

# Network Rail (West Coast Main Line) (Stowe Hill) Order

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## **Network Rail (West Coast Main Line) (Stowe Hill) Order**

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Our Ref: TWA 3/1/247  
Your Ref: 7111/MARP/3607

18 December 2006

Dear Sirs,

### **Transport and Works Act 1992**

#### **Application for the proposed Network Rail (West Coast Main Line) (Stowe Hill) Order**

1. I am directed by the Secretary of State for Transport to say that consideration has been given to the application made by your client, Network Rail Infrastructure Limited (formerly known as Railtrack PLC), for the proposed Network Rail (West Coast Main Line) (Stowe Hill) Order ("the Order") to be made under sections 1 and 5 of the Transport and Works Act 1992 ("the TWA").
2. The Order, if made, would authorise the compulsory acquisition of land and a pedestrian right of way over land for the purposes of using, maintaining and gaining access to your client's pressure relief shaft ("PRS") at Stowe Hill in the district of Daventry, Northamptonshire, on land to the west of the A5 trunk road owned by Mr C J Miller.
3. Your client originally applied on 29 February 2000 for compulsory acquisition powers for the purposes of this PRS in its proposed Railtrack (West Coast Main Line) Order. The powers sought by your client at that time related to 6,130 square metres of Mr Miller's land, described as "plot 11". In addition to the site of the PRS itself, plot 11 included an area of land required for the creation of vehicular and pedestrian access routes to the PRS and for a work site in connection with maintenance of the PRS.
4. The Secretary of State's decision on the proposed Railtrack (West Coast Main Line) Order, following a public local inquiry held between 16 January and 6 December 2001, was set out in the Department's letter dated 26 March 2003 ("the 2003 letter"). It was explained in paragraph 40 of the 2003 letter that the Secretary of State had decided pursuant to section 13(3) of the TWA to defer his consideration of the compulsory acquisition powers over plot 11 sought by your client and to make a separate determination in that respect. For the purposes of this separate determination, the Secretary of State invited representations from your client and from Mr Miller.

**Representations received and changes to the Order**

5. Since the issue of the 2003 letter, the Secretary of State has received a series of representations about the Order from your client and Mr Miller. Each has been given the opportunity to comment in turn on the representations made by the other.

6. On 9 January 2006, your client informed the Secretary of State and Mr Miller that it had decided to reduce substantially the area of land comprised in plot 11, and in particular to remove from the Order the proposed power to acquire a vehicular right of way to the PRS. Accordingly, plot 11 now covers only the site of the PRS and its immediate curtilage (135 square metres) to enable future repair and maintenance work to be carried out, and the route of the proposed pedestrian right of way between the PRS and the gate in Mr Miller's field boundary adjacent to the A5 lay-by (26 square metres).

7. The principal issues covered in your client's and Mr Miller's representations are summarised below, followed by the Secretary of State's consideration of these issues. The summary does not cover any representations relating to the abandoned vehicular access and work site proposals.

## Summary of the Secretary of State's decision

8. **The Secretary of State has decided to make the Order, modified as requested by your client and with some further minor drafting modifications.** The reasons for his decision are given below.

### The objector's case

9. Mr Miller argued that the Order should not be made because the PRS on his land was not required. There was, accordingly, no compelling case in the public interest to justify the proposed compulsory acquisition powers. In support of his case, he said that the maximum speed for trains using the Stowe Hill tunnel was 125 miles per hour ("mph") and that your client's original proposal for trains to run at 140mph had been abandoned on grounds of cost. Your client had also told Mr Miller that there would now be only a marginal increase in the number of passenger trains using this route, as opposed to the 100% increase over a 10 year period forecast at the public inquiry referred to above.

10. On this basis, Mr Miller considered that the other three PRSs constructed by your client at Stowe Hill were sufficient and the fourth on his land was not needed. No modelling had been carried out to show that those three were ineffective for the speed and number of trains passing through the tunnel, or to show whether other more cost-effective traffic management measures such as signalling could be considered.

11. Mr Miller said that the licence agreement which he made to enable the PRS to be built on his land was not a relevant consideration in deciding whether to give your client compulsory acquisition powers. The determining factor for granting compulsory acquisition powers was the purpose for which the land was to be used. He considered also that your client, having chosen to construct the PRS by way of licence agreement, should now similarly purchase the land by agreement rather than compulsion.

12. Mr Miller and your client had, however, been unable to reach agreement on compensation for injurious affection on the basis of the statutory compensation code. The two main areas where differences remained were the assessment of increased network capacity and the assessment of noise levels resulting from that additional capacity and the PRS on Mr Miller's land. With regard to capacity, Mr Miller doubted the suggestion that there would be only a marginal increase in the number of passenger trains and considered that the forecasts in the West Coast Main Line Strategy 2003 prepared by the Strategic Rail Authority should be used. As for noise, he believed that your client should fund the cost of a survey to predict future noise impact on his property based on train types, speeds and topography. Noise levels in the vicinity had already increased substantially as a result of the upgrade of the West Coast Main Line and, with increased usage, would deteriorate further. Mitigation measures should be provided to reduce noise levels.

### Network Rail's response

13. Your client explained that the PRS on Mr Miller's land, together with three PRSs on land to the east of the A5, were constructed to mitigate the effects on passengers of pressure changes caused by trains running through the Stowe Hill tunnel at up to 140 mph. Research studies showed that, without mitigation measures, where a Class 390 (pressure-sealed) train travelling through the tunnel at the current maximum speed of 125 mph passed another type of train, passengers on the latter would experience pressure changes well in excess of the maximum tolerable for humans. Your client considered that, since the four PRSs installed at Stowe Hill provided effective mitigation for current operations, it was unnecessary to undertake further modelling to ascertain whether lesser mitigation measures would be effective.

14. Your client was seeking the powers needed to retain the PRS on Mr Miller's land both to mitigate existing train movements and to preserve the ability of trains to operate at 140 mph, since there was a prospect that Class 390 trains might run at faster speeds in the foreseeable future. If the PRS were to

remain, adequate provision was needed for its proper maintenance to ensure that it remained effective and did not become a danger to the railway.

15. The PRS was constructed on Mr Miller's land with his consent given by a licence agreement dated 27 March 2001 and following the grant of planning permission by the local planning authority. The work was carried out on the understanding that the necessary interests in land would be granted by Mr Miller to your client. Since construction, however, your client has been unable to acquire those interests from Mr Miller by negotiation and has concluded that without compulsory acquisition powers the matter was unlikely to be resolved with Mr Miller.

16. Your client said that Mr Miller was seeking an amount of compensation in respect of construction of the PRS which was far in excess of the open market value of the land and the amount of compensation payable under the statutory compensation code in respect of injurious affection.

17. An assessment of the effects of the (then proposed) PRSs at Stowe Hill was included in the environmental statement submitted by your client with its application for the proposed Railtrack (West Coast Main Line) Order. The environmental statement concluded that the changes in railway operational noise levels at Stowe Hill would be insignificant as the design of the PRS headworks would attenuate noise levels. Since there were no buildings in the vicinity of the PRS on Mr Miller's land, any diminution of value of the retained land as a result of noise would be minimal.

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

18. The Secretary of State has considered the arguments presented by Mr Miller and your client and has reached the conclusions set out below.

19. In line with the policy guidance in ODPM Circular 06/2004 (Compulsory Purchase and the Crichel Down Rules), the Secretary of State recognises that there must be a compelling case in the public interest to justify granting the compulsory acquisition powers sought by your client.

20. He notes that, as a matter of fact, the PRS in question has been built under a licence agreement with Mr Miller and with the benefit of planning permission from the local planning authority. The Secretary of State further notes that your client considers it necessary to retain (and hence to maintain) this PRS and the other three built in the area in order to mitigate the effects on rail passengers of train movements operating within the current 125 mph speed limit and, furthermore, to preserve the capability for trains to operate at higher speeds of up to 140 mph. Your client has not, however, been able to secure through an agreement with Mr Miller its ability to access and maintain the PRS, which is why it considers it necessary to have compulsory acquisition powers.

21. From the evidence available to him, the Secretary of State sees no good reason to disagree with the expert opinion of your client on the operational necessity for retaining this PRS, both for the purposes of current train movements and in order to ensure the capability for increased train speeds through the tunnel. Furthermore, he is satisfied that, in the absence of a negotiated agreement between your client and Mr Miller, it is necessary for your client to be able to access and maintain the PRS in order to ensure that it remains effective and does not become a danger to the railway (and in turn to public safety).

22. In the circumstances, the Secretary of State has concluded that the public benefit of granting your client compulsory acquisition powers over plot 11 clearly outweighs the private loss to Mr Miller. He considers, furthermore, that the area of plot 11 - which your client has substantially reduced since originally applying for those powers - is the minimum necessary to ensure that the PRS can be adequately maintained. He is accordingly satisfied that, having regard to the purposes of the Order and the policy set out in ODPM Circular 06/2004, there is a compelling case in the public interest to give your client compulsory acquisition powers over plot 11.

23. In reaching this conclusion, the Secretary of State has had no regard to the representations made by Mr Miller and your client about the amount of compensation which should be paid to Mr Miller for the acquisition of his land. By virtue of section 10(3) of the TWA, the Secretary of State is entitled to

determine the application without giving consideration to matters concerned with the assessment of compensation. In the event that, following the making of the Order, your client and Mr Miller cannot agree on either the value of the land acquired or on the amount of compensation due for injurious affection, the matter will be for determination by the Lands Tribunal.

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

24. **For the reasons given above, the Secretary of State has decided to make the Order, subject to some minor drafting modifications** which do not affect the substance of the Order.

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

25. 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. Your client is required to publish newspaper notice of the determination in accordance with section 14(4) of the TWA.

### **Challenge to decision**

26. The circumstances in which the validity of the Secretary of State's decision may be challenged are set out in the note enclosed with this letter.

27. A copy of this letter is being sent to Mr Miller.

Yours faithfully,

**Ellis Harvey**

Head of the TWA Orders Unit

## **Annex**

### **Right to challenge orders made under the TWA**

Any person who is aggrieved by the making of the 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.