EVERSHEDS

Dear Sir/Madam

WRITTEN REPRESENTATION SUBMITTED ON BEHALF OF NETWORK RAIL INFRASTRUCTURE LIMITED
PLANNING INSPECTORATE REFERENCE NUMBER: WW010001
UNIQUE REFERENCE NUMBER: 10018168

In accordance with Item 15 of Annex C (Timetable for Examination of the Application) of your Rule 8 letter dated 26 September 2013, we write to summarise Network Rail's (NR) case put orally at the hearings held on 28 November 2013.

NR notes the response to other parties' previously submitted, written and relevant representations, Local Impact Reports, responses to the first written questions and first requested SoCG, and statements made at the hearings. NR also notes the responses made by Thames Water Utilities Limited (TWUL) to the first written questions from the Examining Authority. These are being considered by NR in the light of the hearings to date, along with the second round of questions from the Examining Authority published on 19 December 2013.

The third party Infrastructure Provider (IP)

NR raised its concerns at the hearing on 26 and 28 November 2013 seeking assurances that any third party Infrastructure Provider or transferee, as currently envisaged by article 9 of the DCO, would have sufficient means to meet liabilities and that NR may secure the comfort of guarantees from the Secretary of State/TWUL to safeguard their position.

Article 9 appears to authorise the transfer to not only an Infrastructure Provider but also a *"transferee"*. In both cases NR wishes to know how liabilities will be dealt with particular reference to claims that may arise during the construction and maintenance of the Project. NR considers that existing statutory arrangements make provision for the Secretary of State to provide financial assistance to an Infrastructure Provider and in the case of *"a transferee"* TWUL can provide binding assurances. Accordingly, NR considers that there is no reason why sufficient guarantees cannot be given to NR that in the event of any transfer of functions under the Order, NR will be protected. NR does not accept that the role of a Secretary of State to give consent under article 9(2) offers any guarantee that a transferee will have sufficient means to deal with liabilities as they arise.

Provisions of Draft DCO

1. Article 9 (Transfer of benefit) of Order - NR maintains its objection to the drafting of this article.

2. Article 51 – (Safeguarding) - NR maintains its objection to this article:-

    • There is an existing well established system for safeguarding directions that are made by the Secretary of State under the Town & Country Planning Act 1990.

    • The Order seeks to safeguard land outside of the Order limits – in breach of Regulation 5(2)(i) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 which requires an applicant to produce a land plan showing all land "*required for, or affected by, the proposed development*".

    • Moreover directions properly made by the Secretary of State under the Town and Country Planning Act 1990 provide for safeguarded land to be blighted land for the purposes of Schedule 13 to the Town and Country Planning Act 1990. Accordingly, implementation of a safeguarding mechanism through the Order would remove the landowners outside of the Order limits rights they would otherwise enjoy had the land been subject to safeguarding directions properly made under the 1990 Act.

3. Article 53(Discharge of requirements Etc.) - article 53(1)(e) should be deleted from the draft DCO:-

    • NR does not agree that protective provisions should be subject to the discharge of requirements set out under article 53. It is not at all clear how the schedule is intended to operate.

    • Schedule 17 seems geared to planning approval matters rather than the detailed engineering/technical issues that may be raised under the protective provisions.

    • The protective provisions which NR are seeking to be inserted into the Order are in common form and contain provisions for dispute resolution and it is entirely unclear how this relates to appeals under paragraph 4 of Schedule 17.

4. Article 56 (Amendment of local legislation) - NR objects to article 56:-

    • TWUL is unable to identify the land which is to be subject to the restrictions contained in the article and admitted during examination that they were unable to identify whether or not the legislation that was contained in Schedule 19 applied to the land within the Order limits and to what extent.

    • The powers of the article do not appear confined to the Order limits and this is in breach of the Regulation 5(2)(i) and Regulation 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Under those Regulations an applicant is required to produce a land plan showing all land "*required for, or affected by, the proposed development*", "*any land in relation to which it is proposed to extinguish easements,*

servitudes and private rights" and in respect of Regulation 7(1)(c), the Book of Reference must *"include the names of all those entitled to easements or other private rights over land (including private rights of navigation over water) which it is proposed shall be extinguished, suspended or interfered with"*.

- Regardless of the difficulty TWUL encountered in identifying the extent of private legislation, it is incumbent on TWUL to be able to explain the purpose and intent of each provision of the Order.

- NR acknowledges that there is policy support for the Project but this does not override the requirements to comply with the Applications Regulations and the provisions of the Planning Act 2008. Accordingly, NR objects to the retention of this article in the Order.

Yours faithfully

Eversheds LLP

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