

21 August 2019

Mr Paul Singleton
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By email only

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Our ref:
RG1/FE1/300932.7063
Your ref:

Dear Mr Singleton

Application for the West Midlands Interchange DCO (Proposed Order)

We write on behalf of Network Rail Infrastructure Limited (**Network Rail**).

We write to provide you with an update in respect of the ongoing negotiations between Four Ashes Limited (**Applicant**) and Network Rail.

Network Rail and the Applicant have engaged in negotiations in respect of an agreement to regulate certain aspects of the relationship between the parties in relation to the Proposed Order, and to ensure that Network Rail's interests as statutory undertaker are properly protected (**Side Agreement**).

The Side Agreement is not yet in place, nor is the deed of easement that is also being negotiated by the parties.

Network Rail requires access to the West Coast Main Line (**WCML**) at all times. As it currently stands, if the Order is made and Network Rail does not have the access rights that it requires, Network Rail may be prevented from attending to any incidents or emergencies on the WCML through lack of access rights. This would have negative impacts on Network Rail's ability to run the national rail infrastructure network and lead to unnecessary costs being incurred.

Network Rail is concerned that the land assembly and works authorised by the Proposed Order could begin prior to the appropriate access rights being provided by the Applicant to Network Rail. Network Rail has been negotiating the Side Agreement and the deed of easement in good faith and in good time for conclusion prior to the end of the examination, which is why our client did not appear at the CA and S127 hearing. However, as it currently stands, the provision of such rights has not yet been agreed.

Network Rail has been willing to enter into negotiations with the Applicant in respect of the Proposed Order, Side Agreement and deed of easement. Whilst it is acknowledged that the Applicant has given good indications of its intent to deal with Network Rail's issues, our client is concerned about the lack of formal commitment in respect of its request for access to the WCML which is a key requirement for Network Rail and for the operation of the wider network.

We would therefore confirm that Network Rail's initial s127 representation remains in respect of the Proposed Order and should not be treated as withdrawn.

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In addition, on the basis that no agreement has yet been reached, we would request that a Requirement is included in the Proposed Order as follows:

"(1) No authorised development may commence until a scheme for the continued provision of access to the West Coast Main Line has been agreed by the relevant planning authority, in consultation with Network Rail. Such scheme is to include the specification of and timings for Network Rail's temporary and permanent access to the West Coast Main Line and show how access to the West Coast Main line will be maintained at all times.

(2) The authorised development is to be carried out in accordance with the details approved to the satisfaction of the relevant planning authority in consultation with Network Rail."

In addition to the above, Network Rail would request that the enclosed protective provisions for Network Rail (see Appendix 1 of this letter) are included in the Order as made. A small change to the PPs is required – see the comparison at Appendix 2.

Network Rail has not agreed the form of the current protective provisions in the Order and has been expecting the applicant to present a revised form of the Protective Provisions to the Examination. Network Rail's position on the Protective Provisions has been made clear to the Applicant since before the application for the Order was made. As the request reflects Network Rail's constant position presented to the Applicant, and no other party would be prejudiced by the change, Network Rail would kindly ask if this change be made, in the best interests of the national railway network.

We have included at Appendix 2 to this letter a comparison showing the changes between the protective provisions for Network Rail in the current draft Order and those that Network Rail are requesting, as included at Appendix 1.

Network Rail remains hopeful that it can, with the Applicant, reach formal agreement in respect of the outstanding agreements. However, until that has taken place, Network Rail's s127 representation should remain and be taken into account in the consideration of the application for the Proposed Order.

Yours faithfully



Womble Bond Dickinson (UK) LLP

Enclosures

1. Appendix 1 - Network Rail proposed protective provisions
2. Appendix 2 - Comparison between protective provisions