



Department  
for Transport

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14 November 2022

Dear Sirs,

**PLANNING ACT 2008 APPLICATION FOR THE PROPOSED PORTISHEAD  
BRANCH LINE – METROWEST PHASE 1B DEVELOPMENT CONSENT 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 dated 19 July 2021 of the Examining Authority (“ExA”), Jo Dowling BA (Hons) MPhil MRTPI and Susan Hunt BA (Hons) MA MRTPI who conducted an Examination into the application made by North Somerset District Council (“the Applicant”) for the Portishead Branch Line – MetroWest Phase 1B Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
- post examination correspondence received by the Secretary of State following the close of the Examination;
- the responses to the further consultations undertaken by the Secretary of State in respect of the application dated 26 July 2021, 13 August 2021, 21 September 2021, 9 November 2021 24 November 2021 (but reissued on 30 November 2021), 28 January 2022; and
- the response received from the Applicant to the “Minded to Agree” letter dated 19 April 2022 and the responses from interested parties to the consultation letter dated 2 September 2022.

2. The Order as applied for under the 2008 Act would grant development consent to North Somerset District Council for the construction of a new railway on the trackbed of the former branch line from Bristol to Portishead (“the Proposed Development”). This would follow the existing railway corridor, comprising the disused railway section between Portishead and Pill, and then with associated

works along the operational railway line from Pill to the existing Ashton Junction before joining the Bristol to Exeter main line at Parson Street Junction.

3. This letter should be read in conjunction with the Secretary of State's "minded to agree" letter dated 19 April 2022 ("April Letter") which sets out the Secretary of State's views on the conclusions of the Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport dated 19 July 2021 ("the ExA's Report"), which is published on the Planning Inspectorate's website on 19 April 2022. The ExA's findings and conclusions are set out in chapters 5 to 6 of the ExA's Report, and the ExA's summary conclusions and recommendation are in chapter 10.

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

4. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent were:
  - a. Legal and policy context,
  - b. Principle need for the Proposed Development including alternatives;
  - c. Biodiversity, ecology and the natural environment;
  - d. Flood risk, water quality and resources;
  - e. Traffic and transport;
  - f. Air quality, carbon emissions and climate change adaptation;
  - g. Construction impacts;
  - h. Design and landscape and visual;
  - i. Land use, including PRoW;
  - j. Socio-economic;
  - k. Historic environment; and
  - l. Other policy and factual issues.
5. For the reasons set out in the ExA's Report, the ExA recommended that the Secretary of State should make the DCO in the form recommended at Appendix C of the ExA's Report (ER 10.2.1).
6. As set out in the April Letter, in light of post-examination correspondence, the Secretary of State considered that he was not yet in a position to decide whether to accept the ExA's recommendation. Nevertheless, the Secretary of State was minded to agree with the ExA's conclusions subject to receiving satisfactory evidence of the following;
  - an updated Funding Statement with information confirming the amount of the increased costs of the scheme;
  - information setting out the way in which the amount of the increased costs has been assessed so that they could be assured of the amount of these costs and their assessment;
  - information confirming how these costs will be met so that he can be satisfied that adequate funding will be available to meet these costs;
  - further information to enable him to confirm the updated costs of the scheme and to be satisfied that adequate funding will be available to meet these costs.

7. The Applicant responded to the April Letter on 26 August 2022 providing information to address the matters set out above. On 2 September 2022 the Secretary of State sought views from all interested parties on the Applicant's response. The Secretary of State received representations from three interested parties by the deadline set of 16 September 2022. The Applicant's response and the comments received from interested parties were made available on the Planning Inspectorate's website.

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

8. The Secretary of State has decided under section 114(1)(a) of the 2008 Act to make with modifications an Order granting development consent for the project.
9. This letter is to be read in conjunction with the April Letter and the Secretary of States Habitats Regulations Assessment published alongside this letter: together they serve as 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)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

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

10. The Secretary of State's consideration of the main issues raised in response to paragraphs 137-141 of the April Letter are set out below, followed by his consideration of other matters arising from the April Letter. Unless otherwise indicated below, the assessment of the conclusions of the Examining Authority remains as set out in the April Letter. All paragraph references prefaced by "ER" are to the Examining Authority's report.
11. Where consultation responses are not otherwise mentioned in this letter, it is the Secretary of State's view that these representations do not raise any new issues that were not considered by the ExA and also do not give rise to an alternative conclusion or decision on the DCO.

### **Compulsory Acquisition and Related Matters**

12. The Secretary of State notes that in response to his April Letter, the Applicant has confirmed that together with its delivery partners, it has secured additional funding for the delivery of the scheme. In support of this statement the Applicant submitted an updated Funding Statement, version 2, ("Updated Funding Statement") dated 12 August 2022 which updates the version submitted as part of their application. Paragraph 1.6 of the Updated Funding Statement set out that the estimated capital out-turn cost of MetroWest Phase 1 is £152.01m. This represents a capital cost increase of £35.58m above the original £116.43m budget reported in the Outline Business Case of December 2017.
13. The Secretary of State notes the way in which costs have been assessed as well as the reasons set out by the Applicant for the cost increase as set out in paragraphs 3.1 and 3.2 of the Updated Funding Statement. The Secretary of State also notes that as set out in paragraph 4.1 of the Updated Funding Statement, the

additional funding required to cover the funding gap of £35.58m will be addressed by agreed funding from the Applicant, West of England Combined Authority (“WECA”) and DfT.

14. The breakdown of the additional funding is set out in the Updated Finance Statement and the following letters:
  - Letter dated 8 August 2022 from the Applicant committing an additional £10m;
  - Letter dated 11 August 2022 from WECA committing an additional £10m from the Investment and Transforming Cities Funds (the latter underwritten by the Investment fund);
  - DfT letter from minister Wendy Morton MP dated 19 July 2022 committing additional funding of £15.58m from the Restoring Your Railway Fund.
15. In response to the Secretary of State’s letter of 2 September 2022 inviting comments on the Applicant’s letter of 12 August 2022 three responses were received. Two were in relation to the Applicant’s request for amendments to the draft DCO and this is considered further below. The other response set out a request for the Department to work with the parties involved in the delivery of the Proposed Development to secure an earlier start of works. This however would be a matter for the Applicant to consider should consent be granted and is outside the scope of the matters considered as part of the decision on the DCO. The Secretary of State is satisfied that no issues have been raised by Interested Parties on the Updated Funding Statement.
16. The Secretary of State is satisfied that the costs of the scheme have been appropriately assessed and as set out in the Updated Funding Statement, that evidence has been provided that the costs relating to the £35.58m funding gap will be met. The Secretary of State therefore has no reason to consider that, if the Order is made, the Proposed Development will not proceed due to there being insufficient funding.
17. The matters concerning compulsory acquisition and related matters have been fully set out by the Secretary of State in paragraphs 126 to 141 of the April Letter and so are not further repeated. As set out in paragraph 138 of the April Letter, the Secretary of State took account of the fact that the ExA was satisfied that the land for which CA powers are being sought is no more than would be reasonably required to enable the construction, operation and maintenance of the Proposed Development, so where required accepted there would be no alternative to the use of CA powers [ER 8.6.9].
18. In light of the additional information submitted, the Secretary of State is satisfied that the application meets the requirements set out by the compulsory acquisition powers in accordance with sections 122 and 123 of the 2008 Act that there is a compelling case in the public interest for the compulsory acquisition powers sought. The Secretary of State has also considered the Department for Communities and Local Government’s (now the Department for Levelling Up, Housing and Communities) Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land noting that the need for there to be compelling evidence that the public benefits that would be derived

from the compulsory acquisition will outweigh the private loss that would be suffered from those whose land is to be acquired. He is now content that there is sufficient funding available to finance the project including compulsory acquisition to meet all liabilities arising from the acquisition of land and rights and compensation claims. He has noted the ExA's consideration of the relevant provisions of the Human Rights Act 1998 and their consideration of the individual rights of affected landowners that would be interfered on the exercise of the compulsory acquisition powers in that it would be in accordance with the law, proportionate and justified in the public interest and with which the Secretary of State agrees [ER 8.11.4].

### **Draft Order**

19. As set out in the April Letter the Secretary of State agrees with the ExA's conclusions on the text of the Order, subject to further changes detailed below. The Secretary of State notes the comments made by the Applicant in their letter dated 12 August 2022 and the responses submitted by Wedlake Bell LPP and BDB Pitmans LPP on the draft Order ("the Draft Order") published alongside the April Letter. The requested changes have been taken into consideration and have been included in the Order.

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

20. The Secretary of State is content that the application satisfies all legal and regulatory requirements including the obligations under the Habitats Regulations. The Secretary of State has completed a HRA for the Proposed Development which sets out an appropriate assessment for the purposes of the Habitats Regulations and this is published alongside this decision. Noting the above, the Secretary of State agrees with the ExA conclusions on the compulsory acquisition provisions in the Order [ER 8.13.7] and that the tests for compulsory acquisition in sections 122 and 123 of the 2008 Act have been met and that the Order should include the compulsory acquisition powers sought by the Applicant.
21. For all the reasons in this letter and the April Letter, the Secretary of State has concluded that there is a compelling case for authorising the project, taking into account the substantial public benefits that it would be likely to achieve and the comprehensive range of mitigation and compensatory measures that would be implemented to offset the adverse impacts of the Proposed Development. The Secretary of State has accordingly decided to accept the ExA's recommendation and to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitute 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. The Secretary of State confirms that, in reaching this decision, he has had regard to the local impact reports submitted by affected local authorities and to all other matters which he considers important and relevant to his decision as required by section 104 of the 2008 Act (decisions in cases where a National Policy Statement has effect).

### **Challenge to Decision**

22. 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**

23. 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 Portishead Branch Line - MetroWest Phase 1 Development Consent Order 2022 (as made) is being published on the Planning Inspectorate website at the following address: [Portishead Branch Line – MetroWest Phase 1 | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/portishead-branch-line-metrowest-phase-1)

**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)**