

NETWORK RAIL INFRASTRUCTURE LIMITED

THE GREAT WESTERN MAIN LINE
ELECTRIFICATION PROJECT

APPLICABILITY OF DEVELOPMENT CONSENT
UNDER THE PLANNING ACT 2008

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1. Purpose of this paper

- 1.1 Network Rail wish to establish the appropriate consenting regime for the Great Western Main Line Electrification Project (“GWML Electrification Project”) proposed to be carried out by Network Rail Infrastructure Limited (“Network Rail”). The scheme is described, and its purpose explained, in paragraph 3. The physical works necessary to achieve electrification are outlined in paragraph 4. As explained below, this is a project of very great national importance (to use a non-statutory term).
- 1.2 It is essential for Network Rail to have early certainty on what consenting route(s) is/are appropriate for this project for the following reasons:
- (a) If any elements of the project require development consent under the Planning Act 2008 (“the 2008 Act”), failure to obtain such consent is a criminal offence¹.
 - (b) The consultation requirements under the 2008 Act differ from those under the TWA Regime and from those required for planning or listed building consent. The route of the GWML which is to be the subject of the Electrification Project runs through the area of many local planning authorities and complying with the consultation requirements under the 2008 Act (if applicable) will be challenging and will need to be programmed in at an early stage.
 - (c) The procedural requirements, and the level of detail required, for the application(s) differ according to the authorisation route used.
 - (d) Early certainty will ensure that the very substantial funds and resources which will be required to obtain authorisation for the project will be efficiently and effectively directed, avoiding any abortive costs.
- 1.3 Network Rail is seeking to establish by means of this paper whether in the view of the IPC the whole of the GWML Electrification Project must/can be authorised by means of a development consent order.

¹ Section 160 of the 2008 Act.

2. **Executive summary**

- 2.1 The GWML Project is of vital national strategic importance to both England and Wales. Electrification will bring important benefits for people making both short and long journeys and will enable the introduction of electric high speed trains which have significant environmental benefits.
- 2.2 The Project comprises many different work elements (see paragraph 4). Most of them can be carried out under Network Rail's permitted development rights ("the PDR works") but the remaining works require specific authorisation ("the non-PDR works").
- 2.3 A preliminary assessment indicates that carrying out the PDR works would require 193 prior approval applications under Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO"), 31 listed building applications, 3 conservation area consents and 78 notifications under Part 11 or 17 of Schedule 2 to the GPDO. To obtain consent by those means would be a very considerable logistical exercise: each application would need to be made, and justified, individually to the relevant local planning authority and could potentially be the subject of an appeal to the Secretary of State.
- 2.4 The different elements of the project are all directed to a single end, and all of those elements require to be authorised and carried out for electrification to be achieved. Network Rail therefore consider that it would make sense, both conceptually and in terms of deploying resources to good effect, if authorisation for the project could be achieved by means of an overarching application.
- 2.5 The central question for the IPC is whether, or to what extent, the PDR and the non-PDR works which together make up the Project must or can be authorised by a development consent order. That question is posed in the context that if it is not possible to seek authorisation for the project by means of an overarching application, the logistical challenge in seeking consent will put at risk the project and the very considerable public benefits it will bring.
- 2.6 In this paper the central question has been divided into the following sub-questions:-
- Question 1 - The IPC is asked to confirm that the non-PDR works forming part of the GWML Electrification Project are "alterations of the railway" which fall within the section 14(1)(k) of the 2008 Act and require development consent.
 - Question 2 - Assuming that the answer to Question 1 is yes, the IPC is asked to confirm that the application for development consent should cover not only the elements of the GWML Electrification Project which are non-PDR works but also the elements which, taken by themselves, are PDR works.
 - Question 3 - If the answer to Question 2 is no, the IPC is asked whether the application for development consent for the non-PDR works could include provision to authorise the PDR works on the basis that such provision falls within Section 120 of the 2008 Act.

- Question 4 - If the answers to Questions 2 and 3 are no, the IPC is asked whether the application for development consent for the non-PDR works could include provision to authorise the PDR works on the basis that those works constitute "associated development" falling within section 115 of the 2008 Act.

2.7 The questions are considered in more detail in paragraphs 7, 8, 9 and 10 respectively.

3. The purpose of the GWML Electrification Project

3.1 The Great Western Main Line is "the longest non-electrified intercity route in Britain, of vital national strategic importance to both England and Wales. It also includes heavily used commuter lines into London².

3.2 The case for rail electrification, including the GWML, was set out in "Britain's Transport Infrastructure: Rail Electrification", published by the Department for Transport ("DfT") in July 2009.

3.3 The line has seen significant increases in passenger demand, with the Thames Valley and Greater Bristol both being key growth areas. Between 2000 and 2006 there was 20% growth in passenger numbers between the Bristol urban area and London and further growth is forecast³.

3.4 Electrification will bring important benefits for people making both long and short journeys and will enable the introduction of a predominantly electric high-speed train fleet.

3.5 The key benefits of electrification include the following:-

- Electric trains emit 20–30% less carbon than their diesel counterparts.
- Electric trains are cheaper to operate, with maintenance costs around 33% lower, and fuel costs up to 50% lower, than diesel trains.
- When electrification of a particular route is coincident with rolling stock replacement or cascade opportunities, the lower purchase cost of electric trains can be realised. The DfT has estimated that these savings can result in lease costs 20% lower than diesel trains.
- Other benefits include the potential to reduce journey times, provide more seats per vehicle, and achieve improved levels of train reliability and availability.

² Britain's Transport Infrastructure: Rail Electrification (DfT July 2009), paragraph 2 of Foreword.

³ Britain's Transport Infrastructure: Rail Electrification, paragraph 38.

4. **Outline of the GWML Electrification works**

4.1 The GWML Electrification Project encompasses the proposed electrification of the following rail routes by the 25kV overhead line system:-

- (a) Maidenhead – Reading – Swindon – Bristol Temple Meads via Bath;
- (b) Reading – Newbury;
- (c) Didcot – Oxford;
- (d) Swindon – Bristol Parkway – Newport – Cardiff – Swansea; and
- (e) London Paddington – Airport Jn (north of Heathrow) is already electrified, and electrification of Airport Jn – Maidenhead forms part of the Crossrail project.

4.2 Target dates for completion as are follows:

- Bristol/Newbury/Oxford – 2016.
- Swansea - 2017.

4.3 Electrification will encompass the following categories of works.

Electricity supply

4.4 The provision of suitable National Grid sub-stations, and connections to the electrified railway. It is likely that 4 or 5 new or enhanced sub-stations will be required.

Clearances for overhead line equipment

4.5 Alterations to track and structures will be necessary to provide sufficient clearance for the overhead line equipment.

4.6 Pre-feasibility studies have indicated the following scale of work:-

- Road-over-rail bridge reconstruction or bridge deck raising = 115.
- Track lowering beneath rail-over-road bridges = 73.

4.7 In addition, parapets will require to be increased in height at over 100 over-rail bridges.

Overhead line construction

4.8 Construction of the overhead line system itself, including supports (free-standing masts, attachments to structures).

5. **Obtaining approvals: the logistical challenge**

- 5.1 The electrification of the GWML route raises very considerable challenges given, in particular, the length of the route, parts of which run through sensitive areas including the World Site of the City of Bath, and the significant number of listed buildings and structures affected. The route runs through the area of many local planning authorities.
- 5.2 As mentioned in 4.6 pre-feasibility studies indicate that almost 200 structures (mainly bridges) would require to be modified to provide adequate gauge clearance and over 100 further bridges would require parapet works to comply with safety standards. Of these 53 are individually listed and a number more are within curtilage listed sites.
- 5.3 A preliminary assessment indicates that many of these works could be carried out under Network Rail's permitted development rights (explained in paragraph 6) requiring 193 prior approval applications under Part 11 of Schedule 2 to the GPDO, 31 listed building consent applications, 3 conservation area consent applications and 78 notifications under Part 11 or 17 of Schedule 2 to the GPDO. Those applications would need to be made individually to the relevant local planning authorities, and each application could potentially be the subject of an appeal to the Secretary of State.
- 5.4 However, the remaining works (including several of the bridge reconstruction works) which require to be carried out wholly or partly outside the existing railway corridor could not be carried out under permitted development rights. Individual planning applications, supported by environmental assessments/statements and potentially subject to call in or appeal, would be required for those elements subject to any requirement (considered below) for authorisation to be obtained by means of a development consent order.
- 5.5 The different elements of the project are all directed to a single end, and all of those elements require to be authorised and carried out for electrification to be achieved. Network Rail therefore consider that it would make sense, both conceptually and in terms of deploying resources to good effect, if authorisation for the project could be achieved by means of an overarching application. If that is not possible the logistical challenge in seeking consent will put at risk the project and the public benefits it will bring.

6. **Permitted development**

- 6.1 Network Rail has the benefit of permitted development rights under Parts 11 and 17 of Schedule 2 to the GPDO, the most relevant for this purpose being Part 11. Under Part 11, development authorised by a local or private Act of Parliament which designates specifically the nature of the development authorised and the land upon which it may be carried out has the benefit of deemed planning permission. This permission is subject to a requirement to obtain the prior consent of the local planning authority to the detailed plans and specifications of works in the case of the erection, construction, alteration or extension of any

building, bridge or aqueduct.⁴ "Building" for this purpose is defined as including any structure or erection but does not include plant or machinery.

6.2 Many different elements of the GWML electrification works described in paragraph 4 can be carried out under the terms of the local Acts of Parliament which authorised the original construction of the GWML. To the extent that the works are so authorised, they can be carried out under Part 11 and do not require planning permission. However, there remain significant elements of the Project which are not covered by Network Rail's permitted development rights, notably any works, such as the reconstruction or extension of some bridges, which require to be carried out wholly or partly outside the existing railway corridor.

6.3 In the case of the elements of the Project that can be carried out under Part 11, planning permission would not be needed but it would still in some cases be necessary to apply for the prior approval of the local planning authority (as explained in paragraph 6.1) and in the case of listed structures such as bridges, to obtain listed building consent.

7. **Do the works in England require to be authorised by a development consent order?**

7.1 The issue here can be divided into two stages:

- (a) do the works which are **not** covered by Network Rail's permitted development rights ("the non-PDR works") require to be authorised by development consent; and
- (b) if some or all of the non-PDR works require to be authorised by development consent, is it possible under the 2008 Act also to apply for development consent in respect of the works which could otherwise be carried out under permitted development rights ("the PDR works").

7.2 The different elements making up the electrification works are described in paragraph 4. Of these, some may be required to be carried out on land outside the existing railway corridor and so are not covered by Network Rail's permitted development rights. The works falling into this category include:

- Some of the bridge reconstructions.
- Some of the electricity substations/auto transformer sites.
- The electricity grid sites required to support the GWML electrification.
- The power supply from the grid sites to the substation/auto transformer sites.

⁴ Condition A1 of Part 11 of Schedule 2 to the GPDO.

7.3 Section 31 of the 2008 Act provides that development consent “*is required for development to the extent that the development is or forms part of a nationally significant infrastructure project*”. Section 14(1)(k) of the 2008 Act provides that “*a project which consists of ... the construction **or alteration** of a railway*” is a nationally significant infrastructure project. This provision, so far as it applies to the alteration of a railway, is subject to section 25(2) (see paragraph 7.6).

7.4 In the case of the elements specified in paragraph 7.2, the first question is whether each element constitutes an “*alteration of the railway*” for the purposes of Section 14(1)(k) of the 2008 Act. “*Railway*” has the meaning given by section 67(1) of the Transport and Works Act 1992⁵, ie

“**a system of transport** employing parallel rails which -

- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level);” [emphasis supplied].

7.5 It is notable that “*railway*” is not physical track but is a “*system of transport*”. Given the very significant effects that electrification will have on the operation of the transport system as described in paragraph 3 above, it is considered likely that the electrification of the GWML, viewed as a whole, would amount to “*an alteration*” of the system of transport. It is also considered that individual components of the GWML Electrification Project, which taken on an individual basis may arguably not constitute “*alterations of the railway*”, should be viewed in the context of the scheme as a whole and therefore as “*alterations of the railway*” for the purposes of the 2008 Act.

7.6 Section 25(2) provides that:-

“*Alteration of a railway is within section 14(1)(k) only if -*

- (a) *the part of the railway to be altered is wholly in England,*
- (b) *the railway is part of a network operated by an approved operator, and*
- (c) *the alteration of the railway is not permitted development.”*

If the non-PDR works described in paragraph 7.2 which relate to the part of the GWML in England constitute “*an alteration of the railway*” they satisfy the conditions of Section 25(2).

Question 1

The IPC is asked to confirm that the non-PDR works forming part of the GWML Electrification Project which are generically described in paragraph 7.2 above are

⁵ See section 235(1) of the 2008 Act.

“alterations of the railway” which fall within the section 14(1)(k) of the 2008 Act and require development consent.

8. Assuming that development consent is required for the non-PDR works, should the application for development consent also seek authorisation for the PDR works?

8.1 The works which are authorised by Part 11 permitted development rights do not fall within Section 14(1)(k) of the 2008 Act⁶. Accordingly, those works do not of themselves constitute a nationally significant infrastructure project for the purposes of the 2008 Act (“NSIP”).

8.2 Assuming that development consent is required for the non-PDR works, the question arises what is the NSIP for the purposes of the 2008 Act: is it just the works which are not covered by permitted development rights or is it the whole GWML Electrification Project of which they form part. As a matter of common sense it is considered that the NSIP is not merely the individual non-PDR components (which taken individually could not achieve electrification) but is the Electrification Project viewed as a whole.

8.3 If the GWML Electrification Project is the NSIP, the elements of the project which are covered by permitted development rights are also required under Section 31 of the 2008 Act to be authorised as development consent since, although taken by themselves they do not constitute a NSIP, they do *“form part of a NSIP”*.

8.4 The issue of environmental impact assessment (“EIA”) is closely related to the question considered above. If the non-PDR development constitutes *“an alteration of the railway”* and accordingly requires development consent then, subject to any screening opinion issued by the Secretary of State, an EIA will need to be carried out and the application for such consent will need to be supported by an environmental statement (“ES”).⁷ The ES will need to cover *“the direct effects and **any indirect, secondary, cumulative**, short, medium and long term, permanent and temporary, positive and negative effects of the development”*⁸ [emphasis supplied].

8.5 Accordingly, it would be necessary for the EIA/ES to assess and deal with the effects not only of the non-PDR works but of the whole GWML Electrification Project including the PDR works. This lends weight to the view that it is the GWML Electrification Project, taken as a whole, that is the NSIP for the purposes of the 2008 Act rather than merely the non-PDR works.

Question 2

⁶ See section 25(2)(c) of the 2008 Act.

⁷ See paragraph 13(a) of Schedule 2 to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

⁸ Paragraph 20 of Part 1 of Schedule 4 to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Assuming that the answer to Question 1 is yes, the IPC is asked to confirm that the application for development consent should cover not only the elements of the GWML Electrification Project which are non-PDR works but also the elements which, taken by themselves, are PDR works.

9. **Could a development consent authorising the non-PDR elements of the Project contain provisions under sections 120(3) or (5)(c) of the 2008 Act authorising the PDR elements?**

9.1 Section 120(3) of the 2008 Act provides that a development consent order “*may make provision relating to, or to matters ancillary to, the development for which consent is granted*”. Section 120(5)(c) provides that a development consent order may “*include any provision that appears to the decision-maker to be necessary or expedient for giving full effect to any other provision of the order*”.

9.2 It is considered that the PDR elements of the Project are not “*ancillary*” to the non-PDR elements since they are essentially separate and of equal importance to the implementation of the Electrification Project. However, it is arguable that they do “*relate to*” the non-PDR elements in that, like the non-PDR elements, they contribute to the GWML Electrification Project. Similarly, since the electrification of the GWML cannot come into effect unless and until all the different elements of the project are constructed, it can be argued that the authorisation of the PDR elements of the project is “*necessary or expedient for giving full effect to*” the provisions in the development consent order authorising the non-PDR elements.

Question 3

If the answer to Question 2 is no, the IPC is asked whether the application for development consent for the non-PDR works could include provision to authorise the PDR works on the basis that such provision falls within Section 120 of the 2008 Act.

10. **Could a development consent order authorising the non-PDR elements of the Project, contain provisions under section 115 of the 2008 Act authorising the PDR elements?**

10.1 Section 115 of the 2008 Act enables development consent to be granted for development which is in England and is “*associated with the development [for which development consent is required]*”. The *Guidance on Associated Development* issued by DCLG states that “*Associated development should not be an aim in itself but should be subordinate to and necessary*

*for the development and effective operation to its design capacity of the NSIP that is the subject of the application*⁹ [emphasis in original].

- 10.2 Assuming a scenario where only the non-PDR development is the subject of an application for development consent, it is considered that in most cases the PDR development would not be “subordinate to” the development that is the subject of the application because the PDR development is a separate and equally important component of the GWML Electrification Project.

Question 4

If the answers to Questions 2 and 3 are no, the IPC is asked whether the application for development consent for the non-PDR works could include provision to authorise the PDR works on the basis that those works constitute “associated development” falling within section 115 of the 2008 Act.

⁹ See paragraph 10 of Guidance on Associated Development.