



# Department for Transport

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Our Ref: TWA/16/APP/07  
Your Ref: PetoM292050-000057

22 August 2017

Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED NETWORK RAIL (FELIXSTOWE BRANCH LINE LAND ACQUISITION) (AGREEMENTS FOR TRANSFER) ORDER**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to advise you that consideration has been given to the application made on 28 September 2016 by your client, Network Rail Infrastructure Limited ("NR"), for the Network Rail (Felixstowe Branch Line Land Acquisition) (Agreements for Transfer) Order ("the Order") to be made under sections 1 and 5 of the Transport and Works Act 1992 ("TWA").

2. The Order, if made, would facilitate the transfer of the powers of compulsory acquisition to NR from the current holders, the Felixstowe Dock and Railway Company ("FDRC"). These powers were granted to FDRC through the Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 ("the 2008 Order") and renewed by the Felixstowe Branch Line (Land Acquisition) Order 2014 ("the 2014 Order"). The 2008 Order authorised FDRC to construct certain works on the Felixstowe Branch line to and from the Port of Felixstowe. FDRC can already transfer to NR the works powers, so the Order currently applied for would complete the statutory processes necessary for NR to take on responsibility for carrying out the works. NR did not seek any new powers for construction works in this application.

3. As the Order would not provide for any development requiring planning permission NR did not submit an environmental statement with the Order application or seek a direction as to deemed planning permission from the Secretary of State.

### **Summary of Secretary of State's decision**

4. For the reasons given in this letter, the Secretary of State has decided to make the Order.

## **The Order application**

5. In making this application, NR has complied with the publicity requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. This included serving copies of the application and accompanying documents on the persons specified in those Rules and making the documents available for public inspection. As also required by those Rules, NR published notices giving information about the application and how to make representations.

6. In response to the application the Secretary of State received no objections and one letter of support from FDRC.

## **Purposes of the Order**

7. NR set out in their Statement of Aims, which accompanied the Order application, that the purpose of the Order was to extend the powers conferred under article 39 of the 2008 Order (which enables FDRC and NR to enter into agreements relating to the exercise of works powers conferred in that Order) so that they may also enter into agreements for the exercise of the related powers of compulsory acquisition.

8. The 2008 Order authorises FDRC to construct certain works which, if constructed, would increase freight capacity on the Felixstowe Branch Line to and from the Port of Felixstowe. It also authorised the compulsory acquisition of land required for the purposes of constructing those works. The 2014 Order renewed the compulsory acquisition powers conferred by the 2008 Order for the purposes of constructing the works authorised by that Order. In addition, the 2014 Order authorised the temporary possession of land for an alternative worksite to that authorised by the 2008 Order. Deemed planning permission was granted under section 90(2A) of the Town and Country Planning Act 1990 by the Secretary of State as part of the 2008 Order. One of the conditions of this permission was that development commenced no later than the expiration of five years beginning with the date the Order came into force. On 25 August 2010, Suffolk Coast District Council granted planning permission for the works identical to those previously approved by the Secretary of State as part of the 2008 Order but with a new time limit of 31 December 2018. Similarly, Ipswich Borough Council granted planning permission on 17 June 2010 also with a time limit of 31 December 2018.

9. If the Order is made, FDRC and NR intend to enter into agreements for the compulsory acquisition and temporary possession of the land authorised by the 2014 Order as well as for the construction of the works authorised by the 2008 Order (which were not time limited) for which that land is required.

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

10. The Secretary of State has considered FDRC's reasons for making this application, and is satisfied that the powers in the Order to allow FDRC and NR to enter into agreements are required to enable NR to carry out the works authorised by the 2008 Order. The Secretary of State considers further that there is a compelling case in the public interest for granting these powers to facilitate this project and the increase in the number of trains that

can operate between Westerfield Junction and Felixstowe Port by the construction of a length of additional track.

11. The Secretary of State is further satisfied that the statutory procedures in connection with the application for and making of the Order have been followed. The Secretary of State notes that the proposed Order does not directly authorise the construction of works or the compulsory acquisition of land and that there are no costs associated with the implementation of the proposed Order. However the Secretary of State is satisfied that NR have confirmed that should they enter into agreement with FDRC under article 39 of the 2008 Order, as extended by the proposed Order, that the costs of implementing those works in the 2008 Order and the costs of acquiring land authorised in the 2014 Order have been secured. The Secretary of State has, therefore, decided to make the Order, subject to a number of minor drafting amendments which do not make a substantial change in proposals such as would require notification to affected persons under section 13(4) of the TWA.

### **Notice of determination**

12. This letter constitutes the Secretary of State's notice of determination to make the Order for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish a notice of determination in accordance with section 14(4) of the TWA.

### **Challenge to decision**

13. 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.

Yours faithfully,

**Natasha Kopala**

## **ANNEX**

### **RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA**

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the ground that—

- it is not within the powers of the TWA; or
- any requirement imposed by or under the TWA has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days beginning with the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within 3 working days of the date of this decision letter.

**A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.**