



# Department for Transport

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Our Ref: TWA 8/1/1  
Your Ref: IHM/Y061740

16 October 2012

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED NETWORK RAIL (NORTH DONCASTER CHORD) ORDER**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Examining authority, Dr Pauleen Lane CBE FICE, who conducted an examination into the application made on 22 June 2011 by your client Network Rail Infrastructure Limited ("NR") for the Network Rail (North Doncaster Chord) Order ("the Order") under sections 37, 114, 115, 120 and 122 of the Planning Act 2008 ("the 2008 Act").
2. The examination of the application began on 16 November 2011 and was completed on 2 May 2012. The examination was conducted on the basis of written evidence submitted to the Examining authority and by a series of hearings held in Askern and Doncaster between 17 and 31 January 2012.
3. The Order would grant development consent for the construction and operation of a new 3.2 kilometre railway link ("the Chord") running partly on embankment and partly on viaduct to the north of Doncaster over the East Coast Main Line railway ("ECML"), linking the Skellow and Askern railway lines; together with the construction of a new road bridge over the ECML to allow the closure of Joan Croft level crossing. The Order would also, among other things, authorise the compulsory acquisition of land and interests in land to allow the Chord to be constructed. The Chord would enable slow moving freight trains to travel directly from the Humber Ports to the Aire Valley power stations avoiding the ECML, so eliminating conflicting movements between freight and passenger trains on the ECML.
4. Enclosed with this letter is a copy of the Examining authority's report. Her findings are set out in sections 3 to 6 of the report, and her conclusions and recommendation are at section 7.

## **Summary of the Examining authority's recommendations**

5. The Examining authority recommended that the Order be made, in the form set out in Appendix F to her report.

## **Summary of Secretary of State's decision**

6. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

## **Secretary of State's consideration**

7. The Secretary of State's consideration of the Examining authority's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Examining authority's report ("ER") and references to requirements are to those in Schedule 2 to the Order, as set out in Appendix F to the ER.

## **Principle of the development**

8. The Secretary of State has noted the representations received in response to this application were overwhelmingly supportive of the principle of the development, subject to the implementation of necessary mitigation measures; and that no feasible alternatives had been identified to the Chord itself (ER 40-41).

## **Policy context**

9. The Secretary of State agrees with the Examining authority for the reasons she has given that the Chord is consistent with all current local plans and policies and with the Regional Spatial Strategy ("RSS"). He agrees with the Examining authority that the Chord does not constitute inappropriate development in the Green Belt, having regard to paragraph 90 of the National Planning Policy Framework ("NPPF") (ER 37). He is, nevertheless, satisfied that very special circumstances exist which outweigh any harm to the Green Belt which may result from the Chord (ER 33-34).

10. The Secretary of State notes that Doncaster Metropolitan Borough Council's ("DMBC") Core Strategy (adopted on 18 May 2012) specifically supports the Chord as it would alleviate constraints on the speed and frequency of trains using the ECML; and that the Yorkshire and Humberside RSS includes policies on optimising use of the Humber Ports and improving public transport and freight systems (ER 22-23, 25-29, 36). The Secretary of State agrees also with the Examining authority that, at the national level, the Chord is supported by the Department for Transport's current transport policy statements, which include a requirement in the High Level Output Statement for 2009 to 2014 for an increase in capacity on the ECML of 15% in the annual passenger kilometres (ER 21, 36).

11. In this context, the Secretary of State has given limited weight to the proposed revocation of the RSS since, until it is revoked by Order under the Localism Act 2011, it remains legally part of the development plan. He therefore agrees with the Examining

authority that the RSS remains relevant and important to his decision (ER 22). As regards the publication of the NPPF on 27 March 2012 during the examination, the Secretary of State notes that interested parties were invited to make comments arising from the NPPF, but that no further submissions were received; and that the Examining authority took account of the NPPF in considering the impact of the Chord on the Green Belt (ER 32, 34).

## **Principal issues**

### Environmental matters; Noise

12. The Secretary of State agrees with the Examining authority that NR's Contract Requirements – Environment, which must be implemented under requirement 8, provides a route for securing the mitigation measures set out in the Environmental Statement ("ES") submitted with the Order application. He agrees also that it will be possible for the impact of noise, especially during construction of the Chord, to be managed through the Noise and Vibration Management Plan ("NVMP"), which must be approved by DMBC under requirement 8, and through the oversight of DMBC under the Control of Pollution Act 1974 (ER 42-45).

### Ecology

13. The Secretary of State agrees with the Examining authority that the potential loss of trees and hedgerows during construction of the Chord is an important consideration because of the impact on visual amenity in the surrounding flat landscape and because of the impact on wildlife. Having regard to DMBC's concerns about these impacts, he agrees with the Examining authority that, for the reasons she has given, the Order should be modified to include (at article 36(2)(b)) a requirement on NR to plant replacements for any trees or shrubs lost during construction or the first 12 months of the operation of the Chord, in the same location or in a suitable alternative location as agreed with DMBC (ER 48-51, 107-111).

14. The Secretary of State has noted that a protected species licence would be required from Natural England in respect of the mitigation measures identified in the ES to protect great crested newts affected by the proposed development. The Secretary of State is satisfied, for the reasons given by the Examining authority (at ER Appendix E, page 56), that there is a reasonable prospect that Natural England would grant such a licence, and that consequently there is unlikely to be an impediment to implementing the project in this regard.

15. The Secretary of State has noted also that no reasons were identified by Natural England or by any other parties to suggest that a protected species licence would be required in relation to bats for the purposes of the proposed development; and that Natural England was satisfied with the mitigation measures outlined in the ES for nationally protected species (ER Appendix E, pages 56-58). Taking into account requirement 9 which requires the provision, approval and implementation of an Ecological Management Plan to minimise or mitigate the impacts of the project, he agrees with the Examining authority that the limited number of relevant European and nationally protected species is sufficiently provided for in the Order (ER 51, Appendix E page 58). The Secretary of State also confirms that, in relation to European and nationally protected

species and conservation of biodiversity, he has had regard to his duties under the Natural Environment and Rural Communities Act 2006.

### Highway matters

16. The Secretary of State is satisfied that the Order makes adequate provision for managing the impacts of construction traffic on local roads, through the improvement works to the haul routes and the junction works referred to by the Examining authority at ER 52. He is satisfied also that impacts beyond the end of the specified haul routes can be managed through the Traffic Management Plan to be agreed under requirement 8 by DMBC (ER 87). As regards DMBC's concerns about the timescales prescribed in the Order for assessing details of the proposed works, he agrees with the Examining authority that the amendments to the Order proposed by NR (at article 6) are appropriate (ER 53, 92, 95).

### Level crossings

17. The Secretary of State agrees with the Examining authority that the proposed road bridge to replace the Joan Croft level crossing can properly be regarded as associated development for the purposes of section 115 of the 2008 Act, because it contributes to delivering the objectives of the scheme and reducing the impact on the openness of the Green Belt (ER 58). He further agrees with the Examining authority that the proposal should be supported because it assists both safety and movement for all modes; and that concerns about increased volume and speed of traffic can be addressed by traffic calming measures and through the Traffic Management Plan, to be approved by DMBC under requirement 8 (ER 59-60, 144).

18. The Secretary of State has noted the concerns of DMBC and other interested parties about the impact of the Chord scheme on the Askern Line as a result of additional freight traffic and the potential for increased downtime at level crossings, particularly in Askern Town Centre. He agrees with the Examining authority that the downtime at level crossings is likely to increase and will affect the movement of local residents, accessibility for local businesses and the emergency services. The Secretary of State welcomes the collaboration between NR and the Office of Rail Regulation ("ORR") on measures to optimise the operation of level crossings on this section of the Askern line. However, he agrees with the Examining authority that because further consideration of these issues is needed it is reasonable to include requirement 11(1), as recommended by the Examining authority, which would require the ORR to review and agree those measures (ER 64-72, 112-114).

19. With regard to the proposed closure of Honey Lands Lane level crossing, the Secretary of State agrees with the Examining authority for the reasons she has given that the provision of an underpass at this point (to accommodate Mr Ritchie's cattle and other users) is not a feasible alternative (ER 75-77, 139-140). He has noted the concerns of the Ritchie family and Mr Booth about the alternative route proposed by NR via the existing Owston Grange Farm No.1 level crossing, including the length of the diversion and additional crossing times as a result of extending the length of the crossing (ER78-79, 135-137). Taking into account the discussions between NR and ORR about safety measures at the Owston Grange Farm No.1 crossing, and the indication in the ORR's letter of 27 April 2012 (REP 114) that NR's proposed control measures were acceptable,

he is satisfied that this is capable of providing an acceptable diversionary route. However, he agrees with the Examining authority that because further work is needed on the detail of this crossing, it is appropriate to include requirement 11(2) in the Order. This would require a final review by the ORR of NR's operational proposals for the extended crossing before Honey Lands Lane crossing is closed (ER 80-86, 112-114).

### Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

20. For the purposes of regulation 23(2)(d)(iii) of the above Regulations, the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of development are NR's Contract Requirements – Environment and the requirements. The Secretary of State confirms also for the purposes of regulation 3(2) that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations.

### **Amendments to the Order proposed during the examination**

21. The Secretary of State agrees with the amendments to the Order proposed by the Examining authority in section 5 of the ER which are in addition to those already considered above. In particular, he agrees that the protective provisions for the Environment Agency in Part 3 of Schedule 12 to the Order should be retained and the additional provisions in relation to the Flood Risk Assessment and approval of piling method statement in requirement 13 should be included, for the reasons given by the Examining authority (ER 98-104). The Secretary of State has also decided to make further amendments to the Order as described at paragraph 27 below.

### **Compulsory acquisition matters**

22. In considering the compulsory acquisition powers sought by NR in the Order, the Secretary of State has had regard to sections 122 and 123 of the 2008 Act. He agrees with the Examining authority that the proposed development is for a legitimate public purpose; that funds are available to implement the project; and that NR has identified a clear purpose for the land subject to such powers under the Order (ER 159). He agrees also that the public benefits of the proposed development outweigh the potential private dis-benefits identified through the examination process, except in relation to plots 115 to 119, for the reasons given by the Examining authority (ER 160-161). The Secretary of State is furthermore satisfied that there is a compelling case in the public interest for conferring compulsory acquisition powers for the project, given the need for the increased rail capacity to which the Chord would contribute and the policy support for the project referred to at paragraphs 9 and 10 above.

23. With regard to the adverse impacts of the project on the interests of the affected persons described at ER 130-157, the Secretary of State agrees with the Examining authority that the mitigation measures set out in the ES and secured through the requirements in the Order are sufficient (ER 162). He agrees also that no feasible alternative exists to the loss of land and/or rights required for the project; and that the examination process has ensured a fair and public hearing for the affected persons under the European Convention on Human Rights (ER 163-164).

24. The Secretary of State considers, however, that it would not be appropriate in the circumstances of this project to confer on NR a power to impose restrictive covenants on any of the land which would be subject to compulsory acquisition or use under the Order. You also confirmed in your letter of 20 September 2012 that NR intended in any event to acquire compulsorily all the land required for construction of the embankments and viaduct. The Secretary of State has therefore decided to delete this power from the Order.

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

25. For the reasons given in this letter, the Secretary of State considers that there is a strong case for authorising the Chord scheme. He considers, in particular, that the need for and benefits of increasing capacity on the ECML and the Skellow and Askern railway lines, is demonstrated by the policy support at all levels for the principle of the scheme. He is satisfied that these benefits outweigh by a significant margin the residual adverse impacts of the scheme, taking into account the mitigation measures secured by the Order. He agrees with the Examining authority that the Order (subject to the further modifications set out in paragraph 27 below) is appropriate for implementation of the project (ER165-168).

26. The Secretary of State has therefore decided to accept the Examining authority's recommendation at ER 170 to make the Order granting development consent and imposing the requirements as proposed by the Examining authority, but subject to the modifications described in paragraph 27 below. He confirms that, in reaching this decision, he has had regard to the local impact report submitted by DBMC and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act (decisions in cases where no National Policy Statement has effect).

### **Modifications to the Order**

27. The Secretary of State has decided to make the following modifications to the form of the Order set out in Appendix F to the ER:

- in **article 24 (compulsory acquisition of rights)**, to remove the power to impose restrictive covenants, and make consequential amendments to the Order, for the reasons given at paragraph 24 above;
- in **Schedule 2 (requirements)**, to delete the definition of "commencement" in paragraph 1, because the effect of this definition (as recognised in your letter of 20 September 2012) would be to undermine the effectiveness of the mitigation measures to be secured by the requirements in Schedule 2; and
- to make various minor drafting changes to the Order which do not materially alter its effect, including changes to conform with the current practice for Statutory Instruments (e.g. modernisation of language), changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

### **Challenge to decision**

28. 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.

### **Publicity for decision**

29. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M Woods', written in a cursive style.

**Martin Woods**

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The Network Rail (North Doncaster Chord) Order is being published on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/north-doncaster-rail-chord-near-shaftholme/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**