

**Application by EPL 001 Limited for an Order granting Development Consent
for a Solar Farm**

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

Planning Inspectorate Reference Number: EN010135

1 Introduction

- 1.1 This written representation is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by EPL 001 Limited (**EPL**) for the Stonestreet Green Solar Development Consent Order (the **DCO**).
- 1.2 The Book of Reference identifies several parcels of land where Network Rail are either landowner, riparian owner or have a right over. Network Rail are still in the process of reviewing these parcel and will update the ExA on the impact of each plot.
- 1.3 The DCO includes the power to compulsory acquire New Rights (as defined in the Book of Reference) over Plots 3/14,3/15,3/16,3/17,3/20,3/21, 5/5,5/6,5/7,5/12,5/14,5/16,5/17,5/18 and 5/19 as set out in Schedule 10 of the draft DCO.
- 1.4 Network Rail objects to any compulsory acquisition of new 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 have been entered into by EPL 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.
- 1.5 Network Rail have been unable to assess the impact fully as EPL have not been able to confirm the cable route(s) and whether the existing ducting can be used or if new ducting is required to carry out the works. Network Rail only received confirmation on 9 December 2024 and has therefore not had the time to assess the impact.
- 1.6 Network Rail is continuing to discuss with EPL 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.
- 1.7 In order to ensure that interests are protected, Network Rail requests the examining authority recommend the Network Rail's standard form of protective provisions are included as Part 7 of Schedule 13 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 EPL should negotiate matters by private agreement to secure the necessary powers by consent.

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. Without confirmation of the cable route, Network Rail is unable to submit clearances. 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.
- 3.2 Network Rail intends to keep the Examining Authority and EPL informed regarding the clearance process at the relevant examination deadlines.

4 Powers sought by EPL and the impact on Network Rail

- 4.1 The draft Order seeks powers to compulsorily acquire new rights and impose restrictive covenants over the aforementioned plots which are plots of land either owned by Network Rail for the purpose of its statutory undertaking and is used for that purpose or are plots which Network Rail have rights over. In addition, EPL also seek to compulsory acquire plot 3/29, which Network Rail has rights over. Those rights are wide ranging, and are set out in Schedule 10.
- 4.2 Network Rail does not consider that the scope of those rights is acceptable. The precise impact of the works on the railway line is yet to be fully 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.
- 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 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 unless the requisite agreements are entered into.
- 4.4 Network Rail is concerned that Article 7(3)(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 Network Rail's protective provisions such as maintenance of the authorised development and indemnity provisions, for which there is an on-going liability. Network Rail request that Article 7(3)(c) is deleted.

5 Protective Provisions

- 5.1 As previously mentioned, 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.

6 Conclusion

- 6.1 Network Rail is liaising closely with EPL to enter into private agreements to govern the carrying out of the proposed works.

- 6.2 Without those agreements and satisfactory protective provisions being in place Network Rail considers the proposed development, if carried out, would have a 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, Network Rail is unable to withdraw its objection to the DCO.
- 6.3 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.

Dentons UK and Middle East LLP

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