

**PLANNING ACT 2008  
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010**

**APPLICATION FOR THE LAKE LOTHING (LOWESTOFT) THIRD CROSSING DEVELOPMENT  
CONSENT ORDER**

**Planning Inspectorate Reference: TR010023**

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**Summary Written Representations of  
NETWORK RAIL INFRASTRUCTURE LIMITED  
Registration Identification Number 20013190  
for Deadline 3 of the Examination**

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8 January 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 Railway Act 1993. 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 1.2 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 for highway schemes should be included in the DCO if it is made. Annex 1 of Network Rail's Written Representation contains these Protective Provisions, showing the required amendments from the drafting contained in the Draft DCO.
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 its Written Representation. In essence, in order to comply with its Network Licence it requires and land and/or rights required for a scheme to be 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 bridge through the airspace of the railway and has been working with Suffolk County Council 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 Network Rail's land and rights would not contain the necessary rights and reservations (established under the Clearance Process – see Section 3.3.3 of its Written 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 Network Rail's Written Representation).
  - 9.2 There should be no permanent acquisition in respect of the Airspace Acquisition Land (see paragraph 3.3.12 of Network Rail's Written Representation).

- 9.3 The rights sought over the Airspace Acquisition Land and the New Rights Land are unspecified and are broadly drawn (see paragraphs 3.5.12 and 3.5.13 of Network Rail's Written Representation).
- 9.4 The powers sought over the Temporary Possession Land in particular would prevent the passage of trains and would place Network Rail in breach of its Network Licence (see paragraph 3.5.11 Network Rail's Written Representation).
- 9.5 The powers sought in relation to the New Rights Land are not acceptable to Network Rail. Network Rail would not grant the New Rights in respect of the railway. Instead standard practice is for a mechanism to be provided for in the Bridge Agreement, 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 6 of the Draft DCO insofar as they apply to Work No.1B (ie the bridge over the railway). This applies both in respect of lateral and vertical deviation. In particular, Network Rail is concerned that sub-articles 6(7) and 6(8) allow the bridge over the railway to drop 2.3 metres (ie from 4.9 metres to 2.6 metres) above the railway. Details of this objection are set out in Section 4.1 of Network Rail's Written 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 4.1.3(d) of Network Rail's Written Representation; and
- 12.2 The Protective Provisions are amended as follows
- 12.2.1 Reference to Articles 10, 11, 12, 15, 19, 29 and 35 of the Draft DCO is added to paragraph 33(1); and
- 12.2.2 Sub-paragraph 44(6) is deleted,
- as set out in the Protective Provisions at Annex 1 of Network Rail's Written Representation,

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.

Womble Bond Dickinson (UK) LLP

8 January 2019