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Dear Sirs,

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED NETWORK RAIL (NORTON BRIDGE AREA IMPROVEMENTS) ORDER

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 of the Examining Authority, Mary O'Rourke BA(Hons) DipTP MRTPI, who conducted an examination into the application made on 18 December 2012 by your client, Network Rail Infrastructure Limited ("NR"), for the Network Rail (Norton Bridge Area Improvements) Order ("the Order") under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008 ("the 2008 Act").
2. The examination of the application began on 18 April 2013 and was completed on 14 October 2013. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by a series of hearings held between 19 June and 11 September 2013 in Chebsey and Stafford.
3. The Order would grant development consent for the construction and operation of a new 6.8 kilometre section of railway to the west of the existing West Coast Main Line ("WCML") railway in the vicinity of Norton Bridge, Staffordshire and associated development including the diversion by National Grid Gas plc of two high pressure gas pipelines in order to accommodate the new railway (referred to in this letter as "the project"). The Order would also, among other things, authorise the compulsory acquisition of land and rights in land for the purposes of the project. The new railway would provide a grade-separated junction including a flyover to replace the existing flat junction at Norton Bridge. The purpose of the new railway is to provide greater capacity and efficiency for trains using the WCML.
4. Enclosed with this letter is a copy of the Examining Authority's report. The proposed development is described in chapter 2 of the report. The Examining Authority's findings and conclusions are set out in chapters 4 to 8 of the report, and her overall conclusions and recommendation are in chapter 9.

Summary of the Examining Authority's recommendation

5. The Examining Authority recommended that the Order be made, in the form set out in Appendix F to her report.

Summary of Secretary of State's decision

6. **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 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Secretary of State's consideration

7. The Secretary of State's consideration of the Examining Authority's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Examining Authority's report ("ER") and references to requirements are to those in Schedule 2 to the Order, as set out in Appendix F to the ER.

Legal and policy context

8. The Secretary of State agrees with the Examining Authority that, since no National Policy Statement ("NPS") has yet been designated for railways, he is required to decide this application in accordance with section 105 of the 2008 Act (decisions in cases where no national policy statement has effect) (ER 3.1). For the purposes of section 105, he agrees with the Examining Authority's assessment at ER 3.5-50 of the legislation and policy that are relevant and important matters to be taken into account in deciding this application.

9. As noted by the Examining Authority at ER 3.2, the draft NPS for National Networks was published in December 2013¹. The Secretary of State considers that although the draft NPS does not yet have effect for the purposes of section 104 of the 2008 Act, he should nevertheless give the draft NPS some weight in considering this application as it contains many emerging policies that are relevant to this project. Taking into account the Examining Authority's assessment of the need for and impacts of this project as set out in her report and considered below, he is satisfied that in all significant respects the project is consistent with the objectives of the draft NPS.

10. The Secretary of State has noted the local planning policies referred to by the Examining Authority which support the strategic improvement of the railway and rail facilities, and the policies in the National Planning Policy Framework ("NPPF") which promote sustainable transport. Taking into account the Examining Authority's assessment of the environmental impacts of the project considered below, he agrees with the Examining Authority that the project supports the policy objectives set out in the NPPF and conforms to the objectives of the relevant local planning policies (ER 4.8-18, 6.5).

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263720/consultation-document-draft-national-policy-statement.pdf.

11. The Secretary of State has also considered the significance for the project of the new Planning Practice Guidance launched by the Department for Communities and Local Government on 6 March 2014. He is satisfied that, to the extent that this guidance is relevant to the project, the project does not conflict with the aims of the guidance.

Need for the development

12. The Examining Authority reported that much of the WCML route currently operates at or just below capacity for much of the day; that figures in the WCML Route Utilisation Strategy predict demand growth over the next ten years; and that the flat junction at Norton Bridge is a bottleneck which constrains the number of train paths available and has a record of poor reliability. The Secretary of State agrees with the Examining Authority that by addressing these issues the project would increase capacity in the Stafford area and improve reliability and performance, thereby facilitating an increase in both passenger services and intermodal freight (ER 4.19-29). With regard to the consideration of alternatives, he agrees with the Examining Authority that NR's option, evaluation and selection process was long and methodical, and that the need for the scheme exists now irrespective of future plans for the HS2 high speed rail line (ER 4.30-36).

13. The Secretary of State agrees with the Examining Authority that the project would support NPPF policy by delivering the presumption in favour of sustainable development through increased railway capacity. He agrees also that the project would help to address the urgent need for increased capacity to promote sustainable economic growth recognised in the 2007 White Paper "Delivering a Sustainable Railway" and more recently in the draft NPS for National Networks (paragraphs 2.25-31 of the draft NPS). For all these reasons, the Secretary of State agrees with the Examining Authority that there is a well-argued and strong need for the development which also satisfies the first part of Stafford Borough Local plan policy E&D 7 against unnecessary development in the countryside (ER 4.37-38).

Landscape and visual impact

14. The Examining Authority said that the new railway would cut across an area of rolling countryside and that some interested parties were concerned about the large scale and intrusive nature of the project, and about the lack of detail in the environmental mitigation plans. Taking into account the Design Brief and the revisions to the Order submitted by NR during the examination, the Secretary of State agrees with the Examining Authority that the Order would provide a clear framework for delivering detailed mitigation measures to minimise the adverse landscape and visual impacts of the project. In particular, he is satisfied that requirement 3(2) would ensure compliance with the principles set out in NR's Design Brief and with the Landscape and Ecology Management Plan that is to be approved by Stafford Borough Council. The Secretary of State accordingly agrees with the Examining Authority that NR has demonstrated good design and that the project complies with the objectives of relevant local planning policies and the NPPF policy for sustainable development (ER 4.39-52).

Impact on the local ecology

15. As regards impacts on designated sites, the Secretary of State agrees with the Examining Authority for the reasons she has given that the project does not conflict with national policy or the objectives of relevant local planning policies. He agrees also that significant effects can be excluded for all the features of Midlands Meres and Mosses

Ramsar site, either alone or in combination with other plans or projects, such that he is not required to make an appropriate assessment of the implications for the site under regulation 61 of the Conservation of Habitats and Species Regulations 2010 before deciding whether to give consent for the project (ER 4.59-62, Chapter 5 and 6.7).

16. The Secretary of State is satisfied that in relation to impacts on European and nationally protected species suitable mitigation measures would be secured and that, where licences are required from Natural England, there is nothing to suggest that these would not be granted (ER 4.63-69). He also agrees with the Examining Authority that the Order provides for an appropriate level of habitat mitigation, aftercare and monitoring; and that sufficient regard has been had to the inter-relationship between soils, ecology and landscape character (ER 4.70-74).

17. Like the Examining Authority, the Secretary of State has concluded that adverse impacts on biodiversity and on the ecology of the local area would be minimised through the provisions of the Order (ER 4.75). He confirms that, in coming to a conclusion on these matters, he has had regard to the conservation of biodiversity as required by section 40 of the Natural Environment and Rural Communities Act 2006.

Traffic and highways

18. The Secretary of State has noted the Examining Authority's assessment at ER 4.76-93 of the temporary impacts of constructing the project on traffic and the road network and the permanent changes to the local road and footpath network. He agrees with the Examining Authority for the reasons she has given that the changes to roads and footpaths are acceptable.

19. The Secretary of State has considered the impact that the closure of the existing level crossing and construction of a footbridge to replace it will have on some less able users, having regard to the Public Sector Equality Duty under the Equality Act 2010. He has noted that there was no adverse comment in relation to the closure proposal from either statutory undertakers or the public following NR's consultation in 2011, and that the information provided by the Examining Authority after an inspection of the site that the current footpath is not level and can only be accessed through opening a gate and stepping up. The Secretary of State therefore agrees that replacing the level crossing on PF10 with a footbridge is on balance likely to have a positive impact by making crossing the railway line safer when train speeds and frequencies increase as a result of the project (ER 4.89-90).

20. He agrees also with the Examining authority that the Order would secure adequate controls and safeguards through the Traffic Management Plan and Travel Plan to ensure that the impacts on the roads and footpaths during construction would be minimised and proportionate. The Secretary of State is accordingly satisfied that the project complies with the objectives of local and national planning policy on these matters (ER 4.93).

Noise and amenity impacts

21. The Secretary of State has considered the Examining Authority's assessment at ER 4.94-116 of the likely impacts of dust, noise and vibration as a result of the project and visual intrusion from new highway lighting on those living in the vicinity. He agrees with the Examining Authority that subject to appropriate mitigation which would be secured through the controls and safeguards included in the Order, including approval of the

Nuisance Management Plan, the project would not give rise to unacceptable impacts on the local area and would comply with local and national planning policy. The Secretary of State is accordingly satisfied that all reasonable steps will be taken to minimise any detrimental impact on amenity and that it is justifiable for the project to be covered by a defence of statutory authority against nuisance claims as a consequence of making the Order.

Water, drainage and flood risk

22. The Examining Authority reported at ER 4.117-129 that the new railway would affect the Meece Brook and River Sow and their tributaries, requiring three new river crossings and diversions, and that a Statement of Common Ground (“SOCG”) on water, drainage and flood risk had been agreed between NR and the Environment Agency. The SOCG included confirmation that the Environment Agency had no objections to the proposal while recognising that the new railway and road crossing the Meece Brook flood plain on embankment would impede flood flows, result in loss of flood plain storage and increase the extent and depth of flooding at Norton Bridge. The Secretary of State has noted that, while there would be a residual adverse impact on flood risk as a result of the project, there would be no risk to commercial, industrial or residential development and any devaluation of agricultural land would be a matter for NR to address under the Compensation Code. He agrees with the Examining Authority for the reasons she has given that all other potential effects on water supply, water resources and water quality could be mitigated effectively and that there would be no conflict with the objectives of national or local planning policies (ER 4.130-131).

Heritage impacts

23. The Secretary of State notes that the setting of some heritage assets would be affected by the project and that there may be potential for the presence of previously undiscovered below ground archaeological remains in the vicinity. He agrees with the Examining Authority that the Construction Environmental Management Plan (“CEMP”), which must include an Archaeological Management Plan and a Landscape and Ecology Management Plan, represents a satisfactory approach to securing appropriate mitigation for any adverse impacts on the historic environment from the construction or operation of the project. He agrees further that there would be no conflict with national or local planning policies for the protection of designated or undesignated heritage assets (ER 4.132-140).

Socio-economic impacts

24. The Examining Authority summarised at ER 4.141-145 the potential socio-economic benefits of the project (for example, in terms of vehicle miles removed from the roads, improved connectivity and construction jobs) and the local negative impacts of the project (for example, disruption to businesses and residents during construction and the loss and severance of agricultural land). The Secretary of State agrees with the Examining Authority that in terms of socio-economic impacts overall the project would have a neutral effect on the area (ER 4.146).

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

25. The Secretary of State agrees with the Examining Authority that the environmental information provided in the Environmental Statement included in the Order application

taken with the additional environmental information submitted during the course of the examination is sufficient for the purposes of his decision on this application (ER 6.3). He confirms for the purposes of regulation 3(2) of the above Regulations that he has taken into consideration all the environmental information as defined in regulation 2(1) of those Regulations. For the purposes of regulation 23(2)(d)(iii) of those Regulations, the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the adverse environmental impacts of the scheme are the CEMP and its component plans that would require approval by Stafford Borough Council under requirement 3.

Overall conclusions on the case for development consent

26. For all the reasons given above, the Secretary of State agrees with the Examining Authority that the project supports the policy objectives set out in the NPPF, conforms to the objectives of local planning policy, accords with the goals of Government transport policy and satisfies all legal and regulatory requirements (ER 6.5-7). He agrees also that, taking into account the proposed mitigation that would be secured through the CEMP, the need for the project and the other benefits that it would deliver outweigh the residual adverse impacts after mitigation (ER 6.8). The Secretary of State is therefore satisfied that there is a clear justification for granting development consent for the project as recommended by the Examining Authority.

Compulsory acquisition matters

27. The Secretary of State has considered the compulsory acquisition powers sought by NR against the tests concerning compulsory acquisition in sections 122 and 123 of the 2008 Act, DCLG guidance² and other relevant legislation, and has taken into account the cases for the affected persons set out in Chapter 7 of the ER. He agrees with the Examining Authority for the reasons she has given that a compelling case in the national interest for the project has been clearly demonstrated (ER 7.125-128, 7.152); that funds would be available to meet the costs of acquiring land and implementing the project (ER 7.129, 7.154); that the site and scale of the development was the most suitable in all the circumstances; and that each plot of land had been identified with a clear purpose and was necessary for the project (ER 7.130-136, 7.154).

28. The Secretary of State agrees with the Examining Authority that no feasible alternative exists to the loss of the rights of the affected persons and that the interference with their land interests is proportionate to the benefits that would be achieved by the project and which might be frustrated without compulsory acquisition powers. Like the Examining Authority, he is satisfied that the mitigation measures that would be secured by the Order are sufficient to manage the environmental impacts of the project and address the concerns of the affected persons. He has noted also the potential for land rationalisation and land swaps to address concerns about the severance of agricultural land by the new railway (ER 7.140-153). With regard to the human rights of the affected persons, the Secretary of State agrees with the Examining Authority that the examination process ensured a fair and public hearing and that the proposed interference with the individuals' rights would be lawful, necessary, proportionate and justified in the public interest (ER 7.155).

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf.

29. For all these reasons, the Secretary of State has decided that, subject to the qualifications explained at paragraphs 31 to 33 below, all the compulsory acquisition provisions in the Order are appropriate and justified.

Draft Development Consent Order

30. The Secretary of State has noted the various changes made to the Order in the course of the examination and those recommended by the Examining Authority, as explained in chapter 8 of the ER. For the reasons given by the Examining Authority, he agrees that, subject to the modifications explained in paragraphs 31 to 38 below, the provisions of the Order set out in Appendix F to the ER are appropriate for a railway scheme of this sort and should be included in the Order as made. In particular, he agrees with the Examining Authority that the changes to the Order proposed by Staffordshire County Council in relation to technical approval (ER 8.26-28), the defects period (ER 8.29-30), the authority's network management duty under section 16 of the Traffic Management Act 2004 (ER 8.32-33), the removal of trees (ER 8.35-36) and road condition surveys (ER 8.61-63) are unnecessary for the reasons given by the Examining Authority.

Restrictive covenants

31. The Secretary of State notes that article 22(1) of the Order as recommended by the Examining Authority would allow NR to impose restrictive covenants over any of the Order land as defined in article 2(1). The Explanatory Memorandum ("EM") submitted with the application referred to precedents for such a power in a number of Orders made under the Transport and Works Act 1992 ("TWA"). The EM indicated that this power might be used to impose restrictions for the protection of the railway or for the purpose of environmental mitigation, thus allowing for the possibility of reducing the area of outright acquisition. NR explained further in its response to the Examining Authority's First Written Questions (section 9.14 of document REP-028) that it was in particular seeking a power to impose restrictive covenants to enable a protection zone to be established over a strip of land on either side of the two high pressure gas pipelines that are to be diverted to accommodate the new railway.

32. The Secretary of State agrees with NR that for the purposes of the diverted high pressure gas pipelines it is appropriate to include in the Order a power to impose restrictive covenants over the land in question rather than require National Grid to acquire that land outright. This would allow the surface of the land to be used for its ordinary purposes (that is, agriculture) while preventing development which could threaten the safety of the pipelines or impede access to them. He considers that this situation is comparable to the precedents in the TWA Orders which have authorised railways to be constructed on a viaduct or in a tunnel and have included a power for the railway undertaker to impose restrictive covenants over the land above or below the railway as an alternative to acquiring that land outright.

33. In the absence of a specific justification relating to the circumstances of the project for a power to impose restrictive covenants more generally over any of the land which would otherwise be subject to compulsory acquisition or use under the Order, the Secretary of State remains of the view (referred to by NR in REP-028) that it would not be appropriate to confer a power in those terms. This is because he does not consider that conferring a general power to impose restrictive covenants would be more appropriate than leaving the matter to be the subject of agreement between NR and individual land

owners where this might be an alternative option to compulsory acquisition. He has therefore decided to amend article 22 of the Order to limit the power to impose restrictive covenants to the plots of land required for the diversion of National Grid's high pressure gas pipelines referred to in Part 2 of Schedule 7 to the Order.

Requirements

34. The Secretary of State has considered the Examining Authority's views at ER 8.49–53 as to the degree of flexibility which she considered it reasonable and necessary to allow NR and the relevant planning authority to agree amendments to the design drawings or to details previously approved in accordance with the requirements. He has also considered your letter of 16 January 2014 in which you referred to recent case law on the lawfulness or otherwise of "tailpieces" in planning conditions. In that context, you suggested possible drafting modifications to requirement 2 with the aim of ensuring that the scope of amendments that could be made to the design drawings would be appropriately limited.

35. The Secretary of State agrees with the Examining Authority that, taking into account the scale and complexity of the project, it is appropriate to allow limited design changes and refinements to be approved by the relevant planning authority to ensure that the project can be implemented in an optimal manner and without unnecessary delay, provided that any such approval did not allow development which had not been applied for or assessed. However, the Secretary of State considers that requirement 2 as recommended by the Examining Authority could be interpreted as permitting key elements of the project to be varied by consent of the relevant planning authority and without public involvement. He has therefore decided to redraft requirement 2 as follows:

"The authorised development must be carried out in accordance with the design drawings subject to such non-material amendments as are approved in writing by the relevant planning authority; provided that such approval is not given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement."

36. The Secretary of State has for similar reasons decided to amend the tailpiece of requirement 5(2) as follows:

"Any tree or shrub or other habitat replacement planted as part of an approved landscaping and habitat replacement scheme or ecological management plan that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, or has failed to become established, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent to any variation."

37. With regard to requirement 9, the Secretary of State agrees with the Examining Authority for the reasons she has given that it is appropriate to provide for the relevant planning authority to approve amendments to previously approved details. He is satisfied that the requirement would not allow the relevant planning authority to approve amendments that exceeded the constraints set by the other requirements.

Other changes to the Order

38. The Secretary of State has decided to make the following further modifications to the form of the Order set out in Appendix F to the ER:

- in article 10(2) (construction and maintenance of new or altered streets), to substitute “must” for “may” to make clear that it is an obligation for NR to seek the approval of the highway authority to the standard of completed highway works;
- in article 21(2) (time limit for exercise of authority to acquire land compulsorily), to insert a reference to article 29 to make clear that the authority for National Grid to take temporary possession of land expires 5 years after the Order comes into force; and
- various minor drafting changes to the Order which do not materially alter its effect, including further changes to conform with the current practice for drafting Statutory Instruments and changes in the interests of clarity and consistency.

Representations since examination

39. Since the close of examination, in addition to your letter of 16 January 2014 referred to at paragraph 34 above, the Secretary of State has received the following correspondence relating to the project:

- a representation from a resident of Norton Bridge objecting that the proposed flyover had made their home unsaleable, removing their human right to freedom of movement, and that the project was not needed; and
- notification from Natural England that a badger licence had been given to authorise interference with badger setts for the purpose of the project.

He does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to other interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the Examining Authority’s report.

Secretary of State’s conclusions and decision

40. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the construction of the Norton Bridge Area Improvements project. While he recognises that the project would have a number of adverse impacts as identified by the Examining Authority, taking into account the mitigation measures that would be secured by the Order, he does not consider that any of those impacts would be unacceptable. The Secretary of State is satisfied that, overall, the benefits of the project clearly outweigh the residual adverse impacts of the project after mitigation.

41. The Secretary of State has accordingly decided to accept the Examining Authority’s recommendation at ER 9.5 and is today making the Order granting development consent and imposing the requirements as proposed by the Examining Authority, but subject to the modifications referred to at paragraphs 31 to 38 above. He confirms that, in reaching this decision, he has had regard to the Local Impact Report prepared jointly by Stafford Borough Council and Staffordshire County Council (ER 3.36-38), any matters prescribed

by Regulations under the 2008 Act that are relevant to the proposed development, and any other matters which he considers important and relevant to his decision, as required by section 105 of the 2008 Act.

Challenge to decision

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

Publicity for decision

43. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

Martin Woods

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 former Infrastructure Planning Commission or 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 from the date when the Order is published. The Network Rail (Norton Bridge Area Improvements) Order 2014 (as made) is being published on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/west-midlands/stafford-area-improvements-norton-bridge-railway/>

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 (0207 947 6655).