

## **NETWORK RAIL (HITCHIN (CAMBRIDGE JUNCTION)) ORDER MINDED VIEW LETTER**

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Our Ref: TWA/09/APP/05  
Your Ref: IHM/Y055262  
XX XX 2011

Dear Sirs,

### **TRANSPORT AND WORKS ACT 1992**

### **TOWN AND COUNTRY PLANNING ACT 1990**

### **APPLICATIONS FOR THE PROPOSED NETWORK RAIL (HITCHIN (CAMBRIDGE JUNCTION)) ORDER AND DEEMED PLANNING PERMISSION**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to refer to the applications made on 30 September 2009 by your client, Network Rail Infrastructure Limited ("NR"), for:-

- the Network Rail (Hitchin (Cambridge Junction)) Order ("the Order") to be made under sections 1 and 5 of the Transport and Works Act 1992 ("the TWA"); and
- a direction as to deemed planning permission for the development provided for in the Order, to be issued under section 90(2A) of the Town and Country Planning Act 1990.

2. The Order, if made, would authorise NR to construct and operate a new section of railway, running partly on embankment and partly on viaduct, to the north of Hitchin Station (referred to in this letter as "the scheme"). The scheme would enable rail services from Hitchin to Cambridge to pass over the East Coast Main Line at a separate grade from services operating along that line. The Order would also, among other things, authorise the compulsory acquisition of land and rights in land to allow the scheme to be constructed. The planning direction, if given, would give deemed planning permission for the development provided for in the Order.

3. A public inquiry into these applications was held by Mr J P Watson BSc FCIHT MICE MCMI between 11 and 25 May 2010. On 20 October 2010 the Department issued a letter ("the October 2010 letter") saying that the Secretary of State was minded to make the Order and give the direction as to deemed planning permission and setting out his reasons. This letter must be read in conjunction with the October 2010 letter as it is the two letters, taken together, which convey the full reasons for the Secretary of State's decisions on these applications. A copy of the October 2010 letter may be found at

<http://www.dft.gov.uk/pgr/twa/dl/CambridgeJunction/pdf/decisionletter.pdf>

or may be obtained from the TWA Orders Unit at the above address.

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

4. The Secretary of State has decided to make the Order, with modifications, and to direct that planning permission be deemed to be granted, subject to the conditions set out in Annex 1 to this letter. In a separate letter being issued today, the Secretary of State for Communities and Local Government ("SoS/CLG") has decided to give an exchange land certificate in relation to the open space at Cadwell Marsh to be compulsorily acquired for the purposes of the scheme (see paragraphs 16 to 18 below).

## **The Secretary of State's minded to approve letter of October 2010**

5. In paragraphs 62 to 65 of the October 2010 letter the Secretary of State said that he agreed with the inquiry Inspector that there was a compelling case for authorising the scheme but that he was not yet in a position to determine NR's applications. This was because he needed to be assured that the highway mitigation measures in Wilbury Hills Road which he considered to be necessary and the maintenance scheme for the proposed drainage works on land owned by North Hertfordshire District Council ("NHDC") were capable of being delivered. He accordingly invited NR to continue the negotiations which it had been conducting with Hertfordshire County Council ("HCC") and NHDC during the inquiry with the aim of making an agreement or agreements on those matters. He also invited NR to provide an update on progress with negotiations for the acquisition by agreement of the open space at Cadwell Marsh and in relation to the impact of the scheme on the Sita metal recycling site.

## **Responses to the October 2010 letter**

6. The Secretary of State received letters from NR on 10 November 2010, 19 January 2011, 3 and 10 February 2011 and 8 March 2011. HCC and NHDC also wrote to the Secretary of State on 10 February 2011. Apart from these responses to the October 2010 letter, the Secretary of State received a representation on 21 March 2011 from a local resident about the route to be used by construction traffic. His consideration of the matters raised in this correspondence is set out below.

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

### **Agreements with HCC and NHDC**

7. Mitigation measures in Wilbury Hills Road. In paragraphs 28 to 30 of the October 2010 letter, the Secretary of State concluded that the use of Wilbury Hills Road by construction traffic for the scheme would be appropriate, subject to him being assured that the highway mitigation measures referred to in paragraph 29 of that letter were capable of being delivered.

8. NR and HCC both confirmed in their letters of 10 February 2011 that, although they had not yet finalised an agreement under section 278 of the Highways Act 1980, they had agreed all matters of principle concerning the mitigation measures on which the Secretary of State wished to be satisfied. In particular, the proposed section 278 agreement between NR and HCC would ensure delivery by NR of:

- works to widen the carriageway along Wilbury Hills Road;
- works to facilitate the introduction and subsequent removal of temporary speed limits in Stotfold Road and Wilbury Hills Road and of temporary waiting restrictions in Wilbury Hills Road; and
- any necessary ameliorative works to road surfaces as a result of vibration monitoring surveys by NR at various stages of the development.

There remained to be agreed some matters of detail, for example, in connection with the terms of the indemnity which NR proposes to give to HCC, but both parties anticipated that the agreement could be concluded in due course.

9. Maintenance of drainage works at Cadwell Marsh. In paragraph 37 of the October 2010 letter, the Secretary of State said that he wished to be assured that appropriate arrangements would be in place for dealing with future maintenance liabilities arising from the proposed drainage works on NHDC land. This was to ensure that the maintenance scheme referred to in what is now condition 12 in Annex 1 to this letter was capable of being delivered.

10. In their letters of 10 February 2011, both NR and NHDC reported that considerable progress had been made towards finalising an agreement relating to the construction and maintenance of the proposed attenuation basin at Cadwell Marsh. Among other things, the proposed agreement would include provisions requiring NR to maintain the basin in accordance with the approved maintenance regime and to indemnify NHDC against loss resulting from construction or failure of the attenuation basin. Both NR and NHDC were confident that outstanding issues would shortly be resolved. Subsequently, in its letter of 8 March 2011, NR advised that all the terms of the proposed maintenance agreement were now agreed, but NHDC had still formally to decide to enter the agreement.

11. The Secretary of State notes from the responses provided by NR, HCC and NHDC on 10 February 2011 and from NR's further advice on 8 March that substantial progress has been made since the October 2010 letter towards completion of appropriate agreements. He is satisfied that, when made, NR's agreements with HCC and NHDC would ensure, respectively, that the highway mitigation measures in Wilbury Hills Road and the maintenance scheme for the proposed attenuation basin at Cadwell Marsh would be capable of being delivered. Neither NR nor the Councils anticipate any insurmountable obstacles to completion of those agreements now that all matters of principle have been settled. For these reasons, the Secretary of State has concluded that there is a reasonable prospect of those agreements being finalised and that consequently there is unlikely to be any impediment in this context to implementation of the powers in the Order. He is satisfied that, subject to consideration of the other matters arising since the October 2010 letter discussed below, he is now in a position to determine NR's applications.

## **Regional strategies**

12. In paragraph 12 of the October 2010 letter, the Secretary of State explained that he was attaching no weight to the Regional Strategy for the East of England as the SoS/CLG had revoked all Regional Strategies on 6 July 2010. The Secretary of State was nonetheless satisfied that the scheme was supported by policies at the national and local level.

13. Subsequently, the SoS/CLG's action was challenged in the High Court. Following the judgment of the Court on 10 November 2010 in *The Queen on the application of Cala Homes (South) Limited v. Secretary of State for Communities and Local Government* (2010) EWHC 2866 (Admin), the Regional Strategy for the East of England is part of the Development Plan and is material to this case. The SoS/CLG has since made it clear that it is the Government's intention to revoke Regional Strategies, and the provisions of the Localism Bill which is now before Parliament reflect this intention. Whilst the Secretary of State is entitled to and has taken this intention into account as a material consideration in determining this case (see *The Queen on the application of Cala Homes (South) Limited v. Secretary of State for Communities and Local Government and Winchester City Council* (2011) EWHC 97 (Admin)), he gives it little weight at this stage of the Parliamentary process.

14. Although the Secretary of State has therefore had regard to the policies in the Regional Strategy for the East of England, he takes the view that those policies are not a determining factor in this case as he is satisfied that he would have come to the same decision on these applications irrespective of whether or not those policies were taken into account.

15. It should be borne in mind in this regard that even when the Secretary of State attached no weight to the Regional Strategy policies in his letter of 20 October 2010, he was satisfied that there was a compelling case for authorising the scheme (subject to being satisfied that the Inspector's recommended mitigation measures could be delivered). He considers that the relevant regional policies, as summarised at paragraph 4.8.8 of the Inspector's report, merely serve to add weight to the policy support that otherwise exists for the scheme at the national and local level, and therefore make no difference to the outcome. For these reasons, the Secretary of State does not consider it necessary to refer back to the parties on the implications of taking the Regional Strategy into account.

## **Effects on open space**

16. At paragraph 35 of the October 2010 letter, the Secretary of State said that he wished to be informed by NR, before he decided whether to make the Order, about the progress of its negotiations with NHDC to acquire by agreement the open space at Cadwell Marsh required for the scheme. Such an agreement could obviate the need for compulsory acquisition powers in respect of that land to be included in the Order and for NR to provide exchange land and obtain an exchange land certificate from the SoS/CLG.

17. NR said in its letters of 10 November 2010, 19 January 2011 and 10 February 2011 that negotiations were continuing with NHDC to acquire the relevant interests by agreement. NHDC also confirmed in its letter of 10 February 2011 that this was its favoured approach. However, as NR did not anticipate such an agreement being completed before the Secretary of State determined the Order application, it was unable to withdraw its request for the inclusion of the open space interests in the compulsory acquisition powers in the Order, nor its request to the SoS/CLG for an exchange land certificate.

18. The Secretary of State said in paragraph 58 of the October 2010 letter that he was satisfied, on the basis of the evidence before him, that there was a compelling case in the public interest for giving NR the compulsory acquisition powers it had applied for. He notes in this respect that NR still requires compulsory acquisition powers in respect of the open space at Cadwell Marsh and the proposed exchange land. The Secretary of State confirms that he remains satisfied that there is a compelling case in the public interest for including all the requested compulsory acquisition powers in the Order, so as to enable satisfactory implementation of the scheme.

## **Community effects**

19. At paragraph 48 of the October 2010 letter the Secretary of State said that he agreed with the Inspector that the benefits of the scheme would outweigh its adverse impacts on the metal recycling site at Cadwell Lane owned by Sita UK Limited. However, he asked to be informed about the progress of NR's negotiations with NHDC and Sita in relation to this site and whether any scope for mitigating the adverse impacts of the scheme on Sita's operations had been identified.

20. NR said in its letters of 10 November 2010 and 19 January 2011 that despite holding discussions with Sita during 2010 it was still most likely that the site would, at the least, need to be temporarily relocated during the construction of the scheme. NR would continue to liaise with Sita as the detailed design of the scheme developed and would compensate Sita as appropriate in accordance with the Compensation Code which would be applied by the Order, if made.

21. The Secretary of State notes the current position in regard to the Sita site. He remains of the view that the benefits of the scheme would outweigh its adverse impacts on this site.

## **Conditions to be attached to deemed planning permission**

22. In the Annex to the October 2010 letter the Secretary of State set out the conditions which he was minded to attach to the direction as to deemed planning permission for the scheme. NR proposed some amendments to those conditions in its letter of 19 January 2011, to which NHDC responded in its letter of 10 February 2011. Having considered these representations, the Secretary of State has decided to make the following changes to the conditions:-

- Condition 6 – to enable NHDC to approve a prior request for deliveries during a bank or public holiday (as some deliveries may have to take place during railway possessions, which may be easier to secure during such holidays);
- Condition 7(ii)(a) – to require the Highway Authority's approval to the detailed design of the road widening (as the drawings referred to in this condition are only indicative);
- Condition 8(i) – to clarify that any proposals for landscaping must be subject to the operational requirements of the railway (such as ensuring sufficient sighting distance for railway signals);
- Condition 8(at end) – to make it clear that landscaping proposals need only be implemented on land that is acquired for the scheme;
- Condition 11 – various amendments to allow a phased approach to the submission of details to NHDC for approval (as requiring all these details to be approved before any development takes place could cause unnecessary delay to the scheme);
- Condition 12 – to require a maintenance scheme for the drainage works to be approved before those works are commenced, rather than before any development takes place (again, to prevent unnecessary delay);
- Condition 13(ii) – to require the sites of work compounds etc. to be restored to the reasonable satisfaction of the land owner, rather than in accordance with a scheme approved by NHDC (to ensure consistency with the provisions of the Order); and
- miscellaneous minor drafting amendments to conditions 4, 5, 8(iii) and 13(i) in the interests of clarity and consistency.

The conditions which the Secretary of State now intends to attach to the direction as to deemed planning permission are set out at Annex 1 to this letter, with changes from those detailed in the October 2010 letter shown in bold italics.

## Route for construction traffic

23. In a representation dated 21 March 2011 a resident of Stotfold (Mr Sweeney) expressed concern about the suitability of Stotfold Road for use by construction traffic for the scheme, the alleged lack of consultation by NR with residents of the estate on which he lived, and the impact of traffic noise and pollution on human health and property prices. The Secretary of State has considered these matters and is satisfied that the suitability and impacts of NR's preferred route for construction traffic were sufficiently examined at the inquiry into the scheme. He considers that nothing in this representation amounts to new evidence, or raises a new issue, which needs to be referred to the parties to the inquiry for further consideration. Neither does the representation cause him to take a different view as to the appropriateness of the proposed route for construction traffic than that expressed in paragraph 28 of the October 2010 letter, based on the evidence before the inquiry and the Inspector's conclusions on this matter.

## The Secretary of State's decision

24. Having considered all of the responses to the October 2010 letter, the Secretary of State remains of the view that there is a compelling case for authorising the scheme, for the reasons given in the October 2010 letter and in this letter. **He has therefore decided to make the Order, subject to the modifications described in paragraphs 55 and 56**

**of the October 2010 letter and the further modifications described below; and to direct that planning permission be deemed to be granted for the development provided for in the Order, subject to the conditions set out in Annex 1 to this letter.**

25. The further changes which the Secretary of State intends to make to the Order are as follows:

- to amend paragraph (7) of article 14 (discharge of water) so as to refer to the Environmental Permitting (England and Wales) Regulations 2010 instead of section 85 of the Water Resources Act 1991, which has now been repealed;
- to amend paragraph (1) of article 30 (open space), to make clear that not all of the open space land referred to in that article is intended to vest in NR; and
- to make other miscellaneous minor drafting amendments which would not affect the substance of the Order.

The Secretary of State considers that none of these modifications would make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA.

26. The Order will be made following publication of a notice in the London Gazette of the decision to make the Order. A letter conveying the direction as to deemed planning permission will issue at the same time as the Order is made.

### **Notice under section 14 of the TWA**

27. This letter constitutes the Secretary of State's notice of his determination to make the Order, with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. NR is required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

### **Challenge to decisions**

28. The circumstances in which the Secretary of State's decisions may be challenged are set out in the note attached at Annex 2 to this letter.

### **Distribution**

29. Copies of this letter are being sent to those who appeared at the inquiry and to all statutory objectors whose objections were referred to the inquiry under section 11(3) of the TWA but who did not appear.

Yours faithfully,

Ellis Harvey

Head of TWA Orders Unit

## ANNEX 1

### PLANNING CONDITIONS WHICH THE SECRETARY OF STATE INTENDS TO ATTACH TO THE DEEMED PLANNING PERMISSION

(Text in **bold italics** identifies changes to the version of the draft conditions set out in the Annex to the October 2010 letter)

#### Definitions

In these conditions:-

“Defra” means the Department for Environment, Food and Rural Affairs;

“the development” means the works authorised by the Order;

“the Environmental Statement” means the document of that description submitted with the application for the Order on 30 September 2009;

“the Open Space Plan” means the plan of that description referred to in the Order;

“the Order” means the Network Rail (Hitchin (Cambridge Junction)) Order 201[ ]; and

“the railway” means the railway authorised by the Order.

#### 1 Time for commencement

The development shall be commenced before the expiration of 5 years from the date that the Order comes into force.

**Reason:** To ensure that the development is commenced within a reasonable period of time.

#### 2 Approved drawings

The development shall be carried out in accordance with the following approved drawings:

Drawing number	Issue	Title
123448-00 CV-001	01	General Arrangement
123448-00 CV-002(1)	01	Proposed Cross Sections Sheet 1 of 2
123448-00 CV-002(2)	01	Proposed Cross Sections Sheet 2 of 2
123448-00 CV-003	01	Construction Access and Temporary Works
123448-00 ST-003(1)	01	Viaduct General Arrangement



123448-00 ST_003(2)	01	Viaduct Elevations
123448-00 ST-004.dgn	01	General Arrangement at Cadwell Lane
123448-00 UT-004	01	Utilities Diversions
B10004.10		Illustrative Landscape Proposals Sheet 1
B10004.11		Illustrative Landscape Proposals Sheet 2

**Reason:** To ensure that any development complies with the approved drawings.

### 3 Notification

Written notification shall be given to the local planning authority immediately on commencement of the development and immediately on the first use by a public train of the railway.

**Reason:** To enable the local planning authority to verify and monitor compliance with conditions.

### 4 Stotfold Road site access

No development shall take place until details of the Stotfold Road construction site access have been submitted to and approved in writing by the local planning authority. The submitted details shall make provision for:

- a) A vehicular access to Stotfold Road, to be no less than 7.3 metres wide and with kerb radii of at least 15 metres.
- b) A visibility splay of 4.5 metres into the site by 120 metres along the carriageway edge in a southerly direction and 4.5 metres into the site by 120 metres along the carriageway edge in a northerly direction. These measurements shall be taken from the intersection of the centreline of the permitted access with the edge of the carriageway. Within this splay there shall be no obstruction to visibility between 0.6 and 2.4 metres above the road level.
- c) Any vehicular gates to the Stotfold Road construction site access to be set back at least 12 metres from the edge of the carriageway and shall be arranged to open inwards into the site.
- d) A firm regulated turning area with a bound surface sufficient for OGV2 type vehicles within the construction site compound. The turning area shall be kept free from obstruction and available for use until its removal has been authorised in writing by the local planning authority.
- e) The vehicular access to be surfaced with a stable, bound material for at least the first 12 metres from the edge of the carriageway in Stotfold Road.
- f) A temporary speed limit of 40 mph on Stotfold Road near the site access.

The Stotfold Road construction site access shall be completed in accordance with the approved details before any part of the works that are to be accessed from Stotfold Road are started, and shall be so retained during the construction process.

No later than six months before the scheduled first use of the railway by a public train, a detailed scheme for the permanent access from Stotfold Road, to replace the Stotfold Road

construction site access, shall be submitted to the local planning authority for its written approval. The details to be provided shall include at least figured dimensions, visibility splays and construction details.

The approved scheme shall be implemented within three months of the first use of the railway by a public train or before such other time as shall be approved in writing by the local planning authority.

Upon completion of the permanent access from Stotfold Road, the existing maintenance **access** to the east of Stotfold Road shall be permanently closed off from Stotfold Road by fencing, details of which shall have been previously approved in writing by the local planning authority.

**Reason:** In the interests of highway safety.

## 5 Planning and Environmental Management Strategy

No development shall take place until a Planning and Environmental Management Strategy (as set out in general terms in the Environmental Statement Volume 2 Scoping and Methodology Report, Appendix C) consistent with Network Rail's "Contract Requirements – Environment" document (Inquiry document NR/C2) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Planning and Environmental Management Strategy. The submitted Planning and Environmental Management Strategy shall include at least the following:

- i) Measures to monitor and if necessary control within **environmentally** acceptable limits the air quality effects of the construction of the development, in accordance with 'Local Air Quality Management Technical Guidance' (LAQM, TG(09)) published by Defra.
- ii) Measures to monitor and if necessary control within **environmentally** acceptable limits the dust-creating effects of the construction of the development.
- iii) A traffic management plan, which shall include at least:
  - a) details of roadside signs to be erected to direct or control construction-related vehicles travelling to or from the site;
  - b) a scheme for wheel washing and road cleaning; and
  - c) details of arrangements to be made throughout the construction period whereby the public may communicate with the contractor.
- iv) A construction traffic code of practice, as outlined in **the Steer Davies Gleave Road Transport Assessment dated January 2010** (Inquiry document NR/B12).

**Reason:** In order to minimise the impact of the development on the local environment, and in the interests of highway safety and the amenity of neighbouring residential properties.

## 6 Delivery times

No deliveries to the construction site shall be received there from public roads except between the hours of 07:00 to 19:00 Mondays to Fridays inclusive or between the hours of 08:00 to 13:00 on Saturdays or as otherwise approved in advance in writing by the local planning authority. No deliveries shall be made via public roads on Bank or Public Holidays **unless otherwise approved in advance in writing by the local planning authority.**

**Reason:** In the interests of the amenity of residents on the construction traffic route.

## 7 Route for bulk fill construction traffic

No development shall take place until Network Rail has notified the local planning authority in writing of its selected contractor's intended mode of bringing bulk fill material to the site. If bulk fill material is brought to the site via public roads, the following requirements shall apply:

i) Bulk fill delivery vehicles shall approach and leave the site only via the A1 or the A1(M), the A507 and the C109 (which includes among others Wilbury Hills Road and Stotfold Road).

ii) No bulk fill delivery vehicles associated with the development shall use Wilbury Hills Road unless the following measures have first been taken:

a) Wilbury Hills Road has been widened as **illustrated** on drawings number E2136/5 and E2136/6 **and in accordance with detailed drawings to be submitted to and approved in writing by the highway authority**; the road to remain so widened at least until the carrying of bulk fill material by road to the site is complete;

b) a 30 mph speed limit has been introduced throughout Wilbury Hills Road; the speed limit to be retained at least until the carrying of bulk fill material by road to the site is complete;

c) waiting restrictions have been introduced in Wilbury Hills Road to have effect from 07:00 to 19:00 Monday to Friday; the waiting restrictions to be retained until the carrying of bulk fill material by road to the site is complete; and to be removed immediately thereafter; and

d) a scheme of scheduling for the arrival at the site, and departure from the site, of bulk delivery vehicles, including monitoring and control measures has been approved in writing by the local planning authority; such scheme subsequently to be implemented as approved.

iii) No development shall take place until the local planning authority has given written approval to a scheme for the undertaking of vibration measurements in Wilbury Hills Road and for other measures also intended to identify any need for remedial works to the carriageway kerbs or footway of Wilbury Hills Road as a result of the use of Wilbury Hills Road by construction traffic associated with the development; and such scheme shall be implemented as approved.

iv) Network Rail shall notify the local planning authority in writing when delivery of bulk fill material to the site is complete.

**Reason:** In the interests of highway safety and local amenity.

## 8 Landscaping and ecology

No development shall take place until the following details have been submitted to and approved in writing by the local planning authority:

i) details of the landscaping proposed for the site in accordance with the illustrative proposals on drawings number B10004/10 and B10004/11 (**subject to the operational requirements of the railway**). The details shall include at least: species, size at time of planting, density and location;

ii) details of the proposed railway boundary fence; and,

iii) details of ecological management measures as shown in outline on Figure 5.3 of Volume 3 of the Environmental Statement, including restoration, habitat creation and future

management, to be implemented on (i) the yellow **and** green land (**and, to the extent it is proposed to be acquired, the pink land**) shown on the Open Space Plan and (ii) within the operational railway boundary.

The approved details (**save to the extent that they relate to land that is subsequently not acquired for the scheme**) shall be implemented in the first planting season following the first use of the railway by a public train. Any tree or shrub in the approved details that dies or is removed or becomes seriously diseased or is damaged within the first five years shall be replaced in the next planting season with another of similar size and species or as otherwise may be agreed in writing by the local planning authority.

**Reason:** In the interests of the visual amenity of the area and to ensure the proper consideration of the impact of the development on nature conservation interests.

## 9 Operational noise

Top of rail friction modification shall be applied to all parts of the railway where the track radius is 500 metres or less.

**Reason:** In the interests of public health and amenity.

## 10 Archaeology

No development shall take place until a written scheme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The scheme of investigation shall be implemented as approved.

**Reason:** To ensure that any archaeological remains are appropriately recorded.

## 11 Further details of construction

**Work on the following structures shall in each case not be commenced until details of their design and external appearance** have been submitted to and approved in writing by the local planning authority:

- i) the accommodation underbridge to be located at chainage 11+900;
- ii) the viaducts and intersection bridge, including the materials to be used;
- iii) the proposed attenuation basin to the west of the proposed railway viaduct (**in respect of which the details to be submitted and approved include the layout, existing and proposed levels, longitudinal sections and cross sections through the basin** together with the design and external appearance of the outfall and headwall on the River Hiz and any other works proposed on the yellow land which is shown on the Open Space Plan); and
- iv) the proposed attenuation basin to the west of Stotfold Road (**in respect of which the details to be submitted and approved include the layout, existing and proposed levels and cross sections through the basin**).

The works shall subsequently take place only in accordance with the approved details.

**Reason:** In the interests of the visual amenity of the area.

## **12 Maintenance of drainage outfall to the River Hiz, etc**

**Construction of Work No. 4, as described in Schedule 1 to the Order**, shall **not** take place until a scheme for the maintenance of the attenuation basin to the west of the East Coast Main Line and the pipes, outfalls, headwalls and the like that together would form the drainage outfall from the railway to the River Hiz, and of any other permanent elements on the yellow land which is shown on the Open Space Plan, has been approved in writing by the local planning authority. The approved scheme of maintenance shall be permanently implemented.

**Reason:** In the interests of the amenity of the locality.

## **13 Construction site compounds, working space, etc**

i) **Details of any** external lighting to be installed at the Stotfold Road construction site compound **shall be submitted to and** approved in writing by the local planning authority **before use of the compound commences**.

ii) All construction site compounds, working space and temporary works shall be cleared upon completion of the construction of the development and the area shall be restored **to the reasonable satisfaction of the owner of the land** in accordance with **the provisions of article 24(4) of the Order**.

**Reason:** In the interests of local amenity.

## **14 Public footpaths**

The diverted routes of public footpaths FP026 and FP089 shall be opened for public use no later than the time of the first use of the railway by a public train.

**Reason:** In the interests of local amenity.

END

## **ANNEX 2**

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

Any person who is aggrieved by the making of a TWA 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 or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days from 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 three working days of the date of this decision letter.

### **CHALLENGES TO DEEMED PLANNING PERMISSION GIVEN IN CONNECTION WITH A TWA ORDER**

There is no statutory right to challenge the validity of the Secretary of State's direction that planning permission shall be deemed to be granted for development for which provision is included in a TWA Order. Any person who is aggrieved by the giving of the direction may, however, seek permission of the High Court to challenge the decision by judicial review.

**A person who thinks they may have grounds for challenging the decision to make the Order or the decision to give the direction as to deemed planning permission is advised to seek legal advice before taking any action.**