

PLANNING ACT 2008
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

APPLICATION FOR THE RIVERSIDE ENERGY PARK DEVELOPMENT CONSENT ORDER

Planning Inspectorate Reference: EN010093

Summary Written Representations of
NETWORK RAIL INFRASTRUCTURE LIMITED
Registration Identification Number 20022294
for Deadline 2 of the Examination

20 May 2019

1. Network Rail owns and operates the rail infrastructure of Great Britain. Its purpose is to deliver a safe, reliable and efficient railway for Great Britain. Network Rail is primarily responsible for maintenance, repair and renewal of track, stations, signalling and electrical control equipment. Train services on the Network are operated by Train Operating Companies and Freight Operating Companies to which Network Rail, as Facility Owner of the Network, grants rights to use the Network in the form of track, station, and depot access contracts approved by the ORR.
2. Network Rail operates under the Network Licence which was granted under Section 8 of the 1993 Act. This Network Licence contains a set of conditions under which Network Rail must operate in the public interest. As the operator and owner of the national rail infrastructure, Network Rail has a key role to play in railway safety and improving railway performance and efficiency.
3. Under Part III, Part A, Condition 1.1 of the Network Licence the purpose of the Licence is (amongst other things) to secure the operation and maintenance, improvement, enhancement and development of the Network in accordance with best practice and in a timely, efficient and economical manner. This is both in respect of the quality and capability of the Network and in the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the Network. Condition 1.3 of the Network Licence places Network Rail under a duty to achieve this purpose.
4. Under the obligations set out in its Network Licence, Network Rail is also required to ensure the safe and efficient operation of the Network to the reasonable satisfaction of railway service providers and funders. If the ORR was to find Network Rail in breach of its licence obligations (including our overarching general duty) then the consequences could be an enforcement order or significant financial penalty.
5. Without Network Rail's standard Protective Provisions, the confirmation of a development consent order allowing the Promoter to acquire rights over and above Network Rail's operational railway would significantly harm Network Rail's role and ability to undertake its obligations as infrastructure owner and operator. It would also be likely to leave Network Rail acting inconsistently with its Network Licence obligations in respect of its residual network
6. Network Rail submits that its standard Protective Provisions should be included in the DCO if it is made.
7. Network Rail's general approach to applications for powers of compulsory acquisition in development consent orders is set out in Section 3.2 and 3.3 of the main representation. In essence, in order to comply with its Network Licence it requires that the acquisition of the rights required for a scheme are dealt with by private treaty via a series of template agreements. The Protective Provisions provide the protections for Network Rail which allow this to happen.
8. Network Rail does not object in principle to the construction of the works through the airspace of the railway and has been working with the Undertaker in order to agree terms which would allow Network Rail to withdraw its objection.
9. However the making of the DCO in the form of the Draft DCO would be likely to cause serious harm to the carrying out of Network Rail's statutory undertaking contrary to Sections 127 and 138 of the 2008 Act. In particular:
 - 9.1 The permanent acquisition of the Network Rail Land and Network Rail's rights over the Network Rail's Rights Land would not contain the necessary rights and reservations (established under the Clearance Process – see Section 3.3.3 of the main representation) to Network Rail such that it would be able to comply with its Network Licence (which would be secured for Network Rail if Network Rail's preferred method of transfer by private treaty is relied on) (see Section 3.6 of the main representation).
 - 9.2 The powers sought plots 07/03, 07/06, 07/07 and 07/08 would prevent the passage of trains and would place Network Rail in breach of its Network Licence (see paragraph 3.5.11 of the main representation).

- 9.3 The powers sought in relation to the Network Rail Land are not acceptable to Network Rail and must be secured via private treaty. This would include provisions under which the Undertaker would contact Network Rail's Asset Protection and Optimisation (ASPRO) Team and enter into a BAPA to facilitate access.
10. Network Rail is also concerned about the Limits of Deviation contained in Article 3 of the Draft DCO. Details of this objection are set out in Section 4.1 of the main representation.
11. It is respectfully requested that the Examining Authority recommend to the Secretary of State that the Draft DCO should not be made in its current form.
12. However in the event that:
- 12.1 The Limits of Deviation are amended as described in paragraph 4.1 of the main representation and
- 12.2 The protective provisions in the Draft DCO are amended as follows
- 12.2.1 Reference to Articles 5, 12, 13, 14, 16, 17, 29, 33 and 34 of the Draft DCO is added to paragraph 42(1); and
- 12.2.2 Sub-paragraph 53(6) is deleted,
- (and subject to paragraph 13 below) Network Rail would be in a position to withdraw its objection to the Application. However unless and until that occurs, Network Rail's objection must stand.
13. Network Rail is currently considering the detailed provisions about arbitration in Article 41 and Schedule 13 (Procedures in relation to certain approvals etc) and reserves the right to make further written representations in relation to those provisions.

Womble Bond Dickinson (UK) LLP

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