

**Application by Rampion Extension Development Limited for an Order
granting Development Consent for an Offshore Wind Farm**

**Written representations submitted on behalf of Network Rail Infrastructure
Limited**

Planning Inspectorate Reference Number: EN010117

1 Introduction

- 1.1 This written representation is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by Rampion 2 Extension Development Limited (**Rampion 2**) for The Rampion 2 Offshore Wind Farm DCO (the **DCO**).
- 1.2 The Book of Reference identifies Network Rail:
- as the freehold owner of plot 3/4, described as "*2352 square metres of land being railway track (Brighton to Littlehampton Line) lying to the north of River Arun and to the south of allotment gardens in the parish of Littlehampton CP.*" The proposed onshore (underground) cable route, forming part of the authorised development described in Schedule 1 to the DCO, will, if authorised, cross under Network Rail's operational infrastructure in this location.
 - As the freehold owner of plot 3/23, *described as 4262 square metres of land being railway track (West Coastway Line) and drain lying north of Brook Barn Farm and to the north of allotment gardens in the parish of Littlehampton CP.*
 - As the freehold owner of plot 3/24, *described as 2724 square metres of land being scrubland, lying north of Brook Barn Farm and to the north of allotment gardens in the parish of Littlehampton CP.*
 - As having rights over plot 3/18 (in respect of rights and restrictive covenants contained within conveyance dated 31 May 1928 registered under title WSX437617), *described as 84 square metres of land being private road and verge (Tatlow Close) and overhead electricity and telecommunication lines, lying south of Brook Barn Farm and east of allotment gardens in the parish of Littlehampton CP.*
- 1.3 The proposed onshore cables route would start with landfall at Climping Beach, traverses the South Downs National Park to the East of the Arun river and would connect to the National Grid Substation at Bolney. The planned export cable will cross underneath Network Rail's asset and connect to the National Grid substation.
- 1.4 The DCO includes the power to compulsory acquire the Rights (by the creation of New Rights) (as defined in the Book of Reference) and imposition of restrictive covenants over Plot 3/4, 3/18, 3/23 and 3/24 as set out in Schedule 7 of the draft DCO.
- 1.5 Network Rail objects to any compulsory acquisition of rights over operational railway land and objects to the seeking of powers to carry out works in the vicinity of the operational railway until relevant agreements (including asset protection) have been entered into by Rampion 2 to ensure that Network Rail's interests as operator of the national rail network are properly protected and that Network Rail's ability to carry out its obligations as a statutory rail undertaker are not affected by the DCO.
- 1.6 Network Rail submitted a Section 56 Representation on 31 October 2023.
- 1.7 Network Rail welcomes the inclusion of its protective provision in its favour in the submission draft of the DCO. However, the protective provisions included in the draft order are not the agreed version or Network Rail's standard protective provision. To ensure the safe and efficient operation of the railway network, it is essential that the development proceeds in consultation and agreement with Network

Rail and that the form of the protective provisions annexed to these written representations is included in the final form of the Order instead.

1.8 Network Rail is continuing to discuss with Rampion 2 arrangements to ensure that the proposed development can be carried out while safeguarding Network Rail's undertaking. Any agreed arrangements are subject to the outcome of Network Rail's internal clearance process which is detailed in section 3 below.

1.9 In order to ensure that interests are protected, Network Rail requests the examining authority recommend the attached form of protective provisions is included as Part 3 of Schedule 10 to the DCO.

2 The Status of Network Rail

2.1 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. Network Rail operate the railway infrastructure pursuant to a network licence (the **Network Licence**) granted under section 8 of the Railways Act 1993. The Network Licence contains a set of conditions under which Network Rail must operate. Network Rail's duties under the Network Licence are enforceable by the Office of Rail Regulation (**ORR**).

2.2 Under the terms of the Network Licence, Network Rail is under a duty to secure the operation, maintenance, renewal and enhancement of the network in order to satisfy the reasonable requirements of customers and funders. If the ORR were to find Network Rail in breach of its Licence obligations, including this core duty, then enforcement action could be taken against Network Rail.

2.3 Network Rail considers there is no compelling case in the public interest for the compulsory acquisition of rights over its land and Rampion 2 should negotiate matters by private agreement to secure the necessary powers by consent. As a statutory undertaker, the Secretary of State is obliged to have regard to S127 of the Planning Act 2008 where compulsory purchase powers are proposed in relation to operational land.

3 Network Rail Clearance

3.1 Clearance is a two stage process by which Network Rail's technical and asset protection engineers review a proposal before clearance can be granted for a proposal to proceed. Clearance may be granted to subject to conditions and requirements.

3.2 Network Rail is in the process of applying for clearance. Until the outcome of the clearance process is known Network Rail is unable to comment fully on the impact of the proposals on its operational railway.

3.3 Network Rail intends to keep the Examining Authority and Rampion 2 informed regarding the clearance process at the relevant examination deadlines.

4 Powers sought by Rampion 2 and the impact on Network Rail

4.1 The draft Order seeks powers to compulsorily acquire new rights and impose restrictive covenants over plots 3/4,3/18, 3/23 and 3/24 which are plots of land either owned by Network Rail for the purpose of its statutory undertaking and is used for that purpose or where Network Rail have rights. Those rights are wide ranging, and include:

- I. Cable Rights – all rights necessary for the purposes of the constructions, installation, retention, operation, maintenance and decommissioning of the authorised development comprising works no. 8,9 and 19, including works (a)-(y) listed at Schedule 7.
 - II. Cable Restrictive Covenant – A restrictive covenant over the land for the benefit of the remainder of the Order land to do such works as listed at (a)-(g) of Schedule 7.
 - III. Operational Access Rights - All rights necessary for the purposes of the operation, maintenance and decommissioning of the authorised development including the works listed at (a)-(j) of Schedule 7.
- 4.2 Network Rail does not consider that the scope of those rights is acceptable; the rights will have a detrimental impact on Network Rail's undertaking. The precise impact of the works on the railway line is being assessed and the carrying out of any works is subject to the clearance process as explained above. Even if the impact of the physical works is considered acceptable, the rights sought are very wide-ranging and exercisable over the entirety of the aforementioned plots. For example, they are not limited to subsoil, or the subterranean tunnel within which the cable will be located.
- 4.3 Network Rail considers that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that the acquisition of New Rights and imposition of restrictive covenants can be exercised without detriment to the carrying on of Network Rail's undertaking, nor can any detriment to the carrying on of the undertaking, in consequence of the acquisition of the rights, be made good by the use of other land belonging to, or available for acquisition by, Network Rail.
- 4.4 Network Rail is concerned that Article 5(7)(c) enables the benefit of the provisions of the Order to be transferred or leased to any person without the approval of the Secretary of State where the timeframe for all compensation claims has passed and all claims have been settled. After that point the benefit of the powers could be transferred without any scrutiny of the standing of the transferee by Secretary of State. However, that overlooks that there are provisions in the DCO and Network Rail's protective provisions (including paragraph 13 (maintenance of the authorised development), 14 (illuminated signs etc) and 16 (indemnity) for which there is an on-going liability. Network Rail request that Article 5(7)(c) is deleted.

5 Protective Provisions

- 5.1 Network Rail engaged with Rampion 2 prior to submission of the Order regarding Network Rail's required form of protective provisions. These were shared with Rampion 2's legal representatives on 29 March 2023.
- 5.2 In order to properly protect its undertaking Network Rail requires the form of protective provisions at Annex A to this document to be included in the final form of the Order. For reference, the amendments against the submitted draft of the Order are shown on the comparison document at Annex B.

6 Conclusion

- 6.1 Network Rail is liaising closely with Rampion 2, and subject to the clearance being obtained, is willing to enter into private agreements to govern the carrying out of the proposed works.
- 6.2 The discussions relate to the following documents:
- (a) Network Rail's standard protective provisions for inclusion in the DCO;

- (b) a property agreement (easement) to govern the installation, operation and maintenance of the cable (subject to Network Rail's clearance process); and
- (c) a framework agreement that describes and attaches the document referred to above, the protective provisions, clearance conditions and any necessary basic asset protection agreement, asset protection agreement or other engineering documents required for the benefit and protection of Network Rail's assets.

6.3 Without those agreements and satisfactory protective provisions being in place Network Rail considers the proposed development, if carried out in relation to the aforementioned plots, would have serious detrimental impact on the operation of the railway and would prevent Network Rail from operating the railway safely and efficiently and in accordance with its Network Licence. Until such agreements are in place, and clearance has been obtained, Network Rail is unable to withdraw its objection to the DCO.

6.4 In the event that insufficient progress is made regarding the protective provisions and private agreements, Network Rail would like to reserve its position to request to be heard in an appropriate hearing to explain the impact of the proposals on its railway undertaking.

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27 February 2024