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Our Ref: TWA 8/1/2  
Your Ref: PFI/18136/275

5 September 2012

Dear Sirs,

**PLANNING ACT 2008  
APPLICATION FOR THE PROPOSED NETWORK RAIL (IPSWICH CHORD) ORDER**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Examining authority, Gideon Amos OBE RIBA MRTPI, who conducted an examination into the application made on 29 June 2011 by your client Network Rail Infrastructure limited ("NR") for the Network Rail (Ipswich Chord) Order ("the Order") under sections 37, 114, 115, 120 and 122 of the Planning Act 2008 ("the 2008 Act").

2. The examination of the application began on 9 November 2011 and was completed on 22 March 2012. The examination was conducted on the basis of written evidence submitted to the Examining authority and by a series of hearings held in Ipswich between 14 and 22 February 2012.

3. The Order, if made, would grant development consent for the construction and operation of a new 1.415 kilometre railway link ("the Chord") to the north of Ipswich Goods Yard linking the Great Eastern Main Line and the East Suffolk Line railways. It would also, among other things, authorise the compulsory acquisition of land and interests in land to allow the Chord to be constructed. The Chord would enable freight trains travelling between the Port of Felixstowe and the West Coast Main Line to access a more direct cross-country route to Nuneaton (instead of via London) without changing direction in the Ipswich Goods Yard.

4. Enclosed with this letter is a copy of the Examining authority's report. His findings and conclusions are set out in sections 4 and 5 of the report, and his recommendations are at section 6.

**Summary of the Examining authority's recommendations**

5. The Examining authority recommended that the Order be made, in the form set out in section 7 of his 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 Part 2 of Schedule 1 to the Order, as set out in section 7 of the ER.

8. Following the closure of the examination, the Government published the National Planning Policy Framework ("the Framework"), which replaced a range of planning policy documents as set out in Annex 3 to the Framework, including PPG13: Transport. The Secretary of State considers that he does not need to invite further evidence as a result of this change in policy. This is because the Framework contains very similar policies to those in PPG13 in support of sustainable transport modes and because the Examining authority has considered the evidence submitted during the examination in the light of the Framework (ER 4.18-4.19).

## **The case for development**

### Need and relevant policy for the proposed development

9. The Secretary of State agrees with the Examining authority that the principle of the Chord is in conformity with the statutory development plan, and is supported by the Framework (ER 4.29). He notes in this regard that the East of England Plan accords high priority to maximising the proportion of freight movement by rail where this is the most efficient mode, and to measures to provide rail freight capacity on routes to the region's major ports, including Felixstowe (ER 4.10). He agrees with the Examining authority that the East of England Plan is both relevant and important to his decision, and has given limited weight to the proposed revocation of the Plan since, until it is revoked by Order under the Localism Act 2011, it remains legally part of the development plan (ER 4.23). The Secretary of State notes further that the Ipswich Core Strategy and Policies Development Plan Document provides explicit support for upgrading the Felixstowe to Nuneaton rail line and for the Chord (ER 4.12).

10. The Secretary of State agrees with the Examining authority that the need for the Chord has been demonstrated. The White Paper "Delivering a Sustainable Railway" makes clear the national need for additional rail freight capacity and mentions improved access to the Port of Felixstowe (which the Chord would serve) as a priority (ER 4.4, 4.29). In this context, he agrees with the Examining authority that the proposed works to increase capacity at the Ipswich Goods Yard, authorised by the Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 ("the 2008 Order"), are not an alternative method of achieving the aims of the Chord scheme, for the reasons set out at ER 4.24-

4.27. He therefore accepts that the planning case for the Chord should be considered on its own merits, irrespective of the scheme authorised by the 2008 Order.

11. The Examining authority also considered relevant and important policies in the statutory development plan and in the Framework which supported the inclusion in development proposals of measures to encourage walking and cycling (ER 4.13-4.18). The Secretary of State has taken these policies into account in assessing the impacts of the Chord scheme on the riverside cycle and footpath at paragraphs 15 to 18 below.

#### The Stour and Orwell Estuaries Special Protection Area ("SPA"), statutory designations and protected species

12. The Secretary of State agrees with the Examining authority that, on the basis of the information in the Habitats Regulations Assessment Framework in Appendix E to the ER, an adverse impact on the Stour and Orwell Estuaries SPA is unlikely to occur (ER 4.30). He is satisfied that it is therefore unnecessary to undertake appropriate assessment of the implications of the Chord scheme for the SPA (ER 4.31). The Secretary of State agrees with the Examining authority that requirement 8 should be expanded to secure delivery of the minimum pollution control measures required to prevent an incident affecting the SPA, as agreed by NR, Natural England ("NE") and the Environment Agency (ER, page A25). Like the Examining authority, he considers that as a result of those agreed measures the Chord scheme will not damage the protected features of the Orwell Estuary Site of Special Scientific Interest (ER 4.32).

13. In relation to nationally protected species and conservation of biodiversity, the Secretary of State has had regard to his duties under the Natural Environment and Rural Communities Act 2006. For the reasons set out in ER 4.34-4.46, the Secretary of State agrees with the Examining authority that the limited number of relevant European and nationally protected species are sufficiently provided for in the Order, for example, by the measures that are to be included in the Ecological Management Plan and approved by the relevant planning authority under requirement 12 (ER 4.36). The Secretary of State has noted that construction of the Chord would necessitate the demolition of the former cold store building on the Harris Bacon Factory Site, which is likely to result in the disturbance of a bat roost. He is satisfied that there is a reasonable prospect that NE would grant a protected species licence for the disturbance of bats at that location, for the reasons given by the Examining authority (ER 4.39-4.40), and that consequently there is unlikely to be an impediment to implementing the scheme in this regard.

#### Townscape, design, and transport implications

14. For the reasons given at ER 4.47-4.52, the Secretary of State agrees with the Examining authority that the proposed designs of the Sroughton Road underbridge and replacement Bridge 404 over the River Gipping are acceptable; and that street lighting for the cycle and footpath tunnel under Bridge 404 should be provided under requirement 18. The Secretary of State is satisfied also that the provisions in the Order as to site access and traffic management in requirements 6, 8 and 21 are appropriate and sufficient for the reasons given by the Examining authority (ER 4.53-4.57).

## Impacts on Riverside Cycleway and Footpath

15. The Secretary of State agrees with the Examining authority that, in order to minimise the periods of closure of the cycleway and footpath on the north bank of the River Gipping to facilitate the construction of the replacement Bridge 404, a temporary cantilever cycleway and footpath should be constructed over the river beneath Bridge 404, as provided for in requirement 19 (ER 4.64).

16. The Secretary of State has considered the Examining authority's conclusion that NR should be required (by requirement 20) to bring forward a scheme to provide cycle ramps over the flood wall situated within the Order land, at the site of the proposed skew bridge over the River Gipping. The provision of cycle ramps would facilitate an extension of the National Cycle Route 51 ("NCR 51") by joining the riverside cycleway and footpath with the Gipping Way footpath on the other side of the flood wall. The Examining authority said that the overwhelming evidence of policy was that the cycleway and footpath should be unblocked as part of the Chord scheme, insofar as ramps over the flood wall would have to be located within the Order land. He considered also that requirement 20 was necessary to mitigate the acquisition by NR of land which Sustrans owned for the purposes of extending NCR 51 over the flood wall (ER 4.62, 4.65-4.71 and 5.79).

17. The Secretary of State does not agree with the Examining authority that requirement 20 is necessary, in spite of the policy support for including measures to encourage walking and cycling in development proposals. He considers in particular that it would be unreasonable to require NR, before starting development, to prepare a scheme to provide cycle ramps over the flood wall within the limits of the Order land. This is because on their own the ramps would serve no useful purpose in isolation from the rest of the works needed to extend NCR 51 being designed, consented and funded, and might not fit with the final design of any such works. The Secretary of State also considers that requirement 20 would go beyond what will be required to mitigate the impacts of the Chord scheme on pedestrians and cyclists as it does not address specifically the effects of the Chord scheme which in this location only require temporary stopping up the riverside cycleway and footpath to enable construction of the Chord.

18. In coming to this conclusion, the Secretary of State has noted that it would still be feasible to provide cycle ramps over the flood wall after the Chord had been constructed, if it did not prove possible to do so at the same time as constructing the Chord (ER 5.53). He has noted also that Sustrans withdrew its objections about the impacts of the scheme on its land as a result of commitments given by NR. The Secretary of State therefore encourages NR and Sustrans to continue to cooperate in developing a practicable scheme for extending NCR 51, if possible at the same time as the Chord is constructed.

## Noise and vibration impacts

19. The Secretary of State agrees with the Examining authority's assessment of the noise and vibration impacts of the Chord scheme and is satisfied that in most respects these would be within acceptable levels (ER 4.72-4.77). He agrees that the measures specified in requirement 10 are necessary to mitigate the noise impact of idling westbound freight trains at Railway Cottages, which was identified in the environmental statement as the only major adverse effect of the scheme.

### Visual intrusion

20. With regard to the visual impacts of the Chord scheme on dwellings at Riverside Road, the Secretary of State agrees with the Examining authority that it is unnecessary to include an additional requirement in the Order requiring the retention of mature trees between those dwellings and the railway line, for the reasons given at ER 4.78–4.81.

### Impacts on economic development

21. The Secretary of State agrees with the Examining authority that the overall economic impacts of the Chord outweigh the impacts of the scheme on the extant planning permissions for employment development at the former Harris Bacon factory and at Europa Way; and that the benefits of the Chord for the Port of Felixstowe clearly outweigh the impact of line closures during its construction (ER 4.82-4.83).

### Other issues

22. Subject to the qualifications explained in paragraphs 23 to 26 below about the scope of the authorised development, the discharge of requirements and street works, the Secretary of State agrees with the Examining authority's conclusions on the matters discussed in ER 4.84-4.94, for the reasons given by the Examining authority.

23. The Secretary of State does not agree with the Examining authority that development consent cannot be granted in the Order for elements of the Chord scheme which, under the requirements, need the prior approval of the relevant planning authority, and which may subsequently require a further assessment under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (ER 4.84). He considers that if such elements were excluded at this stage from the scope of the consent given by the Order, they could not be the subject of a subsequent consent under those Regulations at a later stage, nor would the requirements in the Order apply to them. He has therefore decided to modify the description of "further associated development" in Part 1 of Schedule 1 to the Order so as not to exclude elements of the Chord scheme which may require a further assessment under those Regulations. He nevertheless considers that in relation to the unspecified works referred to in paragraph (k) of the description of "further associated development", it is appropriate that consent is limited to works which fall within the scope of the environmental impact assessment recorded in the environmental statement submitted with the Order application.

24. The Secretary of State agrees with the Examining authority that the appropriate authority for discharging the requirements is the relevant planning authority (ER 4.86). He agrees further that the design drawings should be certified under article 32 of the Order (ER 4.87). The Secretary of State does not, however, agree with the Examining authority that changes to the design drawings should require an application under the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 as amended ("the 2011 Regulations"). In this respect he agrees with NR that changes to points of detail on the design drawings (such as the appearance of structures) would not amount to changing the principles of the works as shown on the works plan; and would not be covered by article 7 of the Order which authorises lateral or vertical deviation in carrying out the development. The Secretary of State considers therefore that the Order should be modified to allow flexibility for detailed design changes

to be approved by the relevant planning authority, which has the necessary expertise (see ER 5.46).

25. In addition, the Secretary of State considers that it is not sufficiently precise for the purposes of enforcement to provide in requirement 3 that the authorised development must be carried out in accordance with the certified “documents”, which he understands to refer to the environmental statement. He considers further that it is unnecessary to refer in requirement 3 to compliance with the certified plans and sections - as this would duplicate article 5 of the Order - or to the 2011 Regulations, since they will apply in any event should NR propose changes to the Order (other than changes to details which may be approved under the requirements). The Secretary of State has therefore decided to amend requirement 3 to provide that the authorised development must be carried out in accordance with the design drawings unless otherwise agreed in writing by the relevant planning authority.

26. With regard to street works, the Secretary of State agrees with the Examining authority that the Order should not authorise NR to place permanent apparatus on (as opposed to under) the street (ER 4.91). He considers, however, that to achieve that effect article 9(1)(b) of the Order should be amended to make clear that permanent apparatus may only be placed under the street, while temporary apparatus may be placed under, over, across, along or upon the street.

### **Overall conclusion on the case for development**

27. The Secretary of State agrees with the Examining authority that, in respect of the planning case for development, development consent should be granted for the reasons given at ER 4.95.

### **Compulsory acquisition matters**

#### Compelling case in public interest and Human Rights

28. In considering these matters, the Secretary of State has had regard to sections 122 and 123 of the 2008 Act, and relevant guidance, referred to by the Examining authority at ER 5.7-5.11. He agrees with the Examining authority that a compelling case in the national interest has been clearly demonstrated for the Chord, in particular because it would make possible a transfer of goods from road to rail (ER 5.76). He agrees also that there is no reasonable alternative to the land take required for the Chord, and that in this context the authorised scheme for increasing capacity at Ipswich Goods Yard referred to at paragraph 10 above is not an alternative in terms of land acquisition (ER 5.77).

29. Except in regard to the need for requirement 20 discussed at paragraphs 17 and 18 above, the Secretary of State agrees with the Examining authority’s assessment at ER 5.78-5.86 of the extent to which the public benefits of the Chord scheme outweigh private losses that will be incurred as a result. He is satisfied that where any private losses will not be mitigated by compensation (as, for example, in the case of tenants who occupy properties under tenancies of six months or less) or by the requirements and protective provisions in the Order, they are outweighed by the need for and benefits of the scheme and the need for compulsory powers.

30. The Secretary of State agrees with the Examining authority that NR has a clear idea of how it intends to use the land subject to compulsory powers and has access to sufficient funds for implementing the Chord scheme (ER 5.87-5.88). He agrees further that through the examination of the application the Examining authority has ensured a fair and public hearing for the purposes of article 6 of the European Convention on Human Rights (ER 5.90). He is satisfied that any interference with human rights of residents (including the tenants of Railway Cottages) and companies as a result of the Chord scheme is proportionate and justified in the public interest, for the reasons given by the Examining authority (ER 5.89, 5.91-5.93).

### Crown land

31. The Secretary of State does not agree with the Examining authority that the powers sought by NR to take temporary possession of the Crown land comprised in plot 2 would be contrary to section 135 of the 2008 Act (ER 5.94-5.96), given that article 35 of the Order (as applied for) stated that those powers would not apply so long as plot 2 remained Crown land. He nevertheless agrees that the Order should not include temporary possession powers over plot 2. This is because, taking into account the Examining authority's view that this would not be sufficient to prevent implementation of the works in any way (ER 5.96), the Secretary of State considers that those powers are not necessary.

### **Overall conclusion on compulsory acquisition matters**

32. The Secretary of State agrees with the Examining authority that the compulsory powers in the Order (except in relation to plot 2) are necessary and justified in their own right, and that there is a compelling case in the public interest for conferring those powers as set out in the proposed Order in section 7 of the report (ER 5.98).

### **Secretary of State's conclusions and decision**

33. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Chord scheme, given the significant contribution that it would make to increasing freight capacity on the route between the Port of Felixstowe and Nuneaton, by removing the constraints of the existing rail network at Ipswich. He is satisfied that the adverse impacts which would remain after mitigation are limited and are clearly outweighed by the benefits of the scheme.

34. The Secretary of State has therefore decided to accept the Examining authority's recommendation at ER 6 to make the Order granting development consent and imposing the requirements as proposed by the Examining authority, but subject to the modifications described in paragraph 35 below. He confirms that, in reaching this decision, he has had regard to the local impact report submitted by the relevant local authorities and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act (decisions in cases where no National Policy Statement has effect). The Secretary of State confirms also for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations.

## Modifications to the Order

35. The Secretary of State has decided to make the following modifications to the form of the Order set out in section 7 of the ER:

- in **article 4**, to delete the proposed disapplication of section 6 of the Party Wall etc. Act 1996 which (as explained in your letter of 5 July 2012) had been sought in connection with excavation works required for the relocation of a sewer. This is because the Secretary of State does not consider that there are sufficiently compelling reasons in the circumstances of this case for displacing the normal arrangements established by Parliament for notifying and resolving disputes with adjoining property owners about excavation work that is to be carried out at or near to property boundaries;
- to amend **article 9** as described in paragraph 26 above;
- in **article 18**, to remove the power to impose restrictive covenants, and make consequential amendments to the Order. This is because, having considered your letter of 5 July 2012, the Secretary of State is not persuaded that in the circumstances of this case it is appropriate to authorise NR to impose restrictive covenants for the purpose of preventing development on land adjoining the proposed embankment which could cause a risk to the railway; he considers that these are matters which should be addressed in the context of applications for planning permission for the development of land adjacent to the railway corridor;
- to modify in **Part 1 of Schedule 1** the description of “further associated development” as explained at paragraph 23 above;
- to amend **requirement 3** as explained in paragraphs 24 and 25 above;
- to delete **requirement 20** for the reasons given at paragraphs 17 and 18; and
- to make various minor drafting changes to the Order which do not materially alter its effect, including changes to conform with the current practice for Statutory Instruments (e.g. modernisation of language), changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

## Challenge to decision

36. 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**

37. 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,

A handwritten signature in black ink, appearing to read 'M Woods', written in a cursive style.

**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 (Ipswich Chord) Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/eastern/ipswich-rail-chord/>.

**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).**