Written Representations by Network Rail Infrastructure Limited in relation to The Oxfordshire Strategic Rail Freight Interchange and Highways Order 202[*] (DCO)

Planning Inspectorate Reference Number: TR050008
Registration Identification Number:
Applicant: Oxfordshire Railfreight Limited
Application: The Oxfordshire Strategic Rail Freight Interchange and Highways Order 202[*]
Scheme: Oxfordshire Strategic Rail Freight Interchange

Introduction

We write further to Network Rail Infrastructure Limited's (**Network Rail/NR**) Section 56 Representation (submitted on 24 July 2026) which confirmed that Network Rail requires its standard protective provisions to be included in the draft Development Consent Order (**Order**).

Concerns with the Draft Order & Protective Provisions

As set out in our Section 56 Representation, Network Rail supports the growth in rail freight in principle, but must ensure that the Scheme will not have a detrimental impact on the operation of the Railway and that the safety of the Railway is maintained during the construction, operation and ongoing maintenance requirements of the Scheme.

As currently drafted, the draft Order (document reference number 3.1) does not contain the form of protective provisions considered by NR to sufficiently protect its assets and to ensure the safe and efficient operation of the railway (**Protective Provisions**). Further, the Order grants explicit rights to the Applicant to compulsorily acquire operational railway track (comprising a portion of the Chiltern Mainline at plots 2/8, 2/9 and 2/13 respectively) which would have the effect of bringing these plots into private ownership.

The protective provisions that are included in the Draft Order allow for compulsory acquisition powers to be exercised on land owned by Network Rail without any requirement to obtain NR's prior consent. There is a longstanding principle that any exercise of compulsory acquisition powers pursuant to a Development Consent Order in respect of railway property must be subject to NR's prior consent and a restriction to this effect must be included in the Protective Provisions. Network Rail's position is that an absence of such protection in the Protective Provisions will cause a serious detriment 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.

Should Network Rail and the Applicant (together the Parties) not be able to reach an agreement as to the inclusion of the Protective Provisions as part of the Order (should the Inspectorate be minded to grant the same), Network Rail must maintain its objection to the DCO.

We set out the reasons for Network Rail's position and a request for the inclusion of the Network Rail's required form of Protective Provisions on the Order in this submission.

Protective Provisions

The Application includes protective provisions for the benefit of the railway which would, if granted, authorise the Applicant to carry out works on and in close proximity to operational railway land belonging to Network Rail, to use such land temporarily and to acquire permanent rights over such land. Network Rail must accordingly ensure that the Application is granted subject to the Protective Provisions which provide appropriate protection for the safe and efficient operation of the railway.

The Protective Provisions that are afforded to NR at Schedule 14 of the current draft Order crucially do not contain a restriction on the Applicant's use of compulsory acquisition powers without NR's prior consent (with such consent not being unreasonably withheld). The Applicant requires the deletion of the parts of NR's required form of Schedule 14, sub paragraph 4 (as set out below), whereas NR requires the inclusion of these provisions:

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

(a) article 3 (development consent granted by the Order);

(b) article 6 (maintenance of authorised development);

(c) article 22 (discharge of water);

(d) article 23 (authority to survey and investigate the land);

(e) article 26 (compulsory acquisition of land);

(f) article 28 (Compulsory acquisition of land - incorporation of the mineral code);

(g) article 29 (compulsory acquisition of rights and imposition of restrictive covenants);

(h) article 30 (private rights);

(i) article 31 (power to override easements and other rights);

(j) article 35 (temporary use of land for carrying out the authorised development);

(k) article 36 (temporary use of land for maintaining the authorised development);

(l) article 37 statutory undertakers);

(m) article 49 (felling or lopping of trees and removal of hedgerows);

(n) article 50 (Trees subject to tree preservation orders).

(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;

(r) 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 37 (statutory undertakers), article 31 (power to override easements and other rights) or article 30 (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 the carrying out of any specified work.

Of the above provisions, the only provision included within the current draft Order in a form acceptable to Network Rail is sub-paragraph (2) & (7), which are included within Schedule 14 Part 1 of the draft Order at paragraph 4.

NR is unable to agree to the Applicant's proposed omission of the above sub-paragraphs 4(1) & (4) and the Applicant's proposed amendments to (2), (3), (5) and (6) within Schedule 14 of the draft Order for the detailed reasons set out below.

Paragraph 4(1)

The Applicant proposes to compulsorily acquire all of Network Rail's interests over the plots numbered 2/8, 2/9, 2/13, 5/17, 5/18, 5/19, 5/20, 5/21, 5/22 and 5/26. These plots include sections of the Chiltern Main Line, an operational railway line.

Further, the Applicant also proposes to compulsorily acquire permanent rights over Network Rail's land over the plots numbered 2/1, 2/2, 2/3, 2/6, 2/7, 2/16, 5/18a, 5/23, 10/1, 10/2, 10/3, 10/4, 10/5, 10/6 and 10/7. These plots include sections of the Chiltern Main Line and a railway tunnel, an operational railway line.

If NR's consent is not required to be obtained prior to such acquisition of this land and/or rights, it would give rise to a significant, unacceptable risk that the Applicant could compulsorily acquire operational railway land or a right over (as applicable to the respective plots) operational railway land which would not be subject to the approvals, conditions, limitations and restrictions necessarily required by NR (including any conditions deemed to be required by NR's engineers through its business and technical

clearance process) to facilitate and ensure the safe and efficient operation of the railway. Further it would afford the Applicant powers to take private ownership of the land on which operational track is located. We assume this must be an error as this section of track is not intended by the Applicant to become a private railway. We are liaising with the Applicant accordingly as such a position is clearly untenable (the risks which would be caused if a section of national railway was acquired by an entity who is not the appropriate statutory undertaker for such railway are so significant and far-reaching that it is patently unacceptable) and so must be rejected in any granted Order.

Such processes and protocols are implemented by Network Rail to regulate third party interference with the railway and any such interference must be subject to the requisite approvals in order for Network Rail to be in compliance with its Network Licence (as described in further detail below). It is inconceivable that the Applicant should have the powers to circumvent such protocols by way of exercising powers of compulsory acquisition.

NR operates under a Network Licence granted by the Office of Rail and Road (**ORR**). Under its Network Licence, NR is obliged to ensure compliance with a wide number 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 regulate its ability to comply with such standards, NR must retain stringent restrictions, controls and procedures over any interferences with the railway by third parties, including by reason of persons exercising rights on or over railway land. NR imposes such restrictions through (i) a requirement to obtain its prior consent before railway land and rights are compulsorily acquired and (ii) by requiring any works on or near to railway land to be subject to the entering into of an asset protection agreement.

Accordingly, where a right is compulsorily acquired and may be exercised over railway land which is not subject to NR's prior consent, such a right is created outside of NR's control and would not be subject to the necessary restrictions and conditions that NR would regard as sufficient so as to enable it to comply with its Network Licence. For example, NR may require that rights granted to the Applicant 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 to stipulate that the exercise of such rights 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 would not be subject to the 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. Moreover, this could lead to a failure by NR to comply with its Network Licence which is not position that can be accepted by NR, nor would it be acceptable to the ORR as NR's regulatory body.

Network Rail is of course willing to engage with the Applicant to seek to agree the necessary rights to deliver the Scheme and is required by its proposed Protective Provisions at paragraph 4(6) above to act reasonably granting or refusing any prior consent for the exercise of compulsory powers. It cannot however relinquish this degree of control over rights being exercised on the railway where the consequences of doing so could be so significantly adverse. Network Rail is in discussions with the Applicant to agree the grant of the necessary rights through private agreement (including rights required as an alternative to where the Applicant is seeking compulsory powers to acquire railway land), but these negotiations are still in the early stages and so the relevant agreements are not yet in place.

A restriction on the compulsory acquisition of rights over railway land is a widely accepted and longstanding principle which has been accepted by the Examining Authority and Secretary of State on numerous DCOs 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 the necessary

protection to NR as a statutory undertaker 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. As previously mentioned, 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 without NR's consent as it could result in a breach of NR's Network Licence.

The Applicant has agreed the inclusion of paragraph 4(2) in the Protective Provisions.

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 railway. Compulsory acquisition of land is for this reason not appropriate where said acquisition concerns operational railway land and must therefore 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 of rights over railway land where Network Rail has the benefit of easements and other rights, such acquisition would not be subject to Network Rails usual process of obtaining both business and technical clearance (a process by which network rail engineers assess the detriment to the railway). If such rights are acquired outside of this process implications are that Network Rail could be in a position where the railway is unsafe (with catastrophic consequences), and Network Rail are compromised in both it's position as statutory undertaker and ability to ensure the sage and efficient running of trains on the railway.

Network Rail are willing to engage with the Applicant to agree the terms and extent of the rights being sought. In doing so (and discussed above), Network Rail are under a duty to act reasonably in their role as statutory undertaker. However, Network Rail cannot be placed in a position where they are to relinquish the degree of control over the railway being sought by the Applicant as the consequences of doing so are significantly adverse.

Paragraph 4(7)

An Asset Protection Agreement (**APA**) is required to be entered into in order to support the review of the design and construction of a specified work and to facilitate access on to railway land. An APA is a contracting agreement between Network Rail and an outside party to allow interaction and to establish roles, responsibilities and liabilities of a project over, under or adjacent to the railway. The APA enables NR's Asset Protection Team to regulate managing access, site safety management, engineering services, and possession arrangements as necessary. The Protective Provisions must include a requirement for the Applicant to enter into an APA in order for NR to fulfil its statutory duty to protect the railway in accordance with the terms of its Network Licence. It is therefore submitted that Network Rail would be acting reasonably in requiring that any such required APA be entered in to before any specified work is carried out.

The Applicant has agreed the inclusion of paragraph 4(7) in the Protective Provisions.

However, the Applicant has proposed an amendment to the definition of APA/asset protection agreement which would, in effect, require the form of that agreement to be agreed between the parties. This misunderstands the purpose and function of an APA.

Asset protection agreements are prepared in a specific form by Network Rail's Asset Protection Team in accordance with a form which has been approved by the ORR. This ensures that works affecting Network Rail's assets are carried out in accordance with Network Rail's statutory duties, standards and operational requirements. Their form is not intended, nor is it appropriate for them to be, negotiated and agreed between the parties on a bespoke basis.

Further, Network Rail's form of APA has been developed, rigorously tested and tailored specifically to the protection of Network Rail's assets and the safe operation of the railway by appropriately qualified experts. It is therefore neither necessary nor appropriate for the form of the agreement to be subject to separate agreement between Network Rail and the Applicant in each case. The content of the agreement may, if appropriate, be adapted to reflect the particular works and circumstances of the Scheme, but it should remain in a form prescribed by Network Rail from time to time.

For the reasons set out above, NR must maintain its objection to the Application and must insist on the inclusion of the form of provision 4 set out in this submission and the DCO should not be granted in its current form.

Expert Determination

The Applicant has proposed that disputes be resolved by expert determination rather than by arbitration under Article 60 of the draft Order and has explicitly disapplied this process. Network Rail does not agree with that approach and considers arbitration to be the appropriate dispute resolution mechanism.

As proposed, expert determination would involve an informal process conducted by a single expert. Given the nature of the Scheme, and Network Rail's particular interests as railway undertaker, it may be difficult to identify an expert with the necessary breadth of expertise and sufficient familiarity with the operational, technical and commercial issues arising in relation to railway undertakings and freight schemes. By contrast, arbitration provides the parties with a structured, established and confidential procedure for the determination of disputes.

The Applicant's proposed approach would also introduce an internal inconsistency within the draft Order, given that disputes arising elsewhere under the Order are to be resolved in accordance with the dispute resolution provisions in Article 60 (Arbitration).

Further, arbitration is the usual and well-established mechanism for resolving disputes concerning protective provisions in development consent orders. Network Rail is not aware of any feature of this Scheme that would justify a departure from that longstanding approach. Accordingly, disputes arising under the Protective Provisions should be determined by arbitration pursuant to Article 60, and the proposed expert determination procedure should be removed.

Planning Act Tests

The relevant statutory question under section 127 of the Planning Act 2008 is whether the land or rights sought can be acquired without serious detriment to the carrying on of Network Rail's undertaking, or whether any such detriment can be made good by the use of other land. Similarly, the separate question under section 138 is whether the extinguishment of rights, or the removal of apparatus, is necessary for the purpose of carrying out the authorised development.

In Network Rail's view, the protective provisions currently proposed by the Applicant do not adequately address those statutory tests.

Section 127 Planning Act 2008

Applying section 127 of the Planning Act 2008, the acquisition of railway land, interests or rights required for the Scheme cannot be effected without serious detriment to Network Rail's undertaking, and that detriment cannot be made good by the use of other land. That is particularly so where the land or rights in question relate to operational railway infrastructure forming part of the national rail network, which is being proposed in this instance as operational sections of the Chiltern Mainline are affected.

In such circumstances, it would neither be reasonable nor proportionate to require Network Rail to relocate a section of operational railway land, or to permit any part of the operational railway to pass into private ownership, in order to facilitate the Scheme.

The Applicant's proposed protective provisions do not adequately restrict or regulate the exercise of compulsory acquisition powers over railway property, rights, easements, access arrangements and operational assets. In Network Rail's view, in order properly to address the section 127 test, the Order must include an effective restriction preventing the exercise of compulsory acquisition powers affecting railway property, rights or assets without Network Rail's prior consent, such consent not to be unreasonably withheld or delayed.

The purpose of that restriction is not to prevent or frustrate the delivery of the Scheme. Rather, it is to ensure that compulsory acquisition powers affecting railway land, easements, access rights, apparatus and other operational assets cannot be exercised unless and until their effect on Network Rail's undertaking has been properly assessed and appropriate protections have been secured. That control is necessary to give practical effect to the statutory protection afforded to statutory undertakers. Network Rail's consent would not be unreasonably withheld or delayed.

In relation to the Applicant's proposed acquisition of land and rights over Network Rail's land, rights and assets, the acquisition of such rights without adequate control, and without a proper opportunity to assess their scope, timing and operational consequences before they vest, could give rise to serious detriment to the carrying on of Network Rail's undertaking. That is especially so in the case of a railway freight scheme, where access rights, maintenance corridors, freight handling interfaces and operational interactions with live railway infrastructure are often safety-critical and operationally constrained.

For the purposes of sections 127(5) and 127(6), Network Rail does not consider that the Applicant has demonstrated that the land and rights sought can be acquired without serious detriment to its undertaking. In the case of operational railway as is proposed to be acquired in addition to access rights, maintenance corridors, freight sidings, signalling interfaces and structures associated with the operational railway, there is often no realistic substitute "other land" capable of performing the same operational function. That is particularly the case where the proposed interference affects operational track or freight-related rail infrastructure.

By way of example, where Network Rail benefits from access rights necessary to inspect, maintain, repair and operate operational track and associated freight infrastructure, the Applicant may seek overlapping rights for the installation, operation, inspection or maintenance of its own infrastructure.

Even if such rights do not formally extinguish Network Rail's existing rights, they may nonetheless constrain or interfere with the exercise of those rights in practice. That could impede planned maintenance, reactive repairs, emergency access, possession planning or other safety-critical functions necessary for the safe and efficient operation of the railway and freight services. Requiring Network Rail's consent before such areas of land and rights are acquired would enable the likely effects of those rights to be assessed in advance and, where appropriate, managed through bespoke protections, interface arrangements or other operational controls.

Ongoing Engagement with the Promoter

Network Rail welcomes the Applicant's engagement with its technical teams and expects that engagement to continue. However, if the Applicant were able to exercise compulsory acquisition powers affecting operational railway land, as well as such rights or interfaces without adequate protective control, that could materially prejudice Network Rail's ability to manage safe access and egress across the railway, preserve existing operational access arrangements and retain effective control over safety-critical railway interfaces.

Network Rail is continuing to review the Applicant's plans, draft Order and application documents, and will continue to work constructively with the Promoter to progress the discussions regarding Protective Provisions and agree a form of side agreement.

Network Rail reserves the right to produce additional and further grounds of concern when further details of the Scheme and its effects on Network Rail's assets are available.