the exception of Pumpkin café, all of those units are outside the Order Limits, and are not subject to any compulsory acquisition or interference with their interests (IR 111). The Secretary of State therefore agrees with the Inspector that the objection is without substance in respect of those units (IR 164). The Secretary of State notes that with regard to the Pumpkin café negotiations have taken place on this matter and that there are challenges with relocating the cafe during construction due to safety and space constraints (IR 113-115) and agrees with the Inspector that that there is a compelling case in the public interest to acquire the land and that interference with the objector’s human rights would be justified (IR 165).

Co-op Children’s Nursery

35. Consideration of the impact on land take at Co-op nursery is set out above. The Secretary of State agrees with the Inspector that there is a compelling case in the public interest to acquire the land required by NR. The Secretary of State also notes the Inspector’s conclusion that in the absence of an agreement, the undertaking given by NR would address the Co-op’s concerns, involving both temporary relocation and the long term changes to the nursery building, and would ensure that the Co-op’s interests are not affected any more than is necessary (IR 166). The Secretary of State has no reason to disagree with this.

The case for the Supporters

36. The Secretary of State notes the support for OSP2 Project at IR 117-120 which includes economic benefits relating to the delivery of EWR, improvements for cyclists, pedestrians and buses and improvements for passenger and freight services.

Secretary of State’s overall conclusion and decision

37. In the light of the above, the Secretary of State agrees with the Inspector that that the revised Order is justified on its merits and that there is a compelling case in the public interest for making it. The Secretary of State is satisfied that the substantial public benefit with regard to public transport improvements and economic development outweigh the harm due to private losses. The Secretary of State also agrees with the Inspector that making the revised Order would accord with relevant national, regional and local policies (IR 169).
38. The Secretary of State is satisfied that the statutory procedures in connection with the application for the revised Order have been followed.
39. The Secretary of State has had regard to all matters set out above and has therefore determined in accordance with section 13(1) of the TWA to make the

revised 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.

Proposed Modifications to the Order

40. The Secretary of State notes that modifications were made to the Order and plans prior to the Inquiry as set out at IR 91-102 and explained above at paragraph 6. The Secretary of State notes that the Inspector was satisfied that they were all necessary (IR 167). The Secretary of State agrees to these modifications.
41. On 17 June 2022, NR requested that the provision creating an offence on summary conviction with regard to the disclosure of confidential information should be removed as it was not required for the Order. The Secretary of State is content to accede to this request as it does not affect the substance of the Order that was considered at the Inquiry and has removed this provision.
42. The Secretary of State has made one further modification to delete the provision on the application of the 1961 Act and replaced it with wording in the relevant articles that concern matters of compensation. Consequential changes regarding article references have also been made. The Secretary of State is also satisfied that this change does not affect the substance of the Order that was considered at the Inquiry.

Public Sector Equality Duty

43. NR has confirmed that it has complied with the Public Sector Equality Duty set out in section 149(1) of the Equality Act 2010 and in preparing the revised Order has engaged with affected parties (IR 89). The Secretary of State has also complied with the Public Sector Equality Duty in considering this application and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not. The Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics.

Notice of determination

44. This letter constitutes the Secretary of State's notice of his determination to make the revised Order for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your client is required to publish a notice of the Secretary of State's determination in accordance with section 14(4) of the TWA.

Challenge to decision

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

Distribution

46. Copies of this letter are being sent 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

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 made 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 have grounds for challenging the decision to make the Order is advised to seek legal advice before taking action.