



# Department for Transport

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19 January 2021

Dear Sir,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A1 BIRTLEY TO COAL HOUSE IMPROVEMENT SCHEME**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the Report dated 21 October 2020 of the Examining Authority (“ExA”), David Cliff, BA Hons, MSc MRTPI (Lead member of the Panel), and Max Wiltshire BSc, MSc, CEng, MICE who conducted an Examination into the application made by Highways England (“the Applicant”) for the A1 Birtley to Coal House Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”); and
- post examination correspondence and the response received to the consultation undertaken by the Secretary of State following the close of the Examination.

2. The application was accepted for Examination on 10 September 2019. The Examination began on 21 January 2020 and was completed on 21 July 2020. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook unaccompanied site inspections.

3. The development would be located on and adjacent to the A1 between a location just south of junction 68 (Lobley Hill) and junction 65 (Birtley), within the metropolitan borough of Gateshead. The stretch of the A1 subject to the proposed works is approximately 6.5 kilometres in length. The DCO as applied for would grant development consent for the widening of the southbound carriageway from three to four lanes and widening of the northbound carriageway from two to three lanes (with an additional lane between junctions) between junction 67 (Coal House) and junction 65 (Birtley) (“the Development”). The Development includes:

- Changes to signage and road markings on the southbound carriageway between just south of junction 68 (Lobley Hill) and junction 67 (Coal House);
- A replacement bridge structure where the A1 crosses over the East Coast Main Line (“ECML”), 40 metres to the immediate south of the existing Allerdene Bridge

structure; which would tie into the existing carriageways at junction 67 (Coal House) and north of junction 66 (Eighton Lodge);

- Replacement of the existing North Dene Footbridge located between junction 66 (Eighton Lodge) and junction 65 (Birtley) to accommodate the widening of the A1; and
- The diversion of utilities.

4. Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the Report"). All "ER" references are to the specified paragraph in the Report and references to "Requirements" are to those in Schedule 2 to the DCO as recommended by the ExA at Appendix D to the Report.

### **Summary of ExA's Recommendations**

5. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the Report under the following broad headings:

- Legal and Policy Context (Chapter 3);
- Planning Issues (Chapter 4);
- Findings and Conclusions in relation to the Planning Issues (Chapter 5);
- Findings and Conclusions in relation to the Habitats Regulations Assessment (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 8); and
- Draft Development Consent Order and Related Matters (Chapter 9).

6. For the reasons set out in the Report, the ExA recommend that the Secretary of State makes the DCO in the form recommended at Appendix D of the Report (ER 10.3.1).

### **Summary of Secretary of State's Decision**

**7. The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("2017 Regulations").

### **Secretary of State's Consideration**

8. The Secretary of State's consideration of the Report, post Examination correspondence (see paragraph 84), response to his consultation letter of 10 November 2020 and other material considerations are set out in the following paragraphs. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations set out in the Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

## **The Planning Issues**

### **Legal and Policy Context**

9. The Secretary of State notes that, as set out in ER 2.2.3-9, the application was amended in 3 ways during the course of the Examination. The first change (non-material) introduced further design flexibility for the replacement Allerdene Bridge through the introduction of an additional three span viaduct option within the DCO application (ER 2.2.3). Each of the resulting Allerdene Bridge design options are proposed to be included in the DCO application. At the detailed design stage, the preferred option would be identified and taken forward into construction (ER 2.2.5). The second change (non-material) provided flexibility for the road layout within the Development to enable narrower lanes to be provided for a stretch of approximately 750 metres between the existing narrow lanes north of junction 67 (Coal House) across junction 67 itself (ER 2.2.8). The third change, representing a material change, involved the inclusion of additional land at junction 67 (Coal House) for an extension to the previously proposed main site construction compound to be used for material stockpiling (ER 2.2.9). The Secretary of State notes that the first and third changes were subject to consultation by the Applicant before being accepted into the Examination and those interested were also provided with the opportunity to make representations on all the changes during the Examination (ER 2.2.11).

10. In determining the application, the Secretary of State notes that under section 104(2) of the 2008 Act the Secretary of State must have regard to any relevant National Policy Statement; any Local Impact Report submitted; any matters prescribed in relation to the development of the description to which the application relates; and any other matters that the Secretary of State considers to be both important and relevant to the decision. Accordingly, by section 104(3) of the 2008 Act, this application must be decided in accordance with the National Policy Statement for National Networks (“NNNPS”) (ER 3.2.1).

11. The Secretary of State agrees with the ExA that section 104 of the 2008 Act has effect in this case (ER 3.1.1) and that he must decide the application in accordance with the NNNPS (ER 3.1.2), subject to certain exceptions set out in section 104(4) to (8) which are not relevant in this case. The Secretary of State has also had regard to the legislation and policy documents identified by the ExA, as well as the Local Impact Report from Gateshead Council (“GC”) and the relevant development plan policies noted at ER 3.10. The Secretary of State has also had regard to environmental information, as defined in regulation 3(1) of the 2017 Regulations.

12. The Secretary of State notes that European Law and related UK regulations set out in ER 3.3 remain in place despite the UK having left the EU on 31 January 2020 and despite transition arrangements ending on 31 December 2020. These are therefore still relevant to this application.

### **The need for the Development**

13. The Secretary of State notes that the ExA’s summary of the Applicant’s case for the need for the Development at ER 5.9.13-25. The A1 between Birtley and Coal House forms part of the Newcastle Gateshead Western Bypass and is a critical part of both the national and local road network. Analysis of network performance in the Traffic Assessment Report indicates that the section between Coal House and Birtley experiences significant congestion (ER 5.9.14-16).

14. The Secretary of State notes that the Development would improve traffic flows and reduce driver delays currently experienced on this section of the A1 and would provide additional capacity to support future development at the Team Valley Trading Estate. The replacement of Allerdene Bridge would also improve the reliability of this section of the A1 by avoiding the likely need for emergency maintenance and repair of the aging structure (ER 7.2.2).

15. The ExA concluded that the Development conforms with the Government's vision and strategic objective set out in the NNNPS to deliver national networks that meet the country's long-term needs, supporting a prosperous and competitive economy and improving overall quality of life as part of a wider transport system. The Secretary of State agrees with this and that the Development would meet the need to improve the national networks to address road congestion (ER 7.2.4 and 4.4.1-8).

16. The Secretary of State notes that both GC and Sunderland County Council support the principle of the Development (ER 7.2.3).

17. The Secretary of State notes the ExA's consideration of the Development's conformity with development plans at ER 4.6 and the ExA's recommendation at ER 4.6.6 and ER 10.2.15, that the Secretary of State may wish to request an update on the progress towards adoption of the emerging Making Spaces for Growing Places document that GC intends to form Part 3 of its Local Plan, including any implications that may have a bearing on the application. The Secretary of State issued a consultation letter to GC on this matter on 10 November 2020. GC responded on 13 November 2020, explaining they are in the process of making modifications and it is intended that the plan will be adopted in January 2021. At the date of this decision the plan had not yet been formally adopted. The Secretary of State is content that this does not change his consideration of this application.

18. The Secretary of State notes that paragraphs 4.26 and 4.27 of the NNNPS deal with the assessment of alternatives (ER 4.5.1-2) and the Applicant's approach to this (ER 4.5.3-9). The ExA conclude that in accordance with paragraph 4.26 of the NNNPS, the Applicant has included within the Environmental Statement ("ES") an outline of the main alternatives studied and provided an indication of the main reasons for choice of the preferred route, taking into account the environmental effects (ER 4.5.11). The Secretary of State agrees with this conclusion.

## **Findings and Conclusions in Relation to the Planning Issues**

### Air Quality and Emissions

19. The Secretary of State notes the air quality issues and considerations as set out in the NNNPS (ER 5.2.1-8) and the Applicant's approach to its assessment of air quality matters (ER 5.2.9-13).

20. The Secretary of State notes that Public Health England raised no objection regarding air quality effects (ER 5.2.15). A representation was received from Lesley Shotton on behalf of the Shotton Family, who raised a general concern regarding pollution due to their property being one of those closest to the road (ER 5.2.15). The Secretary of State notes that the Applicant provided comments on this representation which the ExA reviewed and, taking account of the assessment provided in the ES and agreed by GC, the ExA considered this

adequately addressed Lesley Shotton's concerns (ER 5.2.16). The Secretary of State notes two representations expressing concern regarding the effects of dust from construction activity, with particular reference to additional land. However, the ExA are satisfied that the controls contained in the outline Construction Environmental Management Plan ("CEMP") would ensure that such effects are appropriately managed and controlled during construction works (ER 5.2.19).

21. The ExA conclude that the relevant tests in the NNNPS are met, the Development will not affect the UK's ability to comply with the Air Quality Directive and that air quality matters do not weigh significantly against the Order being made (ER 5.2.20). The Secretary of State agrees with the ExA's conclusion.

### Biodiversity, Ecology and the Natural Environment

22. The Secretary of State notes the policy background and considerations as set out in the NNNPS (ER 5.3.1-5) and the Applicant's approach to its assessment of biodiversity matters (ER 5.3.6-16).

23 The Secretary of State notes, in relation to the bat mitigation licence, Natural England ("NE") issued a letter of no impediment and signed a Statement of Common Ground ("SoCG") confirming that all relevant matters were agreed between NE and the Applicant (ER 5.3.22).

24 Concern was raised regarding the biodiversity impacts of the additional land to be used for temporary stockpiling in relation to breeding birds and wintering birds (ER 5.3.23-4). In addition to the wintering bird assessment survey already submitted, the Applicant undertook an additional breeding birds survey. It concluded the additional land is considered of low conservation value due to the relatively low number of species using the additional land to breed, most of which are common and widespread, with only two having a notable conservation status (ER 5.3.25). The Secretary of State further notes the additional written representation from NE which stated, "that all environmental impacts resulting from the proposal, including the proposed extended working area, can be adequately addressed to ensure no residual impacts arise from the development" (ER 5.3.26). The ExA concluded that the mitigation and enhancement measures set out in the Applicant's ES, including compensatory habitat creation, would be reasonable and proportionate in relation to the Development as a whole including the additional land (ER 5.3.27) and noted that matters concerning biodiversity had been agreed with GC, as confirmed in the signed SoCG (ER 5.5.28).

25. The Secretary of State agrees with the ExA that the relevant tests in the NNNPS are satisfied and with its conclusion that biodiversity, ecology and the natural environment matters do not weigh significantly against the Order being made (ER 5.3.29).

### Economic and Social Effects

26. The Secretary of State notes the NNNPS requires any adverse social effects to be mitigated in line with principles set out in the National Planning Policy Framework and the Government's Planning Guidance (ER 5.4.2). The Secretary of State notes the economic benefits that would result from the Development as set out in the Applicant's planning statement (ER 5.4.11). After accounting for impacts associated with delays during construction and maintenance, the Applicant forecasts that the combined monetised value

of those benefits would be £215.1 million including benefits related to journey time improvements and improvements in accident rates (ER 5.4.12). Further social benefits would accrue from the additional capacity, alleviation of congestion and improvement of journey times for commuters and other users. The Applicant considers these to be significant benefits and forecasts their combined monetised benefits to be £241 million (ER 5.4.14).

27. The likely significant effects during construction, as reported in the ES and summarised in ER 5.4.17, include

- Temporary major adverse effects for motorised travellers including from driver stress because of delays occurring due to speed restrictions from traffic management;
- A temporary moderate adverse effect on walkers, cyclists, and horse riders, including from the temporary closure of the Longbank Bridleway underpass and the North Dene footbridge resulting in increased journey times;
- A temporary moderate adverse effect on community severance because of the closure of the North Dene footbridge and the Longbank Bridleway underpass and;
- A temporary moderate adverse effect on human health from increased driver stress, community severance, amenity value and noise from night-time works.

28. The Secretary of State notes GC's concern about the unsuitability of the temporary diversion of a bridleway through Eighton Lodge roundabout for horse riders and that the Applicant continues to explore possible mitigation measures and a commitment has been added to the Construction Traffic Management Plan (Appendix B of the CEMP) so that matters relating to the use of all diversion routes are the subject of discussion for the Transport Working Group (ER 5.4.23). The Secretary of State notes the ExA's view that the period of diversions would be short term and based on the information before the Examination, the number of horse riders requiring to use the diversion is likely to be limited. The ExA are therefore satisfied that only minor adverse effects would be likely to arise in this respect (ER 5.4.24). The Secretary of State notes matters raised by GC early in the Examination regarding the poor nature of facilities for pedestrians and cyclists at the Coal House roundabout (junction 67) (ER 5.4.26) and that GC concluded that a wider review of provision for access through the Coal House roundabout was required but that it would be unrealistic to seek to achieve this as part of the DCO process for the Development (ER 5.4.27) and that a separate scheme will be proposed by the Council (ER 5.4.29). Overall the ExA are satisfied that the Applicant has included appropriate measures that would be beneficial for non-motorised forms of transport (ER 5.4.30).

29. The Secretary of State notes the impact of the scheme on agricultural land and operations (ER 5.4.31-32). The Secretary of State further notes the measures set out in the CEMP to minimise the use of agricultural land as far as possible and that the permanent loss of grade 3a agricultural land would be modest (0.2ha). Consequently, the ExA are satisfied that the development would not have any significant impact on the operation and economic viability of any farm holding (ER 5.4.33). The Secretary of State agrees with the ExA that the measures proposed to minimise the effects on agricultural land use and operations are reasonable (ER 5.4.34).

30. The Secretary of State notes the objection from Northern Gas Networks Limited ("NGN") on the basis that that the Development seeks temporary possession of a portion of land (for a construction compound) which impacts on its own proposals for a Compressed Natural Gas ("CNG") refuelling station (ER 5.4.35). The use of the additional land for the extended construction compound would only be required if the design choice for the replacement Allerdene Bridge is for either the Single Span or Three Span options. The

Applicant has proposed a new Requirement 17 that would prevent it acquiring rights over the additional land (plot 3/13a) until a plan for the extent and layout of the construction compound is approved by the Secretary of State, in consultation with the relevant planning authority. The ExA is satisfied that this would ensure that decisions on the Development and the CNG facility are properly reflected whilst also ensuring that no more of the additional land is taken than necessary (ER 5.4.38). The Secretary of State agrees with this, further consideration of this matter is set out below at paragraphs 87-91.

31. The ExA agreed with the Applicant that there would be significant economic benefits resulting from the Development due to the likely reduction in congestion on the A1 (ER 5.4.43) and during operation there would be a long term beneficial effect for walkers, cyclists and horse riders. No significant long-term adverse effects on health, well-being and quality of life have been found to arise from the operation of the Development (ER 5.4.44). The Secretary of State agrees with the ExA's conclusion that the Development would be in general accordance with the relevant policies within the NNNPS. The adverse effects found to result during construction would not weigh significantly against the Order being made. Overall, the positive economic and social benefits would weigh significantly in favour of the Order being made (ER 5.4.45).

### Historic Environment

32. The Secretary of State notes the policy considerations (ER 5.5.2-4) and the Applicant's approach regarding the effects of the Development, including on both designated and non-designated heritage assets (ER 5.5.5-11).

33. The Secretary of State notes that the proposed extension of the north side of the Longbank Bridleway Underpass as part of the scheme would affect the Bowes Railway scheduled monument ("SM"). The SM comprises a partly preserved standard gauge rope haulage railway with associated structures and apparatus, and that the proposed extension would require the demolition of up to a maximum of 17 metres length of the stone retaining walls either side of the former track bed (ER 5.5.15). The Applicant has developed its mitigation measures in conjunction with Historic England ("HE") who agree with the Applicant that the permanent removal of part of the SM would result in a moderate adverse significance of effect which, in NPPF terms, would amount to less than substantial harm to the overall significance of the SM (ER 5.5.16).

34. The only outstanding matter not agreed was the wording of Requirement 9 concerning the Final Written Scheme of Investigation ("FWSI") in relation to archaeological remains. HE's preference is for the words "in accordance with" rather than "substantially in accordance with" to be included in that requirement. HE states that this is not so rigid as to prevent opportunities to accommodate potential implications of design changes should this be appropriate (ER 9.6.26). The Applicant states that "substantially in accordance with" achieves the desired aims of both parties by providing an appropriate amount of certainty and flexibility given the potential for slight variations at detailed design, for example in relation to drainage at Bowes Railway and access to the SM (ER 9.6.27). The ExA note that the FWSI would need to be submitted for the approval of the Secretary of State in consultation with both the relevant planning authority and HE. This approval of the final details will ensure that archaeological interests potentially affected by the Development, including the Bowes Railway SM, would be appropriately protected. The ExA are therefore satisfied with the inclusion in Requirement 9 of "substantially in accordance with", as set out the Revised DCO (ER 9.6.28). The Secretary of State agrees.

35. Regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010 states that “when deciding an application which affects a listed building or its setting, the [Secretary of State] must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses”. The ExA consider that the information provided in the ES is sufficiently comprehensive for it to take account of the significance of heritage assets and to understand the impacts of the Development on that significance (ER 5.5.32). The ExA have found that harm would arise to designated heritage assets, and considers this would be less than substantial in each instance. The ExA has not identified any instances, during construction or operation, where the Development is likely to result in substantial harm to or loss of the significance of any heritage asset (ER 5.5.36). The Secretary of State concurs with the ExA’s findings.

### Landscape and Visual Effects

36. The Secretary of State notes the policy background, the Applicant’s assessment of the potential landscape and visual impacts of the Development and the matters considered by the ExA (ER 5.6).

37. The Secretary of State notes several submissions were made by GC and Sir Anthony Gormley regarding the impact of the proposed gantries and the replacement North Deane Footbridge upon the settings and the views of the Angel of the North from the A1 and ECML railway (ER 5.6.27). The ExA state that the Applicant provided a further assessment which concluded that the southbound views from the A1 of the Angel of the North would not be substantially impacted by the gantries but the effect of the proposed gantries and the replacement North Dene footbridge, in combination with woodland planting would result in a worsening of the views by the occupants of vehicles using the A1 northbound, although the impact would not be significant. The ExA also concluded that views from the ECML would not perceptibly change (ER 5.6.28).

38. The Secretary of State notes the position regarding GC’s Southern Green Report “Options Appraisal for Managing and Enhancing the Angel” and also notes that the Applicant and GC agree it does not carry weight as a planning document. GC’s preference is for Option 3 “Revealing the Angel” to be pursued which would involve the removal of existing vegetation surrounding the Angel of the North enabling it to become more visible within its surroundings including for A1 users. The Applicant had made it clear that it considers the baseline for the ES assessment should be the existing situation including the existing landscaping around the Angel of the North. The ExA noted GC’s aspiration to improve the setting and visibility of the Angel of the North and noted that the Applicant will also do what it reasonably can to preserve the views and settings of the Angel of the North. The ExA agreed with the Applicant’s view regarding the baseline for the ES assessment of the impacts of the Development as this is the existing situation including the existing landscaping around the Angel of the North (ER 5.6.29-31). The Secretary of State agrees.

39. The Secretary of State notes that, by the end of the Examination, the Applicant and GC had agreed a revised detailed design Requirement (R3) and a revised landscaping Requirement (R5) in the draft DCO and the main points of relevance to the impact on the Angel of the North are set out in ER 5.6.33. A final representation from Sir Anthony Gormley indicates support for the amendments made to R3 and R5 in respect of the efforts being made to minimise the impacts on the Angel of the North (ER 5.3.37).

40. The Secretary of State notes the Applicant highlighted that a future replacement Design Manual for Roads and Bridges document may have implications for the types and appearance of the gantry signs required for the Development including the possibility of single span rather than the more bulky and intrusive cantilever gantry signs being used with consequently reduced visual impacts (ER 5.6.34). The ExA's position is that whilst during detailed design the impact of the proposed gantries may be reduced from that shown within the application parameters, it remains the case that the assessment of effects needs to be based on the worst-case scenario based on the gantries as currently proposed in the application (ER 5.6.38).

41. The Secretary of State notes the final outline CEMP includes measures which require the area next to the southbound carriageway, adjacent to the Angel of the North, to be subject to woodland clearance with some re-planting of scattered trees and shrubs to allow for the opening up of views of the Angel of the North (ER 5.6.35). The ExA's position is that whilst this would provide some benefits, these areas do not appear to be so extensive as to result in a substantial benefit (ER 5.6.39).

42. The ExA find that the proposed gantries in the north bound approach to junction 66, along with the replacement North Dene Footbridge would, in combination, be likely to result in a moderate adverse effect upon the setting and views of the Angel of the North as experienced by the occupants of vehicles approaching along the north bound A1 carriageway (ER 5.6.40). Overall, the ExA are satisfied that the adverse landscape and visual impacts would not be so damaging as to offset the benefits of the development (ER 5.6.49). The ExA concluded that the Development satisfactorily accords with the relevant aims of the NNNPS with regard to landscape and visual matters and that these matters do not weigh significantly against the Order being made (ER 5.6.50). The Secretary of State agrees with the ExA's conclusion.

### Green Belt

43. The Secretary of State notes the ExA's consideration of this matter at ER 5.7 and the overall conclusion at ER 7.3.

44. The Secretary of State notes GC raised several issues of concern regarding the Applicant's Green Belt assessment including whether it constitutes inappropriate development, whether the impacts would be the same for all of the options, and what is the justification for temporary buildings and structures (ER 5.7.15).

45. As set out in ER 5.7.16-18, in response to GC's concerns and further questions from the ExA, the Applicant included a fuller assessment in its Technical Note on the Green Belt of the impacts of aspects of the Development upon Green Belt openness. As part of its response, the Applicant confirmed that the number and location of the proposed gantries has been primarily driven by the need for safe operation of the highway, but within this constraint, it has sought to avoid additional or unnecessary signs and to keep their physical height and scale as small as possible. The final signage strategy, including the final design and location of gantries, would be subject to subsequent approval (ER 5.7.19). Following the provision of further information, the Applicant and GC agree that the Development would amount to inappropriate development but that there are very special circumstances to justify the development in the Green Belt which outweigh the limited harm identified (ER 5.7.20).

46. The Secretary of State notes the ExA's assessment and conclusion as set out in ER 5.7.21-24 of the above ground structures, including the design options for the replacement Allerdene Bridge and the replacement North Dene Footbridge on the Green Belt. Based on the worst-case scenario, the ExA consider that the Development would result in a moderate adverse impact on Green Belt openness (ER 5.7.25). In terms of the purposes of including land within the Green Belt, the Development would conflict to a limited degree in terms of its encroachment into the surrounding countryside, but would not conflict with the other four Green Belt purposes (ER 5.7.26). The ExA conclude the Development would as a whole amount to inappropriate development in the Green Belt. It would result in a moderate adverse impact on openness and would conflict with the purpose of the Green Belt to safeguard the countryside from encroachment (ER 5.7.27). Like the ExA, the Secretary of State attaches substantial weight to the harm that would result to the Green Belt (ER 5.7.28, 7.3.3).

47. The Secretary of State notes the ExA's overall conclusion on this issue at ER 7.3.3-10. Paragraph 5.178 of the NNNPS states the Secretary of State will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (ER 7.3.4). As well as harm to the Green Belt described above, the Secretary of State notes and agrees with the non-Green Belt harm that would result from the proposed development, as stated at ER 7.3.5. The Secretary of State agrees with the ExA that the potential harm to the Green Belt and the other harm would be clearly outweighed by other considerations such as the need and benefits of the Development (ER 7.3.20). The ExA concluded that the Development would therefore accord with the Green Belt Policy set out in paragraph 5.178 of the NNNPS and the NPPF (ER 7.3.10). The Secretary of State agrees with this conclusion.

### Noise and Vibration

48. Paragraphs 5.188 to 5.199 of the NNNPS set out guidance and policy for undertaking the assessment of noise impacts (ER 5.8.2-6) and the Secretary of State notes the Applicant's approach and assessment of noise and vibration matters, as set out in ER 5.8.7-18.

49. The Secretary of State notes the representation from Lynn Wilson regarding the cumulative construction traffic impacts of the Development and the resulting noise pollution from the increased vehicular activity and the ExA's conclusion that the cumulative and combined assessment carried out by the Applicant is adequate (ER 5.8.28). The Secretary of State has no reason to disagree with this.

50. The Secretary of State notes Nicola Allan of Trinity Chambers' representation on behalf of the owners and occupiers of five residential properties at North Farm which raised concerns regarding the impact of noise and dust on the occupiers of North Farm from the use of additional land outside the current DCO application for stockpiling (ER 5.8.29). The Applicant explained they had prepared an addendum to the ES on the additional land including an assessment of the impact on affected properties at North Farm. The Secretary of State notes that GC confirmed that it is confident that the measures proposed by the Applicant in the outline CEMP will be sufficient to keep impacts to a minimum and the ExA was also content that the Applicant has provided sufficient mitigation to reasonably minimise noise and vibration impacts (ER 5.8.30).

51. The ExA conclude that whilst there would be some short-term significant noise impacts during construction, they consider that the Applicant is proposing appropriate measures to mitigate and minimise the adverse effects (ER 5.8.31). The ExA further conclude the relevant tests in the NNNPS are met (ER 5.8.32) and overall, taking all matters into consideration, that noise and vibration matters do not weigh significantly against the Order being made (ER 5.8.33). The Secretary of State agrees with these conclusions.

### Traffic and Transport

52. The Secretary of State notes the policy background as set out in ER 5.9.2-7 and the Applicant's approach to the assessment as set out in ER 5.9.8-12. The Secretary of State further notes the Applicant's main points regarding the case for and the benefits of the Development as set out in ER 5.9.14-24 and that the ExA agrees with the conclusions of the Applicant's assessment regarding the need and case for the Development, which weighs significantly in favour of the Order being made (ER 5.9.25).

53. The Secretary of State notes that a number of issues were raised during the examination regarding traffic and transport and the ExA's consideration of these matters (ER 5.9.26-5.9.42). The ExA consider that the Applicant has made adequate provision for construction traffic including arrivals and departures to and from construction compounds and that reasonable mitigation and management measures would be secured within the DCO (ER 5.9.34).

54. As set out in ER 5.9.41-42, the Secretary of State notes no representations were received regarding the first and second changes to the DCO, described in paragraph 9, and that the ExA was satisfied that they would not introduce further issues (ER 5.9.41-42).

55. The Secretary of State notes the ExA recommends that he may wish to consider if there are effects and implications of any changes in transport use and related transport modelling arising as a result of the COVID 19 pandemic which are likely to persist against the original baseline modelling (ER 5.9.46) and that the Secretary of State consults on the effect of a potential decrease in road use resulting from the COVID 19 pandemic (ER 5.9.50). The Secretary of State notes the Department for Transport's publication of 20 July 2020 on "Appraisal and Modelling Strategy- A Route Map for updating TAG during uncertain Times". This sets out the need to effectively capture the additional uncertainty associated with potential impacts on COVID 19 for future modelling over the long term. Until such information is captured, the Secretary of State considers it is too early to fully understand the impacts of COVID 19 on future travel demand and is satisfied, based on the information available, there is no change to the long-term need and benefits of the scheme.

56. The Secretary of State notes the ExA's conclusions on traffic and transport as set out in ER 5.9.48-52. He notes the ExA's view that disruption during the construction process can be satisfactorily managed and whilst there will be some temporary disruption for non-motorised users during construction as a result of footpath diversions, such impacts would be temporary and have been minimised as far as reasonably possible (ER 5.9.49). The ExA are satisfied that the relevant tests in the NNNPS are satisfied (ER 5.9.51). The Secretary of State agrees with the ExA's conclusion that traffic and transportation matters weigh significantly in favour of the Order (ER 5.9.52).

## Water Environment

57. The Secretary of State notes the policy background in relation to the water environment, including water quality and flooding, set out in ER 5.10.2-6 and the Applicant's approach to the assessment of water environment matters set out in ER 5.10.7-15.

58. The Secretary of State notes that, at the close of the Examination, the Environment Agency ("EA") confirmed that its SoCG with the Applicant had been updated to reflect that all matters had been agreed between the EA and the Applicant (ER 5.10.21). In addition, at the close of the Examination, GC confirmed that they were in agreement with the Applicant in respect of water environment and drainage matters (ER 5.10.23).

59. The Secretary of State notes the ExA's conclusion at ER 5.10.26 and that the relevant tests in the NNNPS are satisfied. Overall the ExA agreed with the Applicant's assessment that no adverse effects on the water environment would result during either the construction or operation of the Development. The Secretary of State has no reason to disagree with this and agrees with the ExA that taking all matters into consideration that water environment matters do not weigh against the Order being made (ER 5.10.26).

## Climate Change

60. The Secretary of State notes at ER 5.11.2-5 the policy background concerning the effects of the Development in relation to climate change, including any potential effects in relation to climate change targets and climate change adaptation. The Secretary of State notes the Applicant's approach as set out in ER 5.11.6-8 to assess the effects of the Development on climate and its vulnerability to climate change.

61. The Secretary of State notes the Green Party's representations that the Development would contravene the Government's declaration of a climate emergency and that public funds should instead be invested in railway infrastructure, buses, cycling and walking (ER 5.11.10).

62. In June 2019 the Government announced a new carbon reduction 'net zero target' for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (ER 5.11.11). The ExA noted that a future carbon budget may result in different predictions from those currently made in relation to the operation of the Development. It was recommended that the Secretary of State may wish to consider the impact of the CO<sub>2</sub> equivalent emissions for the operational phase of the Development in relation to any relevant carbon budget, if available, and the cumulative impact of emissions for the NNNPS in the context of the revised net zero target (ER 5.11.13).

63. The Secretary of State notes that the Committee on Climate Change ("CCC") published its Sixth Carbon Budget Report on 9 December 2020, with recommendations for the 2033 to 2037 period. He notes the CCC recommended a net reduction of 78% between 1990 and 2035, therefore bringing forward the previous 80% target by nearly 15 years. However, this target has not been approved by Parliament.

64. The Secretary of State notes that the Applicant said the projected increase in greenhouse gas emissions from the Development would represent a contribution of 0.01% to each of the third, fourth and fifth carbon budgets. The Secretary of State is satisfied that the Applicant has carried out an assessment against the latest available carbon budgets

and agrees with the Applicant's conclusion that it is unlikely that the impact of the development, in isolation, would affect the Government's ability to meet the revised target (ER 5.11.11).

65. The Secretary of State notes the ExA's question to the Applicant with regard to cumulative effects along with other relevant road schemes and the Applicant's explanation that the quantification, in the ES, of emissions from the Development in the assessment of significance of effects inherently assesses the combined and cumulative impacts. He further notes that the Applicant concluded, taking account of other schemes nearby or globally, that the impacts of the Development would not affect compliance with the Government's emission targets (ER 5.11.12).

66. The Secretary of State is content with the assessment undertaken by the Applicant and that it is in accordance with paragraph 5.17 of NNNPS. The Secretary of State agrees with the Applicant's conclusions and is satisfied that the increase in carbon emissions that would result from the Development are not so significant that they would have a material impact on the ability of the Government to meet its carbon reduction targets.

67. The Secretary of State notes the ExA are satisfied that suitable measures are proposed in response to climate change adaption and to avoid increased vulnerability to impacts arising from climate change. He agrees with the ExA that the Development would satisfactorily conform with the relevant provisions of the NNNPS in these respects (ER 5.11.17).

#### Other Projects and Proposals

68. The Secretary of State notes the NNNPS sets out a general requirement to consider cumulative effects as part of the ES, showing how the Development would combine and interact with the effects of other developments (PR 5.12.1). The Secretary of State further notes the three other major highway schemes within the local area, identified by the Applicant, which have the potential to have a cumulative impact on the Development (ER 5.12.4). The Applicant has added a commitment to the Construction Traffic Management Plan to set up a working group to discuss and manage interaction between each of the three Applicant-promoted schemes and any other major road work or non-road schemes that come forward (ER 5.12. 5).

69. The ExA concluded that the Applicant has considered cumulative effects as required by the NNNPS and, where appropriate, suitable control mechanisms would be secured in the DCO (ER 5.12.8). The Secretary of State agrees with the ExA that this is not a matter which weighs significantly against the Order being made (ER 5.12.9).

#### **Findings and Conclusions in Relation to Habitats Regulations Assessment ("HRA")**

70. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State (as the Competent Authority) is required to consider whether the scheme would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site. The Development is not directly connected with or necessary to the management of any European Site (ER 6.3.6). The Secretary of State must therefore undertake an appropriate assessment if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects, cannot be ruled out. In the light of any such

assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a European Site, unless there are no feasible alternatives or imperative reasons for overriding public interest apply.

71. The Secretary of State has considered the ExA's assessment at Chapter 6 of the Report of the likely significant effects of the Development. The ExA recorded that the Applicant considered European sites within 2km of the Development and that this was extended to include coastal European sites which are hydrologically connected to the Development via watercourses crossed by the A1 (ER 6.3.2). The Applicant identified three relevant European sites: Northumbria Coast Special Protection Area, Northumbria Coast Ramsar, and Durham Coast Special Area of Conservation (ER 6.3.3). The Secretary of State notes that the ExA, having considered the relevant evidence, is satisfied there are no likely significant effects of the Development on any European Sites or their qualifying features either alone or in combination with any other plans or projects (ER 6.5.1), a view which is confirmed by Natural England (ER 6.4.3). The Secretary of State agrees with this and with the ExA's conclusion that it is not necessary to carry out an appropriate assessment (ER 6.5.1)

## **Overall Conclusions**

72. The Secretary of State notes the ExA's overall conclusions on the impacts of the Development at ER 7.3 and agrees with the ExA that in spite of the harmful impacts that are likely to result, overall these are likely to be within the scope of the relevant policy provisions in the NNNPS (ER 7.3.22). The ExA concluded that the benefits of the Development, particularly in terms of addressing existing congestion, improving safety and promoting economic benefits for the region, would outweigh the impacts it identified in relation to the construction and operation of the Development. Consequently, the potential harm is substantially outweighed by the benefits of the Development in meeting Government policy as set out in the NNNPS (ER 7.3.23). The Secretary of State agrees with the ExA's conclusion that, overall, there is a convincing case for development consent to be granted (ER 7.4. 24).

## **Compulsory Acquisition and Related Matters**

73. Section 122(2) of the 2008 Act requires that the land to be compulsorily acquired must be required for the development to which development consent relates, is required to facilitate or be incidental to that development, or is replacement land which is to be given in exchange for the order land (ER 8.4.2). Section 122(3) of the 2008 Act requires that there must be a compelling case in the public interest for the land to be acquired compulsorily (ER 8.4.3). Section 123 of the 2008 Act requires that one of three procedural conditions must be met, namely: (i) the application for the order included a request for compulsory acquisition (CA) of the land to be authorised, (ii) all persons with an interest in the land consent to the inclusion of the provision, or (iii) the prescribed procedure has been followed in relation to the land. In addition, a number of general considerations from the former Department of Communities and Local Government ("DCLG") CA guidance need to be addressed (ER 8.4.5).

74. The Secretary of State notes the summary of the Examination process relating to CA and Temporary Possession (TP) in ER 8.5. Ten objections were made to the Development relating to concerns regarding acquisition and/or TP of the land, and the impact on the use

of the land (ER 8.5.2). No withdrawals of objection regarding acquisition and/or TP of the land were submitted to the Examination; however, the Applicant obtained agreement with most parties by the end of the Examination (ER 8.5.6). The Applicant's general case for CA and TP is set out in Chapter 5 of its Statement of Reasons and the Applicant concludes, amongst other things, that the conditions in section 122 of the 2008 Act are met and the tests in the DCLG CA Guidance are satisfied (ER 8.5.7-8). The ExA conclude the overarching conclusion on CA and TP cannot be reached until individual objections and all other relevant and important considerations have been addressed (ER 8.5.10).

75. The Secretary now considers the position with regard to the ten objections set out in ER 8.5.12.

Brett Morland Askew, Christopher Askew and Glenn Clifford Askew

76. The Secretary of State notes the objectors' case including that the land referencing is inaccurate and incomplete and sufficient detail has not been provided in regard to drainage and accommodation works, nor any detail as to the impact on retained land. The ExA conclude that in light of the Applicant's repeated requests for further details and that no response has been received from the objectors or their agent, it has no reason not to agree with the Applicant's contention that there is no evidence of inaccuracy or adverse effects on the objectors. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for TP of the land.

Christopher Wilson and Marie Wilson

77. The Secretary of State notes that the objectors sought a reduced land take and a retaining wall or substantial fencing to mitigate the increased impact of noise to their development plot. The Secretary of State notes details of offers and negotiations between the parties and the ExA's conclusion that the objection is effectively a compensation issue which is not a concern requiring its conclusion by the Secretary of State. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

David Herbert Hankey

78. The Secretary of State notes the objector's case regarding Dunkirk Farm and his request that disruption to his operations is kept to a minimum to ensure access to his fields and that he suffers as little financial and practical disruption as possible. The ExA conclude that the Applicant has proposed reasonable and proportionate measures, which would be secured within the DCO, to safeguard farming operations as far as practicably possible. This objection otherwise relates to a compensation issue between the parties which is not a concern requiring its conclusion by the Secretary of State. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

## Environment Agency (“EA”)

79. The Secretary of State notes the EA is concerned about the potential impact of the Development on the gauging station and telemetry software facilities. The Applicant has said that additional measures have been included within the outline CEMP to ensure sufficient protection for the gauging station. The ExA conclude that sufficient protective measures for the gauging station have been included in the outline CEMP. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA and TP.

## GC

80. The Secretary of State notes the main areas of land affected by the Development are woodland areas within GC’s ownership and land that appears to be highway verge. The Applicant is seeking temporary use over private access routes within GC’s ownership and public footpaths and public bridleway. GC considers it is entitled to compensation for the value of the land taken both permanently and temporarily. The ExA conclude that this is effectively a compensation matter between the parties which is not a concern requiring its conclusion. GC submitted a further representation regarding ecology/biodiversity and the extent of council land/rights to be acquired. In response, the Applicant stated this will be addressed through the environmental mitigation proposed. The ExA conclude that the environmental mitigation proposed is adequate and proportionate. The Secretary of State agrees with the ExA that the land is required for the Development, or is required to facilitate or is incidental to that development, and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

## Network Rail (“NR”)

81. The Secretary of State notes that NR does not object in principle to the Development but requests that the protective provisions in relation to Allerdene Bridge appended to its written representation be included in the DCO. The Secretary of State notes the consideration of this issue at ER 9.6.29-41.

82. The only outstanding area of disagreement between the Applicant and NR related to the indemnity provision within paragraph 32 of Part 3 of Schedule 11 to the draft DCO. NR requests the deletion of paragraph 32(4), which states –

*“In no circumstances is the undertaker liable to [NR] under sub paragraph (1) for any indirect or consequential loss or loss of profits, except that the sums payable by the undertaker under that sub paragraph include a sum equivalent to the relevant costs in circumstances where-*

- a) [NR] is liable to make payment of the relevant costs pursuant to the terms of an agreement between [NR] and a train operator; and*
- b) the existence of that agreement and the extent of [NR]’s liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise”*

83. NR argues that the scope of the indemnity included in its protective provisions should not be diluted and that this should include consequential loss, which, in any event would need to be properly justified and meet the relevant common law tests. NR argues that paragraph 32(4)(b) would create an unnecessary administrative burden and that the

agreements mentioned in it are commercially sensitive (ER 9.6.31). Regrading paragraph 32(4)(b), the Applicant states that it should only be liable for losses of which it has knowledge and can control. If NR cannot identify the risks that it considers should be protected, then the risks should not be for the Applicant to bear (ER 9.6.32). The Secretary of State notes further submissions and representations made on this issue, including a further draft of paragraph 32(4) prepared by NR, which it proposes should be included in the Order if the Secretary of State is minded to accept the provision as proposed by the Applicant. NR states the further draft would limit the Applicant's proposed exclusion of liability so that it addresses only the mischief relating to the lack of foreseeability (ER 9.6.36). The Secretary of State also notes the three made Orders referred to by NR which do not include the Applicant's proposed exclusion (ER.9.6.37).

84. On 21 July 2020 the Applicant submitted its Response to Deadline 11 Submissions which sets out the Applicant's and NR's positions regarding paragraph 32(4), reiterating its request that paragraph 32(4) in the draft DCO be included. On 3 December 2020, the Secretary of State received a post Examination correspondence from Addleshaw Goddard on behalf of NR in response to the Applicant's Response of 21 July 2020, reiterating its opposition to the reduction of the scope of the indemnity to be provided to NR.

85. The Secretary of State notes the ExA's conclusion on this matter at ER 9.6.40 and, whilst it is difficult to draw direct comparisons with other cases, given that the detailed circumstances will inevitably vary from case to case, it does not consider there are adequate grounds for the inclusion of paragraph 32(4), representing a deviation from NR's standard indemnity. The Secretary of State agrees with the ExA that paragraph 32(4) of Part 3 of Schedule 11 should be deleted from the draft DCO (ER 9.6.41).

86. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

#### Northern Gas Networks Limited ("NGN")

87. The Secretary of State notes NGN objected to the Development on the basis that it seeks to retain a portion of land proposed for TP (for a construction compound) in order to implement its own proposals for a CNG refuelling station within Plot 3/6c of the order land. The Secretary of State notes that no formal application for the CNG facility has been submitted and there is no guarantee that planning permission would be granted. In the ExA's view, this limits the weight that can be given to the CNG proposal at this stage. The Secretary of State notes that the inclusion of additional land (plot 3/13a) within the application, extending the size of the construction compound, would mean that the parcel of land needed for the CNG facility would no longer be required by the Applicant for TP. The ExA considered, based on the submitted application without the additional land, that the Applicant had satisfactorily demonstrated the need for the TP of the whole of Plot 3/6c for use as a construction compound.

88. Following the Applicant's discussions and the ExA's questions on this matter, the Applicant drafted paragraph (12) to article 32 (temporary use of land for carrying out the authorised development) which states -

*"In the event that this Order includes powers of temporary possession and compulsory purchase over all of the land shown delineated with a broken line on the Northern Gas Networks Land Ownership Plan then the undertaker shall be prohibited from exercising that*

*power of temporary possession over the part of plot 3//6c shown delineated and hatched purple on the Northern Gas Networks Land Ownership Plan”*

89. The Applicant’s reason for including this additional paragraph is that if all the requested rights for the construction compound (including the additional land) are granted to it then there would be sufficient space within the area allowed for the construction compound to allow NGN to retain the land on which they propose to build the CNG filling station. Article 32(12) therefore restricts the Applicant’s power in these circumstances so that the Applicant would not be able to exercise the power of TP over the CNG filling station land, thereby enabling NGN to carry out its development (subject to the necessary permission being in place) (ER 9.6.45). NGN were content with this provision. The ExA is satisfied with this this additional paragraph, subject to deletion of the words “ *In the event that this Order includes powers of temporary possession and compulsory purchase over all the land shown delineated with a broken line on the Northern Gas Networks Land Ownership Plan*”. Since the ExA are satisfied that the additional land should be included in the Order they consider these words superfluous (ER 9.6.46). The Secretary of State agrees.

90. As stated in paragraph 30 of this letter, the Applicant has proposed a new Requirement (R17) that would prevent it from acquiring rights over the additional land until a plan showing the extent and layout of the construction compound is approved by the Secretary of State in consultation with the relevant planning authority (ER 5.4.38 and 9.6.48). The ExA agree that R17 is required in principle, in order to ensure that the TP of land for the construction compound at junction 67 is not more than is reasonably necessary. However, the ExA made several recommended amendments to the drafting of this Requirement as set out in Table 2 of the ER to reflect its conclusion that it is acceptable for the additional land (Plot 3/6(c)) to be included within the Development and therefore, there is no need for the TP of the parcel of land needed for NGN’s proposed facility. The ExA have also recommended the deletion of sub-paragraph (2)(b) of R17, on the basis that the land to which it refers is no longer needed for TP, and have made minor revisions to the drafting of R17, as set out in Table 2, for clarity and precision (ER 9.6.49). The Secretary of State agrees with the revised wording for R17 as set out in Table 2.

91. The Secretary of State agrees with the ExA that, subject to the exception provided by article 32(12) of the DCO, the land sought is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

#### St Mary Magdalene and Holy Jesus Trustee Limited

92. The Secretary of State notes that the Trust has no objection to the Development, and is willing to engage in negotiations. The Trust require undertakings that the restoration of the land to be returned to the farm is done to the highest possible standards and that all necessary accommodation works are carried out. The Applicant has said that a formal offer has been made and that discussions regarding the restoration of the land are on-going. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Thomas Arthur Hamish Ninth Baron Ravensworth (as executor for Lord Arthur Waller Eight Baron)

93. The Secretary of State notes the objector has mineral interests in land which would have to be acquired. Whilst he has no objection to the Development, he is seeking appropriate compensation. The Secretary of State notes a formal offer has been made by the Applicant and there have been subsequent negotiations. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Northumbrian Water Limited

94. The Secretary of State notes that the objector has land interests within the Development and wishes to ensure the assets are protected or diverted (as appropriate). Whilst there does not appear to be any impact on a compensable interest belonging to the objector, the Secretary of State notes discussions took place in relation to the draft Protective Provisions contained in Schedule 11 to the draft DCO and that these are now agreed. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Special Land and Rights Provisions

95. Sections 127 and 138 of the 2008 Act apply in relation to the effects of Statutory Undertakers ("SUs") land, rights and apparatus. Section 127 applies in relation to land acquired by SUs for the purposes of their undertaking and places restrictions on the CA, or CA of a new right, of such land. Where section 127 applies CA of SU's land can only be authorised if the Secretary of State is satisfied the land can be purchased and not replaced without serious detriment to the SU, or if purchased, can be replaced by other land belonging to or available for purchase by the SU without detriment. Alternatively, it can be authorised if the Secretary of State is satisfied the right can be purchased without serious detriment to the SU or if any detriment to the SU, in consequence of the acquisition of the right, can be made good by the SU by the use of other land belonging to or available for the acquisition by the SU. Section 138 applies where an Order authorises the acquisition of land and there subsists a right over the land in relation to relevant apparatus. Section 138(4) provides that an Order may include provision for the extinguishment of any relevant right or the removal of apparatus if the Secretary of State is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the Order relates (ER 8.6.3-5). The SUs affected by the development are NR, NGN, the EA and Northumbrian Water Ltd.

96. The Secretary of State notes that SoCGs have been agreed with the EA, NGN and Northumbrian Water Ltd which demonstrate that these SUs are content with the Development (ER 8.6.9). In addition, a SoCG was signed by NR and the Applicant on 21 July 2020. The Secretary of State notes that the ExA agree with the Applicant that the acquisition of NGN land and NR land would not result in any serious detriment to the carrying of the respective undertakings. In addition, the ExA agree with the Applicant that although the land to be acquired from the EA includes a gauging station, the works relating to the construction of the Development would be downstream of the gauging station and would not directly interfere with its continued operation (ER 8.6.12).

97. The Secretary of State agrees with the ExA that the tests set out in section 127(3) and / or section 127(6) of the 2008 Act are met and, in accordance with section 138(4), they are satisfied that the extinguishment of relevant SU rights and removal of the SU apparatus is necessary for the purpose of carrying out the development to which the Order relates (ER 8.6.15 and 16).

### Human Rights

98. The Secretary of State notes the ExA's consideration of the Human Rights Act 1998 on the Development and the relevant provisions of the European Convention on Human Rights (ECHR) that are normally engaged by CA and TP proposals (ER 8.6.18-19). The Secretary of State notes that Chapter 6 of the Statement of Reasons deals with human rights and compliance with the relevant provisions of the ECHR. He further notes there are no residential properties to be acquired for the Development (PR 8.6.20-21). The Secretary of State agrees with the ExA that the CA and TP sought is compatible with the Human Rights Act and the ECHR (ER 8.6.23).

### Creation of New Rights over Schedule 8 Land

99. The Secretary of State notes that, under article 32(9) (temporary use of land for carrying out the authorised development), the undertaker may not compulsorily acquire land referred to in column (1) of Schedule 8 (land of which temporary possession may be taken) with specified exceptions (ER 8.6.24). The Secretary of State notes the ExA's primary concern regarding article 32(9)(a) is that it could result in the creation of new undefined rights over land in circumstances where it is not clear that the affected landowners or occupiers have been consulted by the Applicant so that they would have been aware that something other than TP could occur on their land. The Secretary of State notes the Applicant's position on this matter and the ExA's conclusions (ER 9.6.9-24). The Secretary of State notes that the ExA are not convinced that there is a compelling case in the public interest for the new rights and that it is not sufficiently clear that the affected persons would have fully understood the potential implications of the inclusion of land within column (1) of Schedule 8 (ER 9.6.22). The Secretary of State agrees with the ExA's conclusion in respect of article 32(9)(a) and also with the recommendation that it should be deleted (ER 9.6.23).

### Final Conclusion

100. The Secretary of State notes the ExA's conclusion that the relevant tests in sections 122 and 123 of the 2008 Act are met and that the ExA recommends acceptance of the CA and TP powers proposed in the DCO, with the recommended amendment of article 32(9) (ER 8.7.9-10). The Secretary of State agrees with this and with the ExA's conclusion that the CA and TP powers sought by the Applicant are justified, are necessary to enable the Applicant to complete the Development, that there is a compelling case in the public interest for the land and interests to be compulsory acquired, and that the Applicant has a clear idea of how it intends to use the land and that funds are available for implementation of the Development (ER 10.2.7).

### **Draft Development Consent Order and Related Matters**

101. The Secretary of States notes the most significant changes made to the draft DCO during the Examination as introduced in ER 9.4 and set out in Table 1 (main changes made

by the Applicant during the Examination) of the Report. The ExA is satisfied that the majority of these changes are justified by the evidence before them. Where the ExA goes on to suggest further amendments to matters which are the subject of change in Table 1, these are reflected in section 9.6 and Table 2 (DCO provisions recommended to be changed) of the Report (ER 9.4.3).

102. Where not previously stated, the Secretary of State is satisfied with the recommended changes set out in Table 2 of the Report and with the further recommended minor or typographical amendments set out in Table 3 of the Report.

103. The modifications which the Secretary of State has decided to make to the draft DCO at Appendix D to the Report are as follows (references to article numbers, paragraphs and requirements in this paragraph are to the same as numbered in the DCO as made)

- In the preamble, the provisions concerning open space land have been removed together with the reference to sections 131 and 132 in the vires paragraph (it seemed to the Secretary of State that these provisions were not relevant in relation to the matters covered in the Order);
- Article 2(1) (interpretation), the definition of “electronic transmission” has been reworked to include a definition of “electronic communications network”;
- Article 2(1), the definitions of “cantilever gantry”, “single span gantry” and “super span gantry” have been moved to requirement 3 in Schedule 2;
- Article 2(1), the definition of tribunal has been removed as the term is only referred to in the arbitration article;
- Article 30 (acquisition of subsoil and airspace only) a new paragraph (4) has been included which seemed to the Secretary of State to have been omitted;
- The text in Schedule 7 (modification of compensatory and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has been reworked to reflect the Secretary of State’s preferred wording.

104. The Secretary of State is making a number of other minor textual amendments to the draft DCO in the interests of clarity, consistency and precision.

## **General Considerations**

### Equality Act 2010

105. The Secretary of State has had regard to the public-sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not (section 149(1) of the Equality Act 2010). In the light of the ExA’s findings and conclusions, the Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics referred to in section 149(7). On that basis there is no breach of the public sector equality duty.

### Natural Environment and Rural Communities Act 2006

106. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Community Act 2006 (“the 2006 Act”) must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme on Biological Diversity of 1992, when granting development consent. The

Secretary of State notes that the ExA has had regard to the 2006 Act and the biodiversity duty in the relevant sections of the Report. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

### **Secretary of State's overall conclusion and Decision**

107. For all the reasons set out in this letter, the Secretary of State considers that there is a clear justification for authorising the Development. The Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

### **Challenge to Decision**

108. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at Annex A to this letter.

### **Publicity for the Decision**

109. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Natasha Kopala

## LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The A1 Birtley to Coal House Improvement Scheme Development Consent Order 2021 (as made) is being published on the Planning Inspectorate website at the following address:  
<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a1-birtley-to-coal-house-improvement-scheme/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).**