

Written Representations by Network Rail Infrastructure Limited in relation to The Light Valley Solar Project Development Consent Order 202[X] (DCO)

Planning Inspectorate Reference Number: EN0110012

Registration Identification Number: [REDACTED]

Applicant: Light Valley Solar Limited

Application: Light Valley Solar Project

Introduction

We write further to Network Rail Infrastructure Limited's (**Network Rail/NR**) section 56 Representation (submitted on 15 April 2026) which confirmed that Network Rail requires its standard protective provisions to be included in the draft Development Consent Order (**draft Order**). As currently drafted, the draft Order (EN0110012/APP/LVS/03.01) does not afford protective provisions for the protection of the railway in a form that Network Rail considers sufficient to protect its assets and ensure the safe and efficient operation of the railway (**protective provisions**).

The form of protective provisions sought by Network Rail is the same as that appended to its earlier relevant representation. Accordingly, the protections now sought are not novel: they have been identified consistently from the outset of the examination.

Network Rail requires the protective provisions appended to its Relevant Representation to be included in any Order (if made). These protective provisions contain the necessary provisions preventing the compulsory acquisition or temporary use of land and rights owned by, occupied by or held for the benefit of Network Rail unless NR's prior consent is obtained. It is established drafting practice in DCOs affecting railway interests that compulsory acquisition and related powers in respect of railway property are subject to Network Rail's prior consent through protective provisions.

Network Rail's position is that the absence of those protections would create an unacceptable risk of serious prejudice to Network Rail's ability to:

- a) carry out its statutory undertaking;
- b) comply with its Network Licence; and
- c) safely operate the railway network.

In summary, Network Rail's objection is now a narrow but important one. The principal matter remaining in dispute is the omission from the draft Order of paragraph 4 of Network Rail's standard protective provisions, in particular the restrictions requiring Network Rail's consent before compulsory acquisition, temporary possession and related powers are exercised in respect of railway property, together with the requirement to enter into an asset protection agreement before carrying out specified work.

Should NR and the Applicant not be able to reach an agreement as to the inclusion of those protective provisions in the Order, NR must maintain its objection to the DCO insofar as it would authorise

compulsory acquisition, temporary possession or other interference with railway property without those protections.

These written representations explain the reasons for that position and respectfully request that the Examining Authority recommends inclusion of paragraph 4 of Network Rail's standard protective provisions in full, or equivalent protection, in the made Order.

Protective Provisions

The Application includes provisions which would, if granted, authorise the Applicant to carry out works on and in close proximity to operational railway land on land in respect of which Network Rail has property interests or protected rights. Network Rail must accordingly ensure that the Application is granted subject to protective provisions which provide appropriate protection for the safe and efficient operation of the railway.

The protective provisions currently included in Schedule 15 of the draft Order crucially do not contain a restriction on the Applicant's use of compulsory acquisition and related powers without NR's prior consent (with such consent not to be unreasonably withheld). The Applicant has not included the following parts of paragraph 4 of Network Rail's standard protective provisions, which Network Rail requires to be included:

4. (1) *The undertaker must not exercise the powers conferred by—*
- (a) *article 3 (development consent granted by the Order);*
 - (b) *article 5 (power to maintain the authorised development);*
 - (c) *article 17 (discharge of water);*
 - (d) *article 20 (authority to survey and investigate the land);*
 - (e) *article 21 (compulsory acquisition of land);*
 - (f) *article 24 (compulsory acquisition of rights);*
 - (g) *article 29 (acquisition of subsoil only);*
 - (h) *article 27 (power to override easements and other rights);*
 - (i) *article 31 (temporary use of land for constructing the authorised development);*
 - (j) *article 32 (temporary use of land for maintaining the authorised development);*
 - (k) *article 33 (statutory undertakers);*
 - (l) *article 25 (private rights);*
 - (m) *article 40 (felling or lopping of trees and removal of hedgerows);*
 - (n) *the powers conferred by section 11(3) (power of entry) of the 1965 Act;*
 - (o) *the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;*
 - (p) *the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;*
 - (q) *any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;*

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 33 (statutory undertakers), article 27 (power to override easements and other rights) or article 25 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to carrying out any specified work.

For completeness, Network Rail notes that paragraph 4(4) is already agreed by the Applicant. The principal disagreement concerns the omission of the remaining consent controls and associated protections in paragraph 4.

Paragraph 4(1)

The Applicant seeks powers in the draft Order to acquire rights permanently over a substantial number of plots, comprising (i) land owned and occupied by Network Rail, and (ii) land in respect of which Network Rail is the occupier or has the benefit of rights.

If NR's consent is not required to be obtained prior to the exercise of such powers, there would be a significant and unacceptable risk that the Applicant could compulsorily acquire rights over or temporarily use railway property without those rights or that use being subject to the approvals, conditions, limitations and restrictions necessarily required by NR (including any conditions identified through its business and technical clearance process in order to facilitate and ensure the safe and efficient operation of the railway. Such processes and protocols are implemented by Network Rail to regulate third party interference with the railway and to ensure compliance with its statutory and regulatory obligations. It would be inappropriate for the Order to allow such powers to be exercised in respect of railway property without Network Rail's prior consent, because that would bypass the safety, operational and engineering controls that Network Rail is required to apply.

NR operates under a Network Licence granted by the Office of Rail and Road (ORR) (a copy of which is appended to this submission). Under its Network Licence, NR is required to comply with a wide range of standards imposed by the Rail Safety and Standards Board that pertain to maintaining the safe and efficient running of trains on the railway. In order to do so, NR must retain appropriate restrictions, controls and procedures over any interference with railway property by third parties, including where rights are proposed to be exercised on or over railway land. Those controls are secured through the requirement for prior consent and, where specified works are proposed, through an asset protection agreement.

Accordingly, where a right is compulsorily acquired and may be exercised over railway property without NR's prior consent, that right would be created outside of NR's proper control and would not be subject to the restrictions and conditions NR considers necessary to enable it to comply with its Network Licence and statutory responsibilities. By way of example, NR may require rights granted to the Applicant to be subject to reservations allowing NR to interrupt the exercise of those rights in certain circumstances such as to respond to emergencies undertake maintenance, facilitate possessions or protect railway safety. In the absence of a consent control, there is a real risk that rights or temporary possession affecting railway property would not be subject to the necessary restrictions, with consequent prejudice to railway safety, operational integrity and Network Rail's ability to discharge its regulatory obligations. That is not a position which can be accepted by NR, nor is it one which would be compatible with its obligations to the ORR as regulator.

Network Rail is willing to engage with the Applicant to agree the terms of the rights sought and under paragraph 4(6) above is required to act reasonably in doing so. The proposed drafting does not confer an unqualified veto. Consent is expressly not to be unreasonably withheld, although it may be subject to reasonable conditions and it will not be unreasonable for Network Rail to withhold consent for reasons of operational or railway safety. NR cannot, however, relinquish the degree of control necessary to ensure the safe and proper management of the operational railway. Network Rail is in discussions with the Applicant to agree the grant of the necessary rights through private agreement, but these negotiations remain at an early stage, and the relevant agreements are not yet in place.

A restriction requiring Network Rail's consent before compulsory acquisition and related powers are exercised in respect of railway property is established drafting practice in DCOs affecting railway interests and has been accepted by the Examining Authority and Secretary of State in a number of made Orders including but not limited to: the A47/A11 Thickthorn Junction DCO, Thurrock Flexible Generation Plant DCO, Yorkshire and Humber CCS Cross Country Pipeline DCO, Sunnica Energy Farm DCO, Longfield Solar Farm DCO and South Humber Bank Energy Centre DCO. The purpose of this restriction is not to impede the implementation of the Applicant's scheme, but to secure appropriate protection for NR as statutory undertaker and infrastructure manager in order that it can properly regulate the rights to be exercised over its railway network and which is appropriate function and purpose of protective provisions.

Paragraph 4(2)

Network Rail is required to maintain strict safety protocols under its Network Licence that is granted by the ORR. Network Rail employees and contractors must have reliable pedestrian and vehicular access to railway property for maintenance, inspection, fault response, emergency attendance, possession access and other operational purposes. That access cannot be impeded without NR's consent. Any prevention of such access could prejudice the safe and efficient operation of the railway and place Network Rail at risk of non-compliance with its regulatory obligations. Network Rail requires the inclusion of paragraph 4(2) in the Protective Provisions for this reason.

Paragraph 4(3)-(6)

Network Rail not only has a duty to ensure the safe and efficient running of the railway for employees, third parties, members of the public and all others who come into contact with the railway; it also has an overarching duty to preserve the integrity of the operational railway and related property interests. For that reason, compulsory acquisition and related powers affecting operational railway land or rights benefiting Network Rail must be subject to Network Rail's prior written consent. Should rights be acquired over railway land without such consent being obtained then the right is created outside the control of Network Rail and may not be subject to the necessary restrictions and conditions that Network Rail would regard as sufficient so as to enable it to comply with the Network Licence and its wider statutory undertaker responsibilities.

Similarly, where proposed compulsory acquisition is proposed over land in respect of which Network Rail has the benefit of easements or other rights, the exercise of those powers without consent would circumvent Network Rail's usual process of obtaining business and technical clearance (a process through which Network Rail's engineers assess the likely detriment to the railway and identify appropriate controls). If such rights are acquired outside of this process Network Rail could be placed in a position where railway safety and operations were prejudiced and where it was unable properly to discharge its responsibilities as statutory undertaker and infrastructure manager.

Network Rail is willing to engage with the Applicant to agree the terms and extent of the rights sought. In doing so (and as reflected in paragraph 4(6)), Network Rail is required to act reasonably. However, Network Rail cannot be placed in a position where it is required to relinquish control over operational and railway safety matters. In those matters, Network Rail must retain the ability to determine what is necessary in order to comply with its statutory duties and licence obligations.

Paragraph 4(7)/ Asset Protection Input

An Asset Protection Agreement (APA) is required to be entered into in order to support the review of the design of any specified works and to facilitate access on to railway land. An APA is a contractual agreement between Network Rail and an outside party regulating interaction with the railway and establishing roles, responsibilities and liabilities in relation to works over, under or adjacent to the railway. The APA enables NR's Asset Protection Team to manage access, site safety, engineering input and possession arrangements and other operational interfaces as necessary. The protective provisions should therefore include an express requirement for the Applicant to enter into an APA before carrying out any specified work so that NR can fulfil its duties to protect the railway and comply with its regulatory obligations. This requirement is proportionate. "Specified work" is defined in Network Rail's standard protective provisions to include works situated upon, across, under, over or within 15 metres of, or which may in any way adversely affect, railway property. In that context, the APA requirement is a practical and established means of ensuring that works interfacing with the operational railway are properly controlled.

It is therefore submitted that Network Rail would plainly be acting reasonably in requiring an APA be entered into before any specified work is carried out.

For the reasons set out above, NR maintains its objection to the draft Order in its current form and requests inclusion of paragraph 4 of its standard protective provisions in full.

Section 127 of the Planning Act 2008

In addition to the points set out above, and insofar as the draft Order would authorise compulsory acquisition affecting statutory undertaker land, NR maintains its objection on the basis that the requirements of section 127 of the Planning Act 2008 are not met unless paragraph 4 of Network Rail's standard protective provisions is included.

Network Rail is a statutory undertaker and the plots and rights affected include operational railway land and rights held for the purposes of its undertaking. Section 127 prevents the authorisation of compulsory acquisition of statutory undertakers' land unless the decision-maker is satisfied, in summary, that the land can be acquired without serious detriment to the carrying on of the undertaking or that any such detriment can be made good by the use of other land.

Without the inclusion of paragraph 4 of Network Rail's standard protective provisions, Network Rail's position is that the Secretary of State could not properly be satisfied that the proposed compulsory acquisition affecting railway property satisfies section 127, because:

(a) the proposed acquisition would give rise to a real risk of serious detriment to the carrying on of NR's undertaking; and

(b) any such detriment cannot be made good by use of other land.

The reasons are as follows:

- 1) all of the plots over which rights are proposed to be compulsorily acquired include operational railway land, land used for railway equipment, and land affected by restrictions or rights held for railway purposes;
- 2) unless NR has the ability to require its prior consent before the exercise of compulsory powers in respect of railway property and, where relevant, to require the Applicant to enter into an asset protection agreement before carrying out specified work, the exercise of such powers may occur outside Network Rail's established safety, engineering and operational control framework;
- 3) in those circumstances, the proposed powers would create a real risk of serious detriment to Network Rail's undertaking because they could interfere with access, maintenance, possessions, operational safety, railway assets and the safe running of trains; and
- 4) such detriment cannot be made good by the use of other land because the operational railway and associated rights cannot realistically be relocated or substituted elsewhere. Requiring NR to relocate operational railway infrastructure in order to accommodate the exercise of such powers would in any event be wholly unrealistic and disproportionate both in cost and nature).

Accordingly, absent paragraph 4 of Network Rail's standard protective provisions and in particular paragraph 4(1) Network Rail does not consider that the Secretary of State could properly be satisfied that the proposed compulsory acquisition affecting railway property would satisfy section 127 of the Planning Act 2008.

For the avoidance of doubt, Network Rail relies on section 127 in relation to compulsory acquisition affecting statutory undertaker land. Temporary possession and other operational interference separately reinforce the necessity for the protective provisions and consent controls sought.

Section 138 of the Planning Act 2008

Network Rail is also reviewing the extent to which the draft Order would authorise the extinguishment, suspension or overriding of rights enjoyed for the purposes of its undertaking. Pending completion of that review, Network Rail reserves its position as to whether the requirements of section 138 of the Planning Act 2008 are satisfied, including whether the Secretary of State could properly be satisfied that any such extinguishment, suspension or overriding would not cause serious detriment to the carrying on of Network Rail's undertaking. Network Rail expects to update its position on these matters once that review has been completed.

Conclusion

As outlined above, Network Rail is continuing to investigate the potential risks to its assets arising from the construction and operation of the scheme and is engaging with the Applicant regarding any necessary mitigation and protective measures. This engagement is expected to continue throughout the examination process.

Network Rail will not be in a position to withdraw its remaining objections to the making of the DCO unless and until all necessary protections have been secured, including the incorporation into the Order of paragraph 4 of Network Rail's standard protective provisions, or equivalent protections agreed by Network Rail.

Network Rail therefore respectfully requests that the Examining Authority recommends that paragraph 4 of Network Rail's standard protective provisions be included in full in the Order. In the absence of equivalent protection, Network Rail maintains its objection to the grant of compulsory acquisition, temporary possession and related powers insofar as they affect railway property.

Network Rail reserves the right to be heard at any relevant hearing and further reserves the right to supplement these representations as further determinations are made in respect of any interference with Network Rail's rights and property interests.