

6 August 2010

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Dear Sirs

Re: Coventry to Nuneaton Rail Improvements Project

Thank you for your letter dated 2nd August 2010, in relation to the above matter, which we received on 6th August.

**s.51 Planning Act 2008**

Firstly, we should note that any advice given by the IPC to potential applicants and others under s.51 of the Planning Act 2008 (the 2008 Act) will be published on the Commission's website. The Commission is not under s.51 able to advise on the merits of an application or proposed application, and any advice given under s.51 does not constitute legal advice upon which persons can rely.

We would also note that the IPC has an openness policy which means that any documents passed to us, whether or not considered by you to be confidential, may be put on the Commission's website. As you will be aware the Commission is also subject to the requirements of the Freedom of Information Act 2000 and so any information received by us may be released if a relevant FoI request is received by us.

**Specific Legal Considerations**

With regards to the specific questions raised in your letter, we would firstly refer you to sections 31 and 32 of the 2008 Act, which set out when development consent is required for Nationally Significant Infrastructure Projects (NSIPs) and the meaning of development for the purposes of the 2008 Act regime. Section 14 of the 2008 Act sets out the various categories of NSIPs, which include the construction or alteration of a railway (s.14(1)(k) and s.25).

'Railway' in the 2008 Act (s.235(1)) has the meaning given by s.67(1) of the Transport and Works Act 1992, which is "a system of transport employing parallel rails which-

- (a) provide support and guidance for vehicles carried on flanged wheels, and
  - (b) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level),
- but does not include a tramway".

You will have to consider and decide whether the proposed scheme involves the 'construction or alteration of a railway' within the meaning of s.25. As you note there are no size thresholds in relation to railways, such as minimum length of line, set out in the 2008 Act. We would also note that the terms 'construction' and 'alteration' are not expressly defined in relation to NSIP railway development in the 2008 Act (see s.25 and s.235(1)).

s.25(1) and (2) set out the circumstances in which the construction or alteration of a railway may require development consent under 2008 Act. With regards to the criteria set out in s.25(1) and (2) we would comment as follows:-

a) the railway (or part thereof) in question is wholly in England;

b) we presume that the railway in question is part of a network operated by an 'approved operator' (Network Rail), but you will need to confirm whether or not this is the case in accordance with s.25;

c) you will need to consider whether any construction or alteration of a railway is permitted development. As to the meaning of permitted development for the purposes of s.25 we would refer you to article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (see s.25(7)), and Class A, Part 11 (where relevant) and Part 17 of Schedule 2 of the GPDO.

### **Further Legal Considerations and Next Steps**

We would advise that you should obtain your own legal advice upon which you can rely as to whether development consent under the 2008 Act is required for this proposed development.

You should also take your own legal advice as to whether, if this proposed development does require development consent, any associated development (s.115(2)) should be included within any DCO application, and the scope of this, and whether there are any matters ancillary to any proposed development (see s.120(3), and Schedule 5 which sets out a non-exhaustive list of such ancillary matters). CLG have published Guidance on Associated Development, which is available on the IPC website.

We would also refer you to the deemed consents, under s.33, that are included (where relevant) within all development consent orders (DCO) and to s.150 which allows for certain other prescribed consents to be included within a DCO where the relevant consenting body agrees (see Part 1 of the Schedule to the Infrastructure Planning (Misc. Prescribed Provisions) Regulations 2010 for the list of these in England). You will note that compulsory acquisition of land or rights over land may also be authorised by a DCO (see sections 122 to 134).

Should you feel, having taken such legal advice, that a meeting with the Commission to discuss this matter is still necessary then we would be happy to consider this.

With regards the types and relevant thresholds of projects covered by the 2008 Act, the gestation of the Act and the secondary legislation made under it these are matters for CLG rather than the IPC, and you should refer any such queries to them direct.

We look forward to hearing from you in due course.

Yours faithfully

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The IPC gives advice about applying for an order granting development consent or making representations about an application (or a proposed application). The IPC takes care to ensure that the advice we provide is accurate. This communication does not however constitute legal advice upon which you can rely and you should note that IPC lawyers are not covered by the compulsory professional indemnity insurance scheme. You should obtain your own legal advice and professional advice as required.

We are required by law to publish on our website a record of the advice we provide and to record on our website the name of the person or organisation who asked for the advice. We will however protect the privacy of any other personal information which you choose to share with us and we will not hold the information any longer than is necessary.

You should note that we have a Policy Commitment to Openness and Transparency and you should not provide us with confidential or commercial information which you do not wish to be put in the public domain.