



Your reference EN020027

Our reference CLARMA/43283-5243

10 August 2026

BY EMAIL TO:

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National Infrastructure Planning
Temple Quay House
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Dear Sirs

DCO Scheme: Norwich to Tilbury Project

Our client: Network Rail Infrastructure Limited

Registered Party Reference: [REDACTED]

Applicant: National Grid Electricity Transmission Plc

Subject: Network Rail Infrastructure Limited's Closing Submissions

This Firm is instructed by Network Rail Infrastructure Limited (**NR**) in relation to the DCO Scheme.

We note the Examining Authority's invite to make closing submissions (if desired) on matters which have not been resolved to NRIL's satisfaction during the Examination Period. We refer the Examining Authority to our previous submissions, including our Relevant Representations [[RR-2671](#)], Written Representations [[REP1-252](#)], Response to ExQ2 dated 10 June 2026, and Response to the Examining Authority's Request for Further Information dated 24 July 2026.

The draft DCO submitted with the Application includes provisions which would, if granted, authorise NGET to carry out works on, under and in close proximity to operational railway land in the control of Network Rail, to permanently acquire new rights over NR's freehold interests in such land and take temporary possession over such land, as well as extinguish, suspend and/or interfere with NR's rights over and apparatus on third party land. The affected plots include land forming part of (or adjacent to) the operational railway.

At the date of these Closing Representations, the draft DCO (document reference number 3.1) does not contain an acceptable form of protective provisions for the protection of the railway.

Previous Representative

We have reviewed the updated draft DCO submitted at Deadline 6 of the Examination Period and the protective provisions included for the benefit of the railway (**Order PPs**). The Order PPs are not wholly consistent with the form of PPs requested by NR to be included in the draft DCO contained at Appendix 1 of NR's relevant representation (**NR PPs**).

For reference, our preferred protective provisions are contained within Appendix 1 of our Relevant Representations [[RR-2671](#)] upon which Network Rail continues to rely.

Protective Provisions

The Parties have agreed the substantial proportion of the Protective Provisions which are to be included in the DCO (if made) noting that these are not the version included in the Draft Order at present. In any event, the Parties have not been able to agree the form of provision 4 (concerning the restriction on the use of compulsory powers without NR's prior consent (not to be unreasonably withheld)).

The Applicant has proposed the deletion of the parts of NR's required form of provision 4 (as shown in red below) and has proposed the insertion of the wording in blue below:

4. (1) *The undertaker must not exercise the powers conferred by—*

- ~~(a) article 3 (development consent granted by the Order);~~
- ~~(b) article 4 (maintenance of authorised development);~~
- (c) article 20 (discharge of water);
- (d) article 22 (authority to survey and investigate the land);
- ~~(e) article 24 (compulsory acquisition of land);~~
- ~~(f) article 25 (compulsory acquisition of rights);~~
- ~~(g) article 38 (private rights);~~
- ~~(h) article 26 (acquisition of subsoil only);~~
- ~~(i) article 39 (power to override easements and other rights);~~
- ~~(j) article 29 (temporary use of land for constructing the authorised development);~~
- ~~(k) article 27 (temporary use of land for by National Grid);~~
- ~~(l) article 27 (temporary use of land for by UKPN);~~
- ~~(m) article 44 (statutory undertakers);~~
- (n) article 50 (felling or lopping of trees and removal of hedgerows);
- ~~(o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;~~
- ~~(p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;~~
- ~~(q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;~~

~~(f) any powers under 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 44 (statutory undertakers), article 39 (power to override easements and other rights) or ~~article 24 (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.~~

(4) 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.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph:

(a) 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)~~ in the circumstances; and

(b) such consent must not be unreasonably delayed and if, by the end of such consent must not be unreasonably delayed and if, by the end of 28 days beginning with the date on which such request for Network Rail's consent was made, Network Rail has not intimated its refusal together with the grounds of any such refusal of consent, the undertaker may serve upon Network Rail written notice requiring Network Rail to intimate approval or disapproval within a further period of 14 days beginning with the date upon which Network Rail receives written notice from the undertaker. If by the expiry of the further 14 days Network Rail has not intimated consent or refusal of consent, Network Rail is deemed to have given consent for the exercise of the respective powers.

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work, and Network Rail must act reasonably and without unreasonable delay at all times in connection with the negotiation of, and entry into, such as an asset protection agreement.

Crucially, if the provisions at paragraphs 4(1)-(7) are not included in the DCO (if granted), serious detriment to NR's statutory undertaking will be caused as a result of NGET being able to exercise compulsory acquisition powers to acquire rights over an operational railway line. Absent the inclusion of sub-paragraphs (1), (3) and (4) and where NR has no ability to require its prior consent to such acquisition, it would give rise to a significant, unacceptable risk that NGET could compulsorily acquire rights over railway land without prior NR's consent.

Such a proposition is patently unacceptable as the proposed compulsory acquisition of rights over railway land would result in NR no longer having control over its operational railway land. This clearly has the potential for catastrophic implications for the operational railway and poses a serious detriment to NR's carrying on of its statutory undertaking. Moreover, this could lead to a failure by NR to comply with its Network Licence which is not position which can be accepted by NR, nor would it be acceptable to the Office of Rail and Road (ORR) as NR's regulator.

For example, NR may require that rights granted to NGET are subject to reservations allowing NR to interrupt the exercise of such right in certain circumstances (such as enabling NR to deal with emergencies on the railway or carry out necessary works or the exercise of such rights or such temporary possession may not be safe to be exercised at certain times). Where NR's prior consent is not required before exercising these powers over railway land, there is a risk that any such rights or such temporary possession would not be subject to NR's required restrictions and as a result NR's control over its ability to appropriately manage the safety of the railway would be compromised. The consequences of NR not being able to effectively manage the safety of the railway could be catastrophic.

NR is of course willing to engage with NGET and would be required by its proposed Protective Provisions to act reasonably in responding to a request for consent by NGET (and thereby agreeing the terms of any easement over railway property) by virtue of sub-paragraph (6). However, NR is under an overarching duty not to compromise the safe operation of the railway and to preserve the safety and integrity of the railway and so its consent to the acquisition of such rights must not be circumvented by the powers in the Order.

NR would ask the ExA to consider; if NGET compulsorily acquires rights over an operational railway (without NR's consent), how can NR ensure that those rights are adequately controlled to preserve safety on the railway and in compliance with its Network Licence when the terms and restrictions of how and when those rights are exercised are no longer within NR's control?

The acquisition of rights over railway land is not akin to acquiring rights over private land and requires special restrictions and controls, so for the reasons set out above the terms of any such rights to access railway land must be agreed by Network Rail first and sub-paragraph (1), (3) and (4) should be included in the draft DCO.

Paragraph 4(3): Network Rail is required to maintain strict safety protocols under its Network Licence that is granted by the ORR. As mentioned above, NR is required to ensure compliance with a number of safety standards. For Network Rail to ensure compliance with such standards, Network Rail employees and contractors must have the ability to access to railway property and this access cannot be impeded by NGET in constructing or maintaining the DCO scheme.

Paragraph 4(4): The same reasons set above regarding maintain access to railway property apply whereby NGET should not have the ability to override easements or rights which NR has the benefit of

for the purposes of accessing the railway in its capacity as railway undertaker without first obtaining NR's express consent.

Paragraph 4(5): The wording included above in blue proposes a deemed consent provision in respect of NRIL's consent to the proposed powers being granted.

Although we understand the Applicant's concern that they do not wish to risk delays to the implementation of the DCO scheme, NR would not seek to delay consent unreasonably. NR's proposed wording at paragraph 4 would provide sufficient comfort to the applicant that NR is not to unreasonably withhold or delay the consent, and that this consent may be given subject to conditions. Ultimately, NR is not a typical landowner, and cannot accept deemed consent provisions in respect of compulsory acquisition powers. This would fetter NR's discretion and would give rise to the risk that the Applicant could proceed to exercise powers over an operational railway where the delay may be as a result of a shortage in resource at the relevant time or a notice being referred to the wrong team at NR. A deemed consent provision is therefore not appropriate in the context of NR's consent being obtained.

Paragraph 4(7): Further, although the requirement to enter into an asset protection agreement at 4(7) provides NR with some comfort, the additional wording in blue is not acceptable. While NR fully intends to act reasonably (to the standard of a reasonably prudent railway undertaker) and without unreasonable delay (while complying with its license obligations and statutory obligations), the requirement places these obligations on NRIL unilaterally, whereas these should at least be mutual obligations on both Parties, and understates what is a complex technical consultation required as part of this process.

This inclusion could give NGET the blanket opportunity to argue that NR is not acting expeditiously or reasonably enough when negotiating the asset protection agreement, particularly as this requires complex technical details to be discussed and consultation and the requirements ensuring compliance with their statutory obligations and maintain the safety of the railway.

S.127 and S.138 of the Planning Act 2008

We refer the Examining authority to our previous submissions, including our including our Relevant Representations [\[RR-2671\]](#), Written Representations [\[REP1-252\]](#), Response to ExQ2 dated 10 June 2026, and Response to the Examining Authority's Request for Further Information dated 24 July 2026.

Conclusion

Network Rail therefore requests that the Examining Authority gives due consideration to the matters raised in this submission and ensures that the final form of the protective provisions adequately safeguards Network Rail's operational interests and statutory obligations.

Should you have any queries, please don't hesitate to contact us on the details below.

Yours faithfully



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Direct line



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