

# ANNEX 5

## PLANNING ACT 2008

### THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010 ("2010 RULES")

#### APPLICATION FOR THE PROPOSED ABLE ENERGY MARINE PARK DEVELOPMENT CONSENT ORDER

**PAPER ON THE KILLINGHOLME LOOP AND ENVIRONMENTAL PROCESS  
SUBMITTED ON BEHALF OF NETWORK RAIL INFRASTRUCTURE LIMITED  
ANSWER TO QUESTION RAISED BY THE EXAMINING AUTHORITY IN THE  
SPECIFIC ISSUES HEARING ON ACCESS AND TRANSPORT ON 14<sup>TH</sup>  
SEPTEMBER 2012**

Planning Inspectorate Reference Number: TR030001

Unique Objector Reference: 10015512

Eversheds LLP  
One Wood Street  
London  
EC2V 7WS  
(Our Ref: ClarkJZ)

## 1. Introduction

- 1.1 In the Specific Issues Hearing on Access and Transport on Friday 14 September, the Applicant raised the question as to what, if any, environmental impact assessment Network Rail (NR) has undertaken in connection with the proposals to construct the Killingholme Loop. The Killingholme Loop is the NR proposed scheme to service the foreseeable intensification of rail traffic along the Killingholme branch line at Humberside. The forecast increase in use of the railway network in the vicinity of the Port of Immingham will result from the change in UK energy policy. As energy generators shift towards renewable energy production (particularly biomass) the volume of goods transported by rail will increase dramatically. This change is explained in detail in the Written Representation submitted on behalf of NR, in paragraph 2.8, and was elaborated on in oral evidence given by Ian Cleland (NR) in the Hearing on 14<sup>th</sup> September.
- 1.2 The Killingholme Loop proposal will provide a new railway to link the existing truncated Killingholme branch that runs from Immingham to Admiralty Sidings/Humber Sea Terminal directly to the line between Ulceby Junction and Barton-on-Humber. The proposals include the re-opening of the mothballed railway track-bed from Admiralty Sidings/Humber Sea Terminal to Goxhill Junction onto the Ulceby to Barton-on-Humber Line and the construction of a new chord to provide a south facing connection towards Ulceby Junction. Land acquisition is required for the proposals.
- 1.3 The Killingholme Loop proposals have reached GRIP 2 in development. This means that the proposals are at a basic level of feasibility assessment and initial consultation. Any infrastructure project at an early stage of planning and optioneering will not have assessed the predicted environmental impacts of the proposals comprehensively on the basis that it is inappropriate at such an immature stage of the scheme and is not required until the authorisation process for the scheme is initiated. Ian Cleland gave evidence in the Hearing of 14<sup>th</sup> September to this effect.
- 1.4 The following reports have been commissioned by NR regarding the Killingholme Loop:
- 1.4.1 **Corus**- *Brief Report on Option Key Issues for Consultation Purposes-Killingholme/HIT/Goxhill Track Enhancements* (attached to the Written Representation submitted by NR in connection with the DCO Application at Annex 6); and
- 1.4.2 **Network Rail** – *Killingholme Loop Option Selection Report*.
- 1.5 The Reports cited at paragraph 1.4 above each consider the potential environmental impacts of the Killingholme Loop proposals and their implications,

including initial consultation action, in respect of those impacts. The conclusions of each Report are considered at paragraph 3.2 and 3.3 below.

- 1.6 GRIP stage 2 is premature for NR to seek specific advice as to the means Killingholme Loop proposals would be consented. Accordingly, it is premature to take a view on what, if any, environmental impact assessment might be required as part of that authorisation process. The purpose of this note is to assist the Examining Authority in providing observations on the potential requirements for any such assessment and more particularly the relevance of those requirements to the examination of the application for the proposed Able Energy Marine Park Development Consent Order (the Proposed DCO).

## 2. **Means of authorising the Killingholme Loop Proposals**

- 2.1 It should be noted that in authorising rail infrastructure projects, it is not always appropriate that one exclusive means of authorisation is sought. The immaturity of the Killingholme Loop proposals are such that at this stage it is impossible to take a considered view as to the appropriate power, or combination of powers, that may be sought. As such, any comment on whether an environmental impact assessment is required and the particular component of the scheme to which it would relate is speculative. A brief description of the possible means by which the Killingholme Loop might be authorised follows, as a necessary step to considering the possible requirement for an environmental impact assessment.

### *Permitted Development Rights*

- 2.2 The Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) deems planning permission to be granted for certain categories of development which are listed in Schedule 2 to the GPDO. Development by Network Rail potentially falls within the definition of two categories, as follows:

#### 2.2.1 Part 11 – Development under Local or Private Acts of Parliament:

Development authorised by (amongst other things) (a) a local or private Act of Parliament, or (b) an order approved by both Houses of Parliament (“the authorisation test”), which designates specifically the nature of the development authorised and the land upon which it may be carried out (“the land acquisition test”).

By virtue of article 3(12) of the GPDO, an environmental statement is not a requirement to be submitted in connection with any development authorised under Part 11.

#### 2.2.2 Part 17, Class A – Railway or light railway undertakings:

Development by railway undertakers on their operational land, required in connection with the movement of traffic by rail.

Development is not permitted by Part 17, Class A if it consists of or includes:

- (a) the construction of a railway;
- (b) the construction or erection of a hotel, railway station or bridge, or
- (c) the construction or erection otherwise than wholly within a railway station of
  - (i) an office, residential or educational building, or a building used for an industrial process; or
  - (ii) a car park, shop, restaurant, garage, petrol filling station or other building or structure provided under transport legislation.

Part 17, Class A does not benefit from the exemption conferred by article 3(12).

2.3 At this stage of design development, the Killingholme Loop proposals can be broadly analysed as follows:

- (a) The proposals require acquisition of third party and outside of NR's existing operational boundary.
- (b) The scheme includes the construction of a new railway chord (it is assumed for the purposes of this note that this new railway chord is over the third party land referred to in (a)).
- (c) The re-opening of a section of mothballed railway track-bed is proposed. A definition of 'mothballed railway' is provided at paragraph 6 of the Relevant Representation submitted by NR.
- (d) By its nature, the proposals include the intensification of use of the existing operational Killingholme branch line that runs from Immingham and then through the AMEP site to Admiralty Sidings/Humber Sea Terminal to the west of AMEP.

2.4 Taking elements (a) to (d) above into account, Part 11 permitted development rights would not on the face of it apply to the proposed scheme at its current stage of planning and design for the following reasons:

2.4.1 For the purpose of this note, an extensive investigation into the original enabling legislation for the Goxhill to Immingham railway has not been undertaken. Initial findings however indicate that it was authorised by a the Barton and Immingham Light Railway Order 1907. The text of this Light Railway Order has not been reviewed, however for the purposes of this note it is assumed that the Order was confirmed by the Board of Trade on recommendation by the Railway Commissioners (Light Railways Act 1896, section 8). It does not therefore satisfy the authorisation test of Part 11 (see paragraph 2.2.1).

2.4.2 The current proposals require the acquisition of third party land, which would fall foul of the land acquisition test of Part 11 (see paragraph 2.2.1).

#### *Transport and Works Order*

2.5 Subject to paragraph 2.6 below, the Transport and Works Act 1992 is potentially applicable to the authorisation of the Killingholme Loop proposals. It seems probably on the current design proposals that should an order be promoted under section 1 of that Act and an environmental impact assessment would be required.

#### *Development Consent Order*

2.6 It is likely that the Killingholme Loop proposal would be within the definition of a Nationally Significant Infrastructure Project under section 14(1)(k) of the Planning Act 2008 and would have to be consented by an order for development consent made under the 2008 Act. The scheme would require an environmental impact assessment.

### **3. Killingholme Loop – Environmental Issues**

3.1 The Reports commissioned by NR in respect of the Killingholme Loop proposals (see paragraph 1.4 above) both address the environmental issues relevant to the proposals. The Network Rail Option Selection Report briefly analyses the environmental issues along the route and recommends that a full environmental impact assessment will be required in respect of the mothballed section of track-bed lying to the west of Admiralty Sidings/Humber Sea Terminal and the proposed routing of the new line. In respect of other options considered in the Report, it recommends early consultation on environmental issues. The recommendation for the GRIP Stage 3 (paragraph 9), includes 'Further

consideration of land acquisition and local impact issues' and 'the need for survey detail to confirm and geometric issues and environmental survey'.

- 3.2 The Corus Report, in summary, recommends that the environmental issues should be addressed at the earliest opportunity. Section 4 and Table 1 identify the environmental issues present.
- 3.3 It is important to note for the purposes of any assessment of environmental impacts that may be undertaken in respect of the Killingholme Loop proposals, that it will be in the context of a baseline whereby the existing operational Killingholme branch line runs through the North Killingholme Haven Pitts SSSI (the SPA).
- 3.4 The Examining Authority has asked what, if any, environmental impact assessment has been undertaken as part of the process of implementing the Killingholme Loop proposals and whether any such assessment will be required. As demonstrated in this note, the proposals have not reached the stage of design development where an assessment of the environmental impacts is required. However, work done to date indicates that there are impacts of potential significance. In addition, an initial analysis of the potential powers by which the proposals may be authorised, suggests that an environmental statement might be required in respect of at least part of the proposed scheme.
- 3.5 The Town and Country Planning (Environmental Impact Assessment) Regulations 2011(section 2(1) and Schedule 4), the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (Regulation 11) and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (Schedule 4) each prescribe the information for inclusion in an environmental statement. Required under each set of regulations is, briefly, a description of the development, the main alternatives studied, a description of the likely significant effects on the environment and the proposed mitigation of those effects. Most railway infrastructure schemes of any significant size, under currently legislation require the submission of an environmental statement (as demonstrated in paragraph 2). However, the crucial question is not whether one is required, but whether the proposed measures to prevent, reduce and where possible offset any significant effects on the environment are such that, when considered together with the need, public interest and other factors (such as financial) for the proposed scheme, the scheme is justifiable as a whole.

#### *Appropriate Assessment*

- 3.6 NR acknowledges the SPA and its proximity to the Killingholme Loop proposals. At such time that powers are sought to implement the proposals, NR will submit any relevant information as may be required by the competent authority under section 61(2) of The Conservation of Habitats and Species Regulations 2010.

Should the competent authority decide that an Appropriate Assessment is necessary, NR will co-operate in informing that assessment and proposing relevant mitigation measures.

#### 4. **Conclusion**

- 4.1 The proposals for the Killingholme Loop are not fully developed. At their current stage, potential environmental issues have been identified and the appropriate consultation measures have been instigated. At this stage of the proposals, whether an environmental statement may be required is speculative, though possible. A comprehensive environmental impact assessment has not been commenced.
- 4.2 As has been presented in the both oral evidence and written submissions by NR in the Examination of the Proposed DCO, the Killingholme Loop proposals have been identified as the best, if only, means to meet the predicted increase in rail traffic in the vicinity of the Port of Immingham. The intensification of rail freight traffic is anticipated to meet Government policy on renewable energy, particularly biomass.
- 4.3 As set out in detail in section 1 of the Written Representation submitted by NR, NR is regulated by the ORR. The ORR itself is under a general duty imposed by the Railways Act 1993 to exercise its functions to, amongst other things, promote improvements in railway service performance. It is worth noting in the context of the Killingholme Loop proposals that it is considered that 'mothballed' railways have a reasonable prospect of reopening (see Relevant Representation paragraph 6). Meeting the needs of national railway requirements (in this context, specifically renewable energy freight traffic) is a duty on NR under the Network Licence (see paragraph 2.8 and Annex 4 to the Written Representation). The Killingholme Loop is NR's proposed means of meeting that need. At such time that an application to seek powers for the scheme is made, the environmental impacts will be assessed in the context of that scheme. At this stage, it cannot be speculated as to how those effects might weigh against those connected with the proposed DCO and currently under examination.

