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OUR REF: TWA/00/APP/6  
Your Ref: PI/18136/35

22 JUNE 2001

Dear Sirs,

**TRANSPORT AND WORKS ACT 1992  
TOWN AND COUNTRY PLANNING ACT 1990  
APPLICATIONS FOR THE PROPOSED RAILTRACK (SHORTLANDS JUNCTION)  
ORDER AND DEEMED PLANNING PERMISSION**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr P McMaster CB, FRICS, who held a public local inquiry between 5 and 13 December 2000 into applications made by your clients, Railtrack PLC ("Railtrack") for:-

- a. the Railtrack (Shortlands Junction) Order ("the Order") to be made under section 1 of the Transport and Works Act 1992 ("the TWA");
- b. a direction as to deemed planning permission ("the planning direction") to be issued under section 90(2A) of the Town and Country Planning Act 1990 ("the TCPA"); and
- c. conservation area consent to be granted under the Planning (Listed Buildings and Conservation Areas) Act 1990.

The application for conservation area consent to demolish the building at 31 Downs Hill is dealt with in a separate letter, issued today by the Secretary of State.

2. The TWA Order, if made, would authorise the construction and maintenance of works to alter the railway track layout at Shortlands Junction in the London Borough of Bromley, involving the re-alignment and grade separation of certain tracks. These works are designed to remove a number of track cross-overs and switches at the junction, with a view to enabling Shortlands junction to meet the needs of both Eurostar and domestic rail services. The proposed Order also seeks, amongst other things, powers of compulsory acquisition.

3. The planning direction that has been sought would give deemed planning permission for the development provided for in the proposed Order.



INVESTOR IN PEOPLE

4. A total of 172 objections to the proposed Order were initially received by the Department and of these 165 were outstanding at the start of the inquiry.

5. A copy of the Inspector's report of the inquiry is enclosed. His conclusions are set out in paragraphs 44 to 51 and he has recommended in paragraph 52 that the Order, as modified in inquiry document RT/I/13, should be made and in paragraph 53 that planning permission should be deemed to be granted for the works, subject to the conditions set out in inquiry document RT/I/38.

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

6. For the reasons given in this letter, the Secretary of State has decided to make the TWA Order, subject to modifications, and to direct that deemed planning permission be granted, subject to conditions. In a separate letter, he is granting conservation area consent, subject to conditions.

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

7. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. The relevant paragraph numbers of the Inspector's report are enclosed in brackets at the end of the section headings and for ease of reference, the issues are dealt with in the same order as they appear in his report.

### Objectives of, and justification for, the proposed scheme (45 and 51)

8. The Inspector accepted that Railtrack had a genuine problem with a lack of track capacity in this area. He was satisfied that the proposed scheme was the best way to meet the needs of Eurostar without reducing local train services. In his view, the objectors had not shown that timetabling could provide a sufficient solution to the problem. If nothing was done, fewer local trains would be able to run when Section 1 of the Channel Tunnel Rail Link (CTRL) came into service in 2003. He accepted Railtrack's evidence that the main benefit of the scheme would be the maintenance of local services; that the scheme would make operation of the junction more reliable, with safety and punctuality benefits; and that the scheme had a strongly positive cost benefit ratio.

9. In the Inspector's view, the scheme was consistent with Government transport policies. With regard to planning policies, whilst it would be in accordance with some, it would be contrary to others which were mainly concerned with the effect of tree loss on visual amenity and the character of a conservation area. On balance, he considered that the proposals were generally consistent with planning policies and that the conflicts were not sufficiently serious to justify refusing the applications.

10. The Secretary of State agrees with the Inspector's analysis of the justification for and benefits of the scheme for national and local transport services, and he is satisfied that a clear need for the scheme has been established. The Secretary of State notes that the scheme is consistent with national transport policies; and that it is consistent with some planning policies but conflicts with others, the conflicts arising from the adverse effect of the loss of trees on the character of the Conservation Area and on the visual amenities of the locality. He is satisfied, however, that subject to consideration of other relevant issues as set out below, these conflicts with local planning policies set out in the UDP, when balanced against the transport and planning policies that the

scheme accords with, would not be sufficiently serious to justify refusing the applications if the scheme was otherwise in the public interest.

Justification for the particular works and land take; the alternatives; and the compulsory land acquisition (46 and 51)

11. In the Inspector's view, Railtrack had put forward detailed and convincing evidence about their consideration of alternative sites and methods for the works which had not been effectively countered by objectors. Bearing in mind Railtrack's obligations to the travelling public, he considered it unrealistic to expect them to design a scheme which did not allow safe and efficient operation of the railway. Given that the existing signal box and substation were needed, he considered that it would be unreasonable to expect Railtrack to demolish these buildings. The Inspector was satisfied that the land which Railtrack proposed to acquire was the minimum necessary for the scheme and that, if the Order were to be made, there would be a compelling case for compulsory acquisition in the public interest.

12. The Secretary of State agrees with the Inspector's conclusions on these issues. He accepts that the proposed scheme was selected only after careful consideration of possible alternatives. He also accepts that Railtrack should not be expected to demolish the signal box and substation if they are still needed. Furthermore, the Secretary of State is satisfied that the land to be acquired compulsorily is the minimum necessary for the proposed scheme and that this acquisition would be justified if he considers the scheme to be in the public interest.

Likely effects of construction and operation on local residents, businesses and statutory undertakers (47 and 51)

13. The Inspector concluded that, notwithstanding the measures that Railtrack would take to mitigate the adverse effects of the proposals, there would still be considerable visual and noise impact for many people during construction. The damage caused to the appearance and character of the area by tree clearance would adversely affect many local residents. With completion of the works, there would be little noise impact, but the visual impact would continue for many years until replacement planting could provide adequate screening and the present wooded character of the area was recovered. The Inspector was satisfied that the wheel washing and traffic management measures to be taken by Railtrack would contain the problems of site traffic to tolerable proportions.

14. The Inspector noted that local businesses and statutory undertakers had not objected to the scheme and, apart from the Sloane Hospital, with whom agreement had been reached, it would have no significant effect on them.

15. The Secretary of State agrees with the Inspector that, even with the mitigation measures proposed by Railtrack, the scheme would be bound to have a considerable visual and noise impact for many people during construction, and that the visual impact would continue for many years after the works had been completed. The Secretary of State has given due weight to these adverse impacts, and to the mitigation measures proposed, in assessing whether it would be in the public interest for the scheme to be allowed to go ahead. He also recognises that the movement of vehicles servicing the site will have adverse effects on local residents during the construction phase, although he agrees with the Inspector that the traffic management measures proposed by Railtrack would contain this problem to tolerable proportions.

Likely effects of construction and operation of the scheme on the environment; any ecological impacts; and effects on nature conservation and on the built heritage (48 and 51)

16. The Inspector considered that the Environmental Statement and supplementary documents gave a satisfactory assessment of the environmental effects and impacts of the proposed scheme. In his view, the adverse effects of the proposed scheme on the environment would be due mainly to tree loss and to noise, dirt and traffic problems during construction. Whilst he accepted that Railtrack would take steps to reduce the adverse impacts of the scheme, it could not eliminate all of them during the construction phase. The Inspector noted that objectors largely accepted that with the completion of construction, the damage remaining would be the visual effect of tree loss and the exposure to view of the railway. Given Railtrack's replanting scheme, this damage would, in his view, eventually be repaired.

17. The Inspector considered that there would be no significant harm to the ecology of the area or to nature conservation by the proposed scheme. The proposed scheme would have no direct effect on buildings apart from the demolition of the house at 31 Downs Hill. There would, however, be an indirect effect of tree loss on the setting and character of the built heritage. He accepted that the damage caused by this would be slowly repaired as the Railtrack replanting scheme took effect.

18. In regard to the demolition of 31 Downs Hill, the Inspector concluded that this was necessary if the proposed scheme was to be implemented; and that, given the character of that house, its loss would not damage the Downs Hill Conservation Area.

19. The Secretary of State agrees with the Inspector's finding that the Environmental Statement and supplementary documents comprise a satisfactory assessment of the environmental impact of the proposals. He confirms, pursuant to section 14(3A) of the TWA, that he has considered the environmental statement submitted with the Order application and has complied with the obligations under section 10 of the Act in relation to all objections which related to the environmental statement. He agrees with the Inspector that the adverse impacts of the scheme on the environment would be mainly due to tree loss, and to noise, dirt and traffic problems during construction, and he has taken these impacts into account in arriving at his decisions.

20. The Secretary of State concurs with the Inspector's view that the scheme would not cause significant harm to the ecology of the area or to nature conservation. In a separate letter issued today by the Department for the Environment, Food and Rural Affairs, a licence is being granted under regulation 44(2)(e) of the Conservation (Natural Habitats &c.) Regulations 1994 to authorise Mr Dominic Woodfield of Bioscan UK Ltd to capture, disturb, transport, obstruct and destroy roosts of Pipistrelle bats, as a consequence of the scheme.

21. Furthermore, as explained in the separate letter referred to at paragraph 6 above, which grants conservation area consent for the demolition of the house and garage at 31 Downs Hill subject to conditions, the Secretary of State agrees with the Inspector's conclusions in respect of that demolition. He is satisfied that the loss of these buildings would not be detrimental to the character and appearance of the conservation area.

Adequacy of measures to be taken to mitigate adverse environmental effects (49 and 51)

22. The Inspector accepted that the mitigation measures proposed by Railtrack would not completely alleviate the adverse effects of the proposed scheme for a long time. However, in his view the measures were extensive and would leave the locality largely undamaged when, after

about 15 years, the replanting was effective. He considered that the steps which Railtrack would take to reduce the ill-effects and problems of the proposed scheme would do as much as is realistically possible, especially bearing in mind that the London Borough of Bromley would have control over significant aspects of the proposals through the approval of reserved matters in respect of design, external appearance and landscaping.

23. The Inspector considered that it would not be reasonable to require Railtrack to demolish, or reduce in height, the substation or signal box, both of which were in use and needed for future operations. Also, in his view, existing conditions and controls proposed for the scheme were sufficient to ensure responsible operations, and further conditions and controls would not be reasonable.

24. The Secretary of State agrees with the Inspector that although the mitigation measures proposed by Railtrack cannot completely alleviate the adverse impacts of the scheme during construction, and that it would take many years for replacement planting to become effective, the mitigation measures to be taken are nevertheless as extensive as can reasonably be expected. He is satisfied that the conditions proposed for the requested deemed planning permission (Inquiry Document RT/I/38) have been carefully worked out so as to give the local authority a reasonable and appropriate degree of control over significant aspects of the details of the proposals.

25. The Secretary of State is required by section 14(3AA) of the TWA to describe the measures to be taken to avoid, reduce and, if possible, remedy any major adverse environmental effects. In this respect, he considers that there are some environmental effects of the scheme which would be likely to have a major adverse impact if they were not to be mitigated.

26. In his view, the adverse effect of the loss of trees would be major if not mitigated. He notes, in this respect, that Railtrack have proposed a number of planning conditions designed to ensure that as many trees as possible are preserved, that measures are taken to protect the trees that are retained, and that replacements are provided for any trees that are to be felled, such replacements to be of a size, species and in a location to be approved by the local planning authority.

27. The Secretary of State also considers that the adverse impact from construction noise would be major, if not mitigated. In this regard, he notes that Railtrack have undertaken to seek consents from the London Borough of Bromley under section 61 of the Control of Pollution Act 1974 requiring them to use best practicable means on site to minimise noise levels; and that where the Council consider that excessive noise levels will nevertheless occur, mitigation measures such as noise insulation, the provision of screens, temporary re-housing or other appropriate measures are to be agreed with the Council and offered to affected parties. He notes further that, in regard to operational noise, noise barriers are to be provided on the east side of Work No. 1 to protect properties in Downs Hill and on the east side of Work No. 3 to protect properties in the Trees Estate and Alexander Court. These, and other principal mitigation measures, are set out in Inquiry document RT/I/10.

28. The Secretary of State is satisfied that these proposed mitigation measures will reduce the adverse environmental effects of the scheme so far as is reasonably possible, and that the residual adverse impacts would not be major. To the extent that adverse impacts will still remain, the Secretary of State considers that these must be weighed against the public benefits of the scheme.

## **Inspector's overall conclusions and recommendations (51 to 53)**

29. The Inspector was satisfied that the proposed scheme was the best way to address the needs of Eurostar operations without adversely affecting local train services. He concluded that it was consistent with Government transport policies and some planning policies. Where the scheme conflicted with some planning policies, the conflicts did not justify refusing the applications.

30. The Inspector found that the adverse effects from construction and tree clearance would have significant impact for local residents and the environment. He was satisfied, however, that the mitigation measures proposed would reduce the ill-effects as much as realistically possible. He concluded that the impacts on local residents and on the environment and the built heritage were not sufficient to outweigh the advantages of the scheme for national and local transport services.

31. The Inspector concluded that the scheme met the requirements of the TWA and other legislation; was consistent with Government policies and the Development Plan; was justified on its merits; was in the public interest; and that its benefits to the wider public outweighed any disbenefits. He therefore recommended that the Railtrack (Shortlands Junction) Order be made, as modified by the amendments set out in Inquiry document RT/I/13. He also recommended that a direction be given that planning permission be deemed to be granted for the works authorised by the Order, subject to the conditions set out in RT/I/38.

## **The Secretary of State's overall assessment and decision on the Order**

32. For the reasons given in this letter, the Secretary of State agrees with the Inspector's conclusions about the need for and benefits of the proposed scheme, and the need for the proposed land acquisition. Whilst the Secretary of State recognises that the scheme will have adverse impacts on local residents and on the environment, as described in this letter, and whilst he accepts that the extensive mitigation measures proposed cannot completely remove or remedy these adverse effects, he nevertheless agrees with the Inspector's overall conclusion that the transport benefits of the scheme outweigh its disadvantages and that it would be in the public interest to allow it to go ahead.

33. Accordingly, the Secretary of State has **decided to accept the Inspector's recommendation that the Order be made** in accordance with Inquiry document RT/I/13. He has, however, decided to make the following further modifications to the Order:

- to require Railtrack to display for a period of not less than two weeks a notice of any intention to exercise the power in the Order to prohibit or restrict the parking, stopping, waiting, loading or unloading of vehicles in certain streets specified in the Order. The Secretary of State considers that it is appropriate to require Railtrack to alert in this way users of the streets in question of any such intention;
- to delete the savings included in the draft Order in respect of the Railways Act 1993, which he considers to be unnecessary; and
- to amend the provisions aimed at preserving rights regulated under the Railways Act 1993 so as to refer to any estate, right or interest "which is subject to an access contract under the Railways Act 1993"; this is to correct the inaccurate reference in the draft Order, as applied for,

to the regulation of estates, rights or interests by “Access Conditions” approved by the Rail Regulator; and

- to make certain minor drafting amendments which do not affect the substance of the Order.

The Secretary of State is of the opinion that none of these changes make any substantial change in the proposals. A notice of this determination given pursuant to section 14(1)(a) of the TWA is enclosed.

### **Planning Direction and Conditions**

**34. The Secretary of State also agrees with the Inspector’s recommendation that deemed planning permission should be given for the development for which provision is made in the Order, subject to conditions.**

35. The letter conveying the planning direction will issue shortly, at the same time as the Order is made (which will follow publication of a notice of the determination in the London Gazette) and that letter will set out the planning conditions in full. In summary, the planning conditions will require the following, with the reasons for these conditions given in brackets (the abbreviation “LPA” is used for “the local planning authority”):-

- (1) development not to be commenced until details of design and external appearance have been approved in writing by the LPA; and the development to be carried out in accordance with the approved details (to ensure a satisfactory standard of design and external appearance);
- (2) development to be begun within five years of the date when the Order comes into force, or within three years of the date of approval of the last of the reserved matters to be approved, whichever is the later (the standard time-limiting condition under the TCPA is considered appropriate in this case);
- (3) before development commences, details of a landscaping scheme, including the materials of paved areas and other hard surfaces, to be submitted to and approved in writing by the LPA. Once approved, the scheme to be implemented in the first planting season which follows the completion of the development (to secure a visually satisfactory setting for the development);
- (4) a landscape management plan, specifying management proposals for at least five years, and including details of long term design objectives, responsibilities and maintenance schedules for all landscaped areas in Railtrack’s ownership, to be submitted to and approved in writing by the LPA; and the plan to be carried out as approved (to ensure that the setting for the development is maintained in the future);
- (5) Railtrack to afford access to an archaeologist nominated by the LPA to observe the excavations, carry out investigations and record items of interest (to enable consideration to be given to preservation in situ and/or recording of items of archaeological interest);
- (6) within 12 months of the completion of the development, garaging or parking facilities to be provided for residents of the Trees Estate in equivalent number to those existing before commencement of the works, and including a lighting scheme, in accordance with details to be submitted to and approved in writing by the LPA (to safeguard the amenities for residents of the Trees Estate);

- (7) within 12 months of the completion of the development, garaging or parking facilities to be provided for residents on Alexander Court, including a lighting scheme, in accordance with details to be submitted to and approved in writing by the LPA (to safeguard the amenities for residents of Alexander Court);
- (8) before any train services are operated over Work No.1 or Work No.3, noise barriers to be constructed between points A and B, C and D, and E and F specified on plan No. BE 6593-182 Rev P2, and to be maintained by Railtrack in accordance with details to be submitted to and approved in writing by the LPA (to safeguard the amenities of local residents and the Sloane Hospital);
- (9) no trees or tree groups specified for retention in the Tree Condition Survey by W S Atkins/PBA and associated schedule dated 27 October 2000 to be felled, lopped or pruned before or during the carrying out of the development without the prior agreement in writing of the LPA (to ensure the preservation of as many trees as possible in the interest of amenity);
- (10) any work to trees agreed by the LPA are to be carried out in accordance with British Standard 3998:1989 (to ensure compliance with good arboricultural practice and in the interest of the visual amenities of the area);
- (11) before development commences, details of the specification and position of fencing and other measures to protect retained trees (in accordance with BS 5837:1991) to be submitted to and approved in writing by the LPA; fencing to be carried out before development commences and maintained during building work; and areas enclosed by fencing not to be used for any purpose, including storage (to ensure compliance with good arboricultural practice and in the interest of the health and visual amenity value of retained trees);
- (12) any trees felled in order to implement the development to be replaced in the first planting season after completion of the development by trees of a size and species, and in locations, to be approved in writing by the LPA. Any replacement trees which die, are removed or become seriously damaged or diseased within 5 years of the completion of development to be replaced in the next planting season with others of a similar size and species (to ensure a visually satisfactory setting for the development);
- (13) before development commences, details of a scheme for the protection of wildlife habitats and bats and badgers to be submitted to and approved in writing by the LPA in consultation with English Nature, and protection measures to be implemented in accordance with those details (to safeguard the nature conservation value of the area);
- (14) before development commences, details of construction site boundaries, including means of enclosure, pedestrian routes around the site and their means of illumination to be submitted to and approved in writing by the LPA. These features to be put in place before development commences and maintained to the satisfaction of the LPA during the construction period (to safeguard the amenity of adjoining occupiers and the safety of pedestrians);
- (15) before development commences, details of site access arrangements, including dimensions of visibility splays and sight lines, to be submitted to and approved in writing by the LPA; and the access to be laid out as approved (to ensure appropriate access to and from the site);

(16) during the carrying out of development, suitable vehicle wheel-washing facilities to be provided. Any accidental accumulation of mud on the highway from vehicles to be removed without delay and under no circumstances left behind at the end of the working day (in the interest of pedestrian and highway safety); and

(17) within 12 months of the completion of work at the two construction sites, the sites to be reinstated in accordance with details to be submitted to and approved in writing by the LPA (to safeguard the amenity of the area).

36. Copies of this letter, the section 14(1)(a) notice and the Inspector's conclusions and recommendations are being sent to those who appeared at the inquiry and to the remaining objectors.

Yours faithfully,

**ALAN GRAY**  
Head of Planning Division 5