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Dear Madam,

TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED NETWORK RAIL (CHURCH FENTON LEVEL CROSSING REDUCTION) ORDER 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 4 September 2023 by the Inspector Mr S Dean MA MRTPI, who held an Inquiry between 8 August 2023 to 10 August 2023, into the application made on 20 July 2022 by Network Rail Infrastructure Limited ("NR"), for the Network Rail (Church Fenton Level Crossing Reduction) Order ("the Order"), to be made under sections 1 and 5 of the Transport and Works Act 1992 ("TWA"); and a direction as to deemed planning permission for the development provided for in the Order, to be given under section 90(2A) of the Town and Country Planning Act 1990 ("the Planning Direction").
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. The names of objectors are accompanied by their reference number in the form "OBJ/xx".
3. The purpose of the Order is to authorise the closure of private rights vehicular access level crossings, known as the Rose Lane crossing, the Poulters level crossing and Adamsons level crossing, located within an approximately 1km length of line commencing 300 metres south-west of Church Fenton station in the North Yorkshire Council area. The Order would provide new pedestrian and vehicular access routes for private rights holders across the railway. This will be achieved by replacing the vehicle level crossing access with a new road bridge and access road which will join Common Lane to the southern end of

Rose Lane. The existing footbridge over the railway line located on Rose Lane will be removed and a new footbridge will be provided in the same location.

4. The Order would also provide NR with powers for the compulsory acquisition of land for the proposed works and ancillary purposes; the acquisition of rights over specified land; provisions for the temporary use of land in connection with the proposed scheme; the extinction and creation of private rights; the temporary stopping up of highways, closure of the three level crossings; provisions relating to streets; and powers to survey and investigate land.

Summary of Inspector's Recommendations

5. The Inspector recommended that the Order should be made, subject to the corrections in the version handed up during the Inquiry and that the deemed planning permission be granted subject to conditions, for the works that are the subject of the Order.

Summary of Secretary of State's decision

6. For the reasons given in this letter, **the Secretary of State has decided to make the Order with modifications and to give the Planning Direction, subject to conditions set out in Annex B to this letter.**

Procedural Matters

7. 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 (Document NR07: Consultation Report ("NR07"), Appendices 1-3) and making the documents available for public inspection in a "virtual consultation room" that could be accessed 24 hours a day for the duration of the consultation (NR07, paragraph 2.5.5). 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 (NR07, paragraph 2.5.8, Tables 2 to 4 and Appendices 2 and 3). Changes to the Order were proposed by NR after it was submitted and both prior to and during the Inquiry (INQ11.2).
8. NR requested a screening decision from the Secretary of State as to whether an environmental impact assessment ("EIA") was required for the Order application. In response to that request the Secretary of State found that an EIA was not required, however NR did prepare and submit an Environmental Report ("ER"). This was in response to feedback on the need to consider in detail issues of water resources, landscape and visual effects and ecology (IR 5 and 6).
9. In response to the application the Secretary of State received a total of 3 objections. Later, one of those objections was reclassified as a representation.

Eleven representations were received, of which 6 were withdrawn. As a result, 2 objections remained by the close of the Inquiry. There were also six letters of support (IR 7).

10. The Secretary of State has complied with the public sector equality duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with sub-section (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 has considered these issues where relevant below.

The Secretary of State's decision

11. Careful consideration has been given to all the arguments put forward by, or on behalf of, all parties. The Secretary of State's consideration of these and of the Inspector's report is set out in the following paragraphs. Where not specifically stated, the Secretary of State can be taken to agree with the findings, recommendations and conclusions put forward by the Inspector.

The Aims and Objectives of, and need for the scheme

12. The Order scheme is a key part of the TransPennine Route Upgrade ("TRU") which aims to deliver improved journey times between northern cities, improved capacity for local and express services, improved reliability, retain existing freight paths and to contribute to NR's decarbonisation strategy and climate policy (IR 25).
13. While the Order scheme is a small part of the overall TRU, the current form of this section is a constraint to the wider project as the two-line layout affects service performance, resilience and capacity. The three level-crossings currently restrict the ability to increase the number of lines at this location as safety standards do not normally allow for more than two lines over a level crossing. In addition, the speed of the trains is limited by the track curvature and the presence of the level crossings. NR's case for the scheme also indicates that it would deliver safety benefits, as level crossings are the largest single contributor to train accidents and risk on the network (IR 26). The Order scheme will contribute to the delivery of the TRU's aims by allowing the closure of the three level crossings which will in turn allow an increase in lines speed, capacity, safety improvements and that will improve performance of the North TransPennine Rail Route. The replacement footbridge proposed would allow for realigned tracks and the electrification of the line allowing the increase of speeds, safety and delivery of environmental benefits. NR considers both the temporary and permanent acquisition of land proposed is necessary to enable all these works (IR 30). The Secretary of State notes that there were no objections to the Order which questions its aims, objectives or the need for it (IR 113).
14. The Inspector concluded that the Order in turn will help to contribute towards the safety, reliability and resilience of an important railway line in the North of England delivering substantial public benefits across the region (IR 114). The

Secretary of State agrees with the Inspector and is content that a suitable case has been made relating to the aims, objectives and need for the Order scheme.

Compliance with statutory procedural requirements

15. In making the application, NR was required to comply with the publicity requirements of the 2006 Rules. This includes 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, the Applicant must display and publish notices giving information about the application and how to make representations. The Secretary of State has had sight of NR's sworn affidavits in relation to the publication and service of notices.
16. The Secretary of State notes that an objection was received on the basis that NR initially failed to submit an ES. The Inspector noted that an ES was not required for the Order application, however NR submitted an ER regardless in response to feedback on the need to consider issues of water resources, landscape and visual effects and ecology. The ER was used to enable NR to incorporate impact avoidance and mitigation measures into the scheme design (IR 6 and 115). The Secretary of State agrees with the Inspector's conclusion that the correct procedures have been followed by the Applicant and all statutory requirements have been complied with (IR 116).

Main alternatives, reasons for choosing preferred option

17. There are no high-level strategic alternatives to the Order scheme which would deliver the TRU remit of improving performance and capacity while reducing journey times (IR 32). NR explored the possibility of keeping the level crossings open and mitigating risks while still achieving the TRU aims but this was considered unfeasible (IR 33). NR have considered several alternative options in the context of the current scheme, this included the replacement of the crossings with a new bridge (Option A), the provision of a new crossing on the Normanton to Colton Junction Line on the Church Fenton to Micklefield line (Option B), the purchase of the Rose Lane cottages to remove the need for the crossing and the provision of alternative access for the Poulters and Adamson crossings (Option C) and the closure of the crossings with no replacement (Option D) (IR 34). The Secretary of State agrees with the Inspector that given the location of the Order scheme and the particular nature of its aims, there are no strategic alternatives to it and it would be unfeasible, unsafe and impractical to allow the level crossings to remain open in light of the wider improvement works needed for the TRU (IR 117).
18. The Secretary of State notes that two sub-options within Option A which were broadly similar to the Order scheme were taken to public consultation, and after further engagement and consultation with stakeholders, affected landowners and the public, the final option, the Order scheme was chosen (IR 35).
19. Flood risk was a key factor driving the option selection as much of the area and much of the Order land is within Flood Zones 2 and 3 (IR 36). The Secretary of

State notes that Mr Ronald Poulter (OBJ02) proposed an alternative, which would alter the location of the new access road further to the West, away from his property (IR 72). NR considered the new location proposed by OBJ02 but concluded that whilst it would reduce the amount of at-grade development (flat, ground level) and parts of the highway and bridge in Flood Zone 3, it would also increase the amount of the embankment within Flood Zone 3 and cause the potential storage basins to lie in Flood Zone 3 (IR 48). This was deemed unacceptable by the Environment Agency (IR 49). The inspector also concluded that this would cause the proposed alternative to fail the Sequential and Exception tests and it would have a far greater infringement into the HS2 safeguarding area (IR 120).

20. Although NR have not assessed this alternative proposal in the same detail as the Order scheme, the Inspector was satisfied that they had considered it in sufficient detail. The Secretary of State agrees with the Inspector that NR have demonstrated that their decision to pursue the Order scheme as presented is the appropriate one (IR 119).
21. NR provided a Consultation Report in the application documents, which the Inspector concluded provided clear evidence that a number of options were considered and were consulted upon and reviewed to consider their effects on local businesses, residents and crossing users and that they were robustly assessed against other technical constraints, including safety and railway operational matters, engineering and design as well as flood risk (IR 118). The Secretary of State agrees with the Inspector's conclusion that there are no strategic alternatives to the Order due to the particular nature of its aims and location (IR 117) and that the Order scheme is well justified (IR 121).

Likely impact on local businesses, residents and crossing users

Landscape, including hedging and trees.

22. In consultation with the local planning authority using agreed and selected viewpoints, NR produced a detailed landscape and visual impact assessment ("LVIA") for the Order scheme. In considering the effects on the landscape the LVIA produced a series of photomontages within the ER showing the Order scheme with no mitigation and at year 15 with mitigation (essentially planting and landscaping) (IR 40). In considering the effects on landscape the LVIA concluded that given the scale of the landscape national character area relative to the scale of the Order scheme, it is unlikely to be significantly affected, NR concluded that there would be a low magnitude of impact during construction and year 1, with no discernible difference at year 15 when compared to the baseline landscape type and area (IR 41).
23. When considering the visual impacts at both Common Lane and Rose Lane the LVIA concluded that there would be a medium magnitude of impact during construction and year 1, but, as a result of tree planting and maturing hedgerow it concluded that this would reduce to low/very low by year 15. NR explicitly considered the views from OBJ02's property and while the views from there would be differ slightly from those in the photomontages, it is the professional

opinion of NR's expert that such a slight difference would not result in a different assessment of the magnitude of any visual impact (IR 42).

24. It is acknowledged that the Order scheme would result in the loss of eight individual trees, one group of trees and sections from three hedges. Three of those trees are being removed in connection with the access road, track and culvert works. One hedge section is being removed in connection with the new Rose Lane/Common Lane junction arrangements and the remainder are being removed in connection with the replacement footbridge and residents parking area at Rose Lane (IR 43). All remaining trees are to be retained and protected with replacement planting mitigating the necessary losses (IR 44).
25. Following a site visit, evidence presented at Inquiry, and considering the conclusions reached by the LVIA the Inspector concludes that in landscape terms, effects would range from 'minor adverse' to 'no change'; and in visual terms the effects would fall from a medium magnitude of impact to low magnitude of impact once the planting and landscaping schemes mature (IR 123). The Inspector notes there is a requirement within the planning conditions, to submit for approval and then implement a detailed Landscape and Ecological Management Plan. The Secretary of State agrees with the conclusions of the Inspector that the measures proposed appear robust and that there is no reason to doubt that they will protect and retain the majority of trees and hedging in the Order area (IR 124). As such, he is satisfied that the Order would not have a detrimental effect on local businesses, residents and crossing users in relation to landscape, including hedging and trees (IR 125).

Drainage and flooding

26. The selection and design of the Order scheme proposed by NR has been informed by a flood risk assessment ("FRA") which has been set out in detail in the ER and also includes a Sequential Test and Drainage Strategy (IR 45). The aim of the Sequential Test is to ensure that development is only located within areas of flood risk where there are no other reasonably available locations in areas of lower risk (National Planning Policy Framework ("NPPF") paragraph 162 and Flood Risk and Drainage: Summary Proof of Evidence, paragraph 2.2.1). Detailed flood modelling work set out in the FRA has established that despite being within Flood Zones 2 and 3, the Order scheme would be safe from flooding and would not increase the flood risk elsewhere. The raised elements of the Order scheme within Flood Zone 3 have the greatest potential to change flooding mechanisms so the location of the embankment north of the Order scheme was therefore kept outside of Flood Zone 3 as much as possible whilst enabling the Order scheme to remain functional. This necessitated the location of the highway bridge and the raised sections of highway on their current proposed alignments (Flood Risk and Drainage: Summary Proof of Evidence paragraph 2.2.4). The Sequential Test established that there are no reasonably available sites appropriate for the Order scheme in areas with a lower risk of flooding (IR 126).
27. As, following the Sequential Test, it was not possible for the Order scheme to be located in zones of lower probability of flooding than Flood Zone 3a, the

Exception Test was applied. For the Exception Test to be passed, it must be demonstrated that the project provides wider sustainability benefits to the community that outweigh flood risk; and, the FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall (NPPF paragraphs 164 and 165). NR considered that the Test was achieved through the inclusion of the Elevated Flood Alleviation Structure and the SUDS as part of the design of the Scheme (Flood Risk and Drainage: Summary Proof of Evidence paragraph 2.3.1).

28. The Order scheme is accompanied by a Drainage Strategy which proposes to replicate the existing drainage routes, take into account topography and through the use of drainage detention basins and swales, surface water run-off would be discharged to surrounding watercourses at the same rate as the current land-use and arrangements (IR 53). Measures are in place, through the Order, to ensure existing drainage features are protected and if necessary repaired or replaced on completion of the works (IR 129). Both the Environment Agency and the Lead Local Flood Authority have approved the drainage and flood design and modelling of the Order scheme. The Secretary of State agrees with the conclusions of the Inspector that the Order scheme satisfies the planning requirements with regards to the Sequential and Exception tests (IR 130) and that it would not have an unacceptable impact on local businesses, residents or crossing users (IR 131).

Construction works, pedestrian and vehicle access

29. The phasing of the Order works and the wording of the Order itself means that until the new access road and new access track are open for use then the existing level-crossings cannot be closed (IR 56). The Inspector notes there will be a short period where the pedestrian access to the Rose Lane cottages will be via the new access road and bridge, whilst the footbridge is replaced. It is recognised this will lengthen the pedestrian route to Church Fenton, but it is not a permanent change and therefore not an unacceptable impact (IR 132).
30. The Inspector considered access to the properties on Common Lane and Rose Lane cottages, noting access will be maintained during the Order scheme works (IR 134). The commitments set out in NRs application combined with the conditions proposed for the Deemed Planning Permission leads the Secretary of State to agree with the conclusion of the Inspector that construction works associated with the Order would not have an unacceptable impact on local businesses, residents or crossing users with particular regard to pedestrian and vehicle access (IR 136).
31. The Inspector concludes that construction effects would be temporary, landscape and visual effects would reduce over time whilst the Order scheme would deliver a marked increase in safety and convenience for those needing to cross the Church Fenton to Micklefield railway line (IR 137). The Secretary of State agrees with this analysis.

Compulsory purchase, the public interest and human rights

32. The Order would authorise the compulsory acquisition of land and of rights over land, including temporary acquisition of land. The Secretary of State therefore must be satisfied that the following tests contained in the Department for Levelling Up, Housing and Communities 'Guidance on Compulsory purchase process and the Crichel Down rules' (as updated in July 2019) will be satisfied:
- (a) whether there is a compelling case in the public interest to justify conferring on NR powers to compulsorily acquire and use land for the purposes of the scheme;
 - (b) whether the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected (having regard to the Human Rights Act);
 - (c) whether there are likely to be any impediments to NR exercising the powers contained within the Order, including the availability of funding;
 - (d) whether all the land and rights over land which NR has applied for is necessary to implement the scheme (IR 10(5)).
33. The Secretary of State notes that NR has set out the need for each plot of land covered by the Order, whether for compulsory purchase, temporary possession or acquisition of rights. Detailed technical evidence on design, drainage, flooding and landscaping justifies the need for the land, both for delivery of the Order scheme and for the mitigation of environmental effects (IR 63).
34. The Secretary of State agrees with the Inspector that the Order scheme would contribute to the delivery of economic, social and environmental benefits of the whole region and that there is a clear and compelling need for the Order scheme (IR 138) and that there is a compelling case in the public interest for the compulsory acquisitions of land and rights and that NR have provided clear justification of the need for the land to be acquired. The test (a) is met (IR 139).
35. Noting the clear need for the TRU which will bring considerable benefits, the Secretary of State agrees with the Inspector that any interference with rights under Article 1 of the First Protocol of the Human Rights Act 1998 is proportionate, lawful, limited in extent and mitigated as far as possible, and where acquisition is necessary compensation will be payable in accordance with the compensation code. The test (b) is met (IR 140).
36. The Secretary of State agrees with the Inspector that there are no likely impediments to NR exercising the powers contained within the Order (IR 142). The Order scheme is supported by the government as part of the TRU programme. Funding is in place to implement it and Natural England have confirmed they can see no reason not to grant a European Protected Species Licence. The Secretary of State therefore agrees with the Inspector that test (c) is met (IR 141).

37. The Secretary of State agrees with the Inspector that justification has been provided for each individual plot required to implement the Order scheme including the purpose for each plot, whether it is for permanent works, temporary works or rights to be secured to provide alternative utility apparatus. NR has committed to minimising the amount of land to be permanently acquired and to restrict temporary use or acquisition of rights over land to that which is sufficient to deliver the Order scheme (IR 143). The Secretary of State therefore agrees with the Inspector that the land and rights over land which NR has applied for are necessary to implement the Order scheme and that test (d) is met (IR 144).

Conditions proposed to be attached to the Deemed Planning Permission

38. The Secretary of State has had regard to the Inspector's consideration of the proposed planning conditions to be attached to the Deemed Planning Permission. It is noted by the Inspector that these conditions have been produced in consultation with Selby District Council (now North Yorkshire Council) (IR 145). In addition, the Inspector notes that NR has agreed to pre-commencement conditions and considers it necessary and reasonable that the information required by those conditions be provided prior to the commencement of development. The Inspector considers the conditions necessary, relevant, precise, enforceable and reasonable (IR 146 and 147). The Secretary of State agrees to the proposed amendments to the conditions as set out in IR Appendix E and Annex B to this letter.

Any other matters

39. As the Order application includes a request for Deemed Planning Permission the Inspector has assessed the proposal against the development plan, including policies in the Selby District Core Strategy Local Plan, saved policies in the Selby District Local Plan 2005 and policies in the Minerals and Waste Joint Plan 2022. Due regard has also been given to government policy in the NPPF, as well as national and local transport policy (IR 152).
40. The Inspector notes that the Order scheme lies within the South and West Yorkshire Green Belt where inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. As the Order scheme is for local transport infrastructure which can demonstrate a requirement for a Green Belt location, it is not inappropriate for development to take place provided it preserves the openness of the Green Belt land (NPPF paragraph 150). Given the conclusions reached at paragraphs 22 to 25 of this letter on the landscape and visual effects of the Order scheme, combined with the LVIA evidence the Secretary of State agrees with the conclusions reached by the Inspector that the Order scheme would not be an inappropriate development in the Green Belt. (IR 153).

The Objections

OBJ01 – Mr Boddy

41. Mr Boddy owns three parcels of land affected by the Order scheme and raised concerns that the drainage of his land would be damaged beyond repair by the Order works (IR 87). NR have committed to inspect the affected land both before and after completion of the works. NR will carry out any necessary remedial works and can do so for up to five years after the opening of the bridge, which makes up part of the Order scheme, which the Inspector considered gives ample time to identify the need for any remedial works (IR 70). The Secretary of State agrees with the conclusions of the Inspector that this objection and the concerns raised have been dealt with appropriately and will continue to be addressed by NR as the Order scheme progresses (IR 157).

OBJ02 - Mr Ronald Poulter

42. Mr Poulter's land is required for the construction of the new highway, bridge, access track and construction compound. He does not object to the principle of the Order scheme, but rather to the proposed position of the new highway and junction with Common Lane and its relation to his home, Willow Farm New House. He fears the disruption and noise from a new road so close to his property and would like the new access road and bridge to be relocated 50m to the west, arguing that these effects would severely impact on rights protected under Articles 1 and 8 of the European Convention on Human Rights (IR 89 to 91 and 96).
43. Whilst not considered as a potential option during NR's option analysis process, Mr Poulter's proposal has been considered subsequently, and in some detail during the Inquiry. NR provided evidence that, contrary to Mr Poulter's assertion that his proposal would utilise less Flood Zone 3 land, such a move would place more of the raised elements of the Order scheme into Flood Zone 3, with implications for flood storage volume and water flows (IR 72 and 94).
44. Mr Poulter also considered that the submission of NR fails to comply with the 2006 Rules in that a true and accurate Environmental Statement has not been submitted. The Inspector disagreed and satisfied that all statutory procedural requirements have been complied with, and the Order scheme did not require an Environmental Statement (IR 91 and 157).
45. The Inspector agrees with the evidence presented by NR and the clear reasons they set out on why the Order scheme was chosen and why the proposed alternative put forward by Mr Poulter was deemed to be unsuitable and impractical (IR 158). Consideration was also given to related concerns raised regarding the visual impact of the Order scheme; the potential for increased noise and disturbance; as well as concerns over badgers. (IR 161 to 163). The Secretary of State agrees with the conclusions of the Inspector at IR 165 that the matters raised are not substantial to render the Order scheme unacceptable. In relation to the compulsory purchase powers being sought to achieve the Order scheme, the Secretary of State agrees with the conclusions reached that any interference with human rights is both limited and proportional (IR 164).

Secretary of State's overall conclusion and decision

46. The Inspector has given careful consideration to all matters raised and concludes none of them are sufficient to prevent the Order scheme from being made. The Secretary of State agrees there is a compelling case in the public interest for making the Order scheme with clear evidence that the substantial public benefits from the public transport improvements and economic development would outweigh the limited private harm due to private losses. National, regional and local policies are aligned with the Order scheme and funding is in place for the project, ensuring there are no significant impediments to its implementation (IR 166). The Secretary of State also agrees that there is no alternative Order scheme before the Inspector nor are any modifications proposed (IR 167).
47. 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 Order under sections 1 and 5 of the TWA, subject to the corrected version of the Order as presented at Inquiry being implemented and 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.
48. For similar reasons, the Secretary of State has also decided that Deemed Planning Permission should be granted for the development that would be authorised by the Order, subject to the conditions set out in Annex B to this decision letter.

Proposed modifications to the Order

49. Secretary of State is making a number of minor textual amendments to the Order presented at Inquiry (Doc INQ11.2) in the interests of clarity, consistency and precision. Further to the textual amendments the Secretary of State also makes the following modifications. He considers that none of these changes materially alter the effect of the Order.
- Throughout the Order, references to “the District of Selby” have been omitted following its abolition on 1 April 2023.
 - In the preamble, a reference to paragraph 17 of Schedule 1 to the TWA has been inserted.
 - In article 2 (interpretation):
 - the definition of “highway authority” has been amended so that it refers to North Yorkshire Council; and
 - the definition of “the 2016 Regulations” has been moved to article 16.
 - In articles:
 - 8 (power to construct and maintain works),
 - 11 (temporary stopping up of streets),
 - 17 (power to survey and investigate land),
 - 22 (rights under or over streets),
 - 23 (temporary use of land for constructions of works),
 - 24 (temporary use of land for maintenance of works),

- 26 (extinction or suspension of private rights of way) and
 - 30 (power to lop trees overhanging the authorised works),
- provisions referring to compensation and disputes about compensation that are to be considered under Part 1 of the 1961 Act have been modified as disputes to be considered under Part 1 of the 1961 Act are disputes concerning compulsory purchase, whereas the compensation provisions contained within this Order are intended to have a wider application.
- In articles:
 - 11 (temporary stopping up of streets),
 - 12 (access to works),
 - 14 (construction of bridges),
 - 16 (discharge of water),
 - 17 (power to survey and investigate land), and
 - 32 (traffic regulation),

paragraphs have been inserted requiring the Applicant to include in an application to the relevant authority to which a deeming provision applies, notification that the application will be deemed as being consented to if the authority does not notify the Applicant of its decision before the end of the relevant specified period.
 - In article 17(power to survey and investigate land), paragraphs (4)(e) has been amended to refer to UK legislation and, consequently, paragraph (5) has been omitted. Cross references have been modified accordingly.
 - In article 38 (service of notices), preceded definitions for “address” and “electronic transmission” have been inserted to avoid there being undefined terms.
 - The shoulder references for Schedules 3, 4 and 7 have been corrected, as have cross-references in Part 3 (for the protection of the internal draining board) of Schedule 11 (protective provisions).

Notice of determination

50. 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.

Challenges to the Decision

51. The circumstances in which the Secretary of State’s decision may be challenged are set out in the note at Annex A to this letter.

Distribution

52. 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 1992 but who did not appear.

Yours sincerely,

Natasha Kopala

ANNEX A

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, because—

- 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 action.

ANNEX B

RECOMMENDED CONDITIONS TO BE ATTACHED TO DEEMED PLANNING PERMISSION

Interpretation

In the following conditions—

“the Code of Construction Practice” means the code of construction practice to be submitted to and approved by the local planning authority under condition 5 (code of construction practice), a draft of which (known as “Part A”) accompanies the Environmental Assessment Report;

“the development” means the development authorised by the Order;

“the Environmental Assessment Report” means the environmental information submitted with the application for the Order on 28th July 2022;

“the local planning authority” means North Yorkshire Council;

“Network Rail” means Network Rail Infrastructure Limited;

“the Order” means the Network Rail (Church Fenton Level Crossing Reduction) Order 202[X];

“the Order limits” has the same meaning as in article 2 (interpretation) of the Order;

“the planning direction drawings” means the drawings listed in Appendix 3 to the request for deemed planning permission dated 28th July 2022;

“preliminary works” means environmental (including archaeological) investigations, site or soil surveys, ground investigations and the erection of fencing to site boundaries or the marking out of site boundaries; site clearance and de-vegetation; and the erection of contractors’ work compounds, access routes and site offices;

“the railway” means the railway comprised in the development;

“the site” means land within the Order limits;

“SDCS” means the Selby District Core Strategy 2013;

“SDLP” means the Selby District Local Plan 2005.

Conditions

1. TIME LIMIT FOR COMMENCEMENT OF DEVELOPMENT

The development hereby permitted must commence before the expiration of five years from the date that the Order comes into force.

Reason: To ensure that development is commenced within a reasonable period of time.

2. IN ACCORDANCE WITH THE PLANNING DIRECTION DRAWINGS

The development must be carried out in accordance with the planning direction drawings unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that the development is carried out in accordance either with the consented design or such other design details as have been subjected to reasonable and proper controls.

3. STAGES OF DEVELOPMENT

No development (including preliminary works) is to commence until a written scheme setting out all the stages of the development has been submitted to and approved in writing by the local planning authority. Variations to the approved stages of development may be submitted to and approved in writing by the local planning authority. Thereafter the development shall be undertaken in accordance with the approved stages of development. Written notification shall be given to the local planning authority of commencement within each stage, not later than 21 days following commencement within the respective stage.

Reason: To identify the individual stages for the purposes of these conditions.

4. LANDSCAPING & ECOLOGY

No development within the relevant stage (including preliminary works) is to commence until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The approach to the LEMP should be in broad accordance with plan 'Outline Landscape and Ecological Mitigation Proposals' (Figure 6.5) Ref 151666-TRA-91-CFM-REP-W-EN-000015 Revision P05 and the details set out within Network Rail's Letter of Commitment dated 4th October 2022 (Ref 151666-TRA-E4-000-LTR-W-LP-000354).

a) The proposed LEMP for each stage will include the following details:

- i) An Arboricultural Method Statement (to BS5837:2012); to comprise works and recommendations, as set out in Environmental Report NR16 Chapter 12 Arboriculture (including all mitigation and details as set out in chapter 12.6).
- ii) Those trees and hedgerows shown to be retained in Environmental Report NR16 Chapter 12 Arboriculture 'Tree Protection Plans' Figures 12.2 (four sheets), shall be retained.
- iii) A plan of ecological mitigation details including areas of new plantings and details of any habitats created or enhanced.
- iv) Implementation timetable and a programme for initial aftercare, long term management and maintenance responsibilities for a period of 5 years post-completion for landscape purposes.
- v) Details of organisation(s) responsible for maintenance and monitoring.

b) The LEMP must reflect the survey results and ecological mitigation and enhancement measures set out in the Environmental Report (Chapter 8 Biodiversity), and must also include the following ecological measures:

- i) The aims and objectives of the management to be undertaken.
- ii) A programme of monitoring with thresholds for action as required.
- iii) Full details of measures to ensure protection and suitable mitigation to all relevant protected species.

c) The LEMP must include both hard and soft landscaping works, covering the locations where landscaping will be undertaken, and must also include the following details:

- i) Full detailed landscape plans indicating full planting specification, including layout, species, number, density and size of trees, shrubs, plants, hedgerows and/or seed mixes and sowing rates, including extensive use of native species.
- ii) Any structures, such as street furniture, any non-railway means of enclosure and lighting.
- iii) Any details regrading, cut and fill, earth screen bunds, existing and proposed levels.
- iv) Any areas of grass turfing or seeding and depth of topsoil to be provided.
- v) A timescale for the implementation of hard landscaping works.
- vi) Details of monitoring and remedial measures, including replacement of any trees, shrubs or planting that fail or become diseased within the first five years initial aftercare period from completion.
- vii) Details of protective measures for retained trees.

The measures within the LEMP must be implemented in accordance with the approved details.

Reason: In order to provide effective screening and landscaping to protect the character and appearance of the surrounding open countryside and Green Belt having had regard to Policy ENV1 of the SDLP, Policies SP3, SP15 and SP19 of the SDCS and the National Planning Policy Framework (July 2021). This is to secure the correct implementation of the measures identified in the Environmental Report.

5. CODE OF CONSTRUCTION PRACTICE

a) No part of the development (including preliminary works) is to commence until a Code of Construction Practice (CoCP) Part B, including the relevant plans and programmes referred to in (b) below (which incorporates the means to mitigate the construction impacts identified by the Environmental Report), has been submitted to and approved in writing by the local planning authority. For the avoidance of doubt this does not include approval for Part A of the CoCP (a general overview and framework of environmental principles and management practice to be applied to the scheme along with all construction-led mitigation identified in the Environmental Report) which has been submitted as part of the Order.

b) Part B of the CoCP (as defined at paragraph 3.3.5 in Environmental Report NR16 Volume 1) must include the following plans and programmes:

- i. An external communications programme.
- ii. A pollution prevention and incident control plan.
- iii. A waste management plan.
- iv. A materials management plan including a separate soils mitigation plan.
- v. A nuisance management plan concerning dust, wheel wash measures, air pollution and temporary lighting; and
- vi. A noise and vibration management plan including a construction methodology assessment.

The development must be implemented in accordance with Parts A and B of the approved CoCP, along with the relevant plans or programmes, unless otherwise agreed in writing with the local planning authority. The approved CoCP (Parts A and B) shall be implemented in full throughout the period of the works.

Reason: To mitigate expected construction impacts arising from the development and to protect local and residential amenity and to ensure the development is carried out in accordance with Policies ENV1 and ENV2 of the SDLP and SP18 and SP19 of the SDCS.

6. CONSTRUCTION TRAFFIC MANAGEMENT & TRAVEL PLAN

- a) No part of the development (except preliminary works) is to commence until a Construction Traffic Management Plan ("CTMP") has been submitted to and approved in writing by the local planning authority. The CTMP must include:
- i. The package of interventions and mitigation outlined in the Environmental Assessment Report including an implementation timetable for each stage.
 - ii. A travel plan for construction staff outlining the methods by which they shall be transported to the relevant sites and including the provision of non-motorised facilities to encourage walking and cycling.
 - iii. Details on temporary diversions of both highways and rights of way required as part of the Scheme.
 - iv. A Traffic and HGV Routing Plan for construction traffic and a method statement for how this will be communicated with any contractors.
 - v. The construction of each stage of the development must be carried out in accordance with the approved CTMP unless otherwise agreed in writing with the local planning authority.
- b) The construction must be carried out in accordance with the approved CTMP unless otherwise agreed in writing with the local planning authority.

Reason: To protect public amenity and highway safety and in accordance with Policies ENV1, T1, T2 and T8 of the SDLP and Policies SP15 and SP19 of the SDCS.

7. MATERIALS

Before the commencement of any works in respect of structures listed below, samples and specifications of all materials to be used on all their external elevations must be submitted to and approved in writing by the local planning authority:

- i) Highway Bridge.
- ii) Footbridge.

The development must be constructed in accordance with the approved details and thereafter retained unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of visual amenity and to ensure the proposals respect the character of the open countryside and the Green Belt in accordance with Policy ENV1 of the SDLP, Policies SP3 and SP19 of the SDCS.

8. MEANS OF ENCLOSURE

No later than 6 months after the commencement of the works, details of all new permanent means of enclosure for the new road and residents' car parking area must be submitted to and approved in writing by the local planning authority. The approved means of enclosure must be erected in full in accordance with the approved details and retained thereafter unless otherwise agreed in writing with the local planning authority.

Reason: In the interest of public safety and visual amenity and to ensure that the proposals respect the character of the open countryside and do not compromise the openness of the Green Belt in accordance with Policy ENV1 of the SDLP, Policies SP3 and SP19 of the SDCS.

9. UNEXPECTED CONTAMINATED LAND

In the event that visual or olfactory evidence of contamination not previously encountered in the intrusive ground investigation is found at any time when carrying out the approved development, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV2 of the SDLP and Chapter 15 of the NPPF (July 2021)

10. BIODIVERSITY NET GAIN

Before the Order scheme commences (excluding preliminary works) a strategy to achieve an overall 10% net gain in biodiversity for the development, including monitoring, maintenance, management and reporting arrangements, has been submitted to and approved in writing by the local planning authority. The strategy shall include a monitoring and maintenance schedule covering a period up to 30 years in compliance with the Biodiversity Metric 3.0- User Guide & Technical Supplement. From the first opening of the road bridge to vehicles measures to achieve an overall 10% net gain in biodiversity for the development (assessed in accordance with the 2021 Department for Environment, Food & Rural Affairs biodiversity metric 3.1) shall be implemented in accordance with the approved strategy.

Reason: In order to provide biodiversity net gain having had regard to Policy ENV1 of the SDLP, Policy SP18 of the SDCS and the NPPF (July 2021).

11. ARCHAEOLOGY

A) No demolition/development within the relevant stage shall take place/commence until a programme of archaeological work for that stage including a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

- i. The programme and methodology of site investigation and recording.
- ii. The programme for post investigation assessment.
- iii. Provision to be made for analysis of the site investigation and recording.
- iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- v. Provision to be made for archive deposition of the analysis and records of the site investigation.
- vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

B) No demolition/development within the relevant stage shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).

Reason: To ensure that the significance of the historic environment is properly assessed and preserved and to ensure that the development is carried out in accordance with paragraphs 189 and 199 of the National Planning Policy Framework (2021), and policy ENV 28A, 28B & 28C of the Selby Local Plan.

12. APPROVAL AND IMPLEMENTATION UNDER THESE CONDITIONS

Where under any condition the local planning authority may approve amendments to details submitted and approved, such approval must not be given except in relation to changes where it has been demonstrated to the local planning authority that the approval sought is unlikely to give rise to any materially new or materially different adverse environmental effects from those assessed in the Environmental Report.

Reason: To provide for certainty in the approvals and implementation process and in the interests of proper planning