

THE NETWORK RAIL (LONDON TO CORBY) (LAND ACQUISITION AND BRIDGE
WORKS) ORDER

CLOSING SUBMISSIONS ON BEHALF OF THE PROMOTER

Introduction

1. The Promoter invites the Inspector to recommend that the Order, in its revised form as submitted to the Inquiry, is made in the terms sought. The Secretary of State is invited to accept that recommendation.

The aims of, and needs for, the Order

2. This Order will deliver limited, but critical, components of the London to Corby Electrification and Capacity Upgrade Project (“L2C”). The aims of the Order and the benefits of the L2C scheme which it supports are not the subject of any dispute at all. Indeed the only objector which appeared at the Inquiry, the Cycling Campaign for North Bedfordshire (“CCNB”), accepted that there were “big benefits in increasing capacity” and that it had “no concerns” about the purpose and aims of L2C.
3. In the absence of any challenge, it is unnecessary to repeat in any detail the aims of, and need for, the L2C scheme. They are set out in detail in the Promoter’s Statement of Case (Part 5) and developed further in Mr Akers’ Proof (Parts 4-6). By way of short summary, it suffices to say L2C is a project of considerable significance for the railway. It delivers a material increase in capacity on the Midland Main Line between London and Corby, one of the most crowded parts of the rail network, and one of the most constrained locations on the entire rail network. There can be little doubt as to the significant public interest in the delivery of L2C.
4. The specific purpose of the Order is to enable the delivery of the series of works, which are addressed below. At Bromham Road, immediately to the north of Bedford Station, the bridge structure is too low to accommodate the electrified lines and there

is no practical scope for lowering the lines. Accordingly, it is necessary to demolish the bridge, and reconstruct it on its existing alignment with greater clearance to the railway. Without those works, the OLE cannot pass beneath the bridge and the electrification would not be possible. In this location, the Order would authorise the works as well as authorising the acquisition of the land and rights necessary for their construction. The Order would also authorise temporary works necessary for the construction, which in practice here would include the installation of a temporary footbridge. There is also a request for deemed planning permission for the works.

5. At Irthlingborough Road, the Promoter has the necessary powers to demolish the existing bridge to enable the OLE to be installed beneath it, and has carried out those demolition works. However, to reinstate the bridge on its raised alignment it would require land and rights from third parties. The Order would authorise the acquisition of that land and those rights.
6. At three locations, the OLE apparatus needs to be installed on the outside of viaducts, potentially extending into airspace which is outside the Promoter's control. For that reason, it needs additional rights in these locations. Again, the Order would authorise the acquisition of those rights for that purpose.
7. In two other locations (Odell Viaduct and Isham Station Road Bridge), the need for land for bridge works has been addressed in negotiation with objectors since the application was made. Accordingly those parts of the propose Order relating to those locations are not pursued, and this is reflected in the amended Order submitted to the Inquiry. Powers to close the Souldrop Level Crossing have been obtained through other means, resulting in the withdrawal of that part of the Order as well.
8. There are constraints on the railway which all need to be overcome to deliver the benefits. Many of those constraints have been addressed on existing land, and through existing powers and permitted development rights. In other instances separate authorisations such as temporary traffic regulation orders have been sought. The fact that the Order relates to a limited part of the L2C project does not reduce the weight that should be given to the benefits of the scheme. As an obvious example, if the OLE cannot pass beneath Bromham Road immediately to the north of Bedford, the purpose of the L2C scheme to electrify the railway to the north of Bedford would immediately

be frustrated. The same is true of the remaining parts of the Order: OLE must be attached to the three viaducts in question in that location to allow the electrification to be delivered. At Irthlingborough Road, the replacement bridge requires more land because its vertical alignment must change to pass over the OLE.

9. For those reasons the wide, and undisputed, benefits of L2C all weigh in favour of the Order scheme and provide a strong justification for making the Order.

Planning policy

10. The strong policy support for L2C is set out in the Statement of Case and in more detail in Mr Rivero's Proof, at sections 5 and 6. Again, this is not a matter of any dispute and therefore it is unnecessary to address the issue in detail in closing. It is worth noting that the electrification of the railway to the north of Bedford is expressly supported by a saved policy of the Bedford Local Plan 2002 (see Mr Rivero's proof at 6.2.1).

Bromham Road Bridge

11. The majority of outstanding objections relate to the proposals at Bromham Road Bridge. The key issues relate to (a) the suitability of the proposed replacement bridge and (b) the impact of the temporary works during the reconstruction of the bridge.

(a) The suitability of the proposed replacement bridge

12. The primary case on this issue is put by CCNB (supported by others OBJ/1, 2, 3, 9, 11, 13, and 14). The issue can be summarised as whether the Order should not be made because it does not make provision for a segregated cycleway over the bridge.

13. The context for this argument needs to be properly understood:

- a. The existing road does not have such provision for cyclists;
- b. The Promoter has been instructed and funded, ultimately by the Secretary of State, to deliver L2C in an economical and efficient manner, consistently with its licence obligations. It has not been instructed to provide "betterment" for road users at Bromham Road or anywhere else (Mr Akers' Proof).

Accordingly, there is a clear justification for promoting a “like for like” replacement;

- c. The proposed bridge is certainly no worse for road users. In fact, through a minor widening on the existing substructure, 600mm of additional “road bed” is made available. This is primarily taken up by providing a widening to the southern footpath (which is currently narrow and sub-standard). The Inspector can therefore report that the reconstructed bridge would have no detriment to road users as compared to the existing position – a point accepted by Mr Blakeman in cross examination. Mr Blakeman’s proposals are, in his words, for a “significantly better” bridge than that which is currently in place;
- d. The Promoter has not been unsympathetic to the interests of cyclists. Through the local highway authority, Bedford Borough Council (“BBC”), the Promoter discussed the possibility of entering into an agreement to deliver a different bridge. That would, obviously, have necessitated BBC or another third party contributing to the additional costs of providing a new cycleway. BBC did not take that approach forward;
- e. Consequently, the Promoter has not developed a full design for a wider bridge which would accommodate a segregated cycleway. What it can say – and does say through Mr Butterworth’s evidence (Proof and Rebuttal) – is that a wider bridge would introduce cost and complexity, since it would require further works to the substructure, which might include the need to fully demolish the existing substructure. Aside from the cost and programme implications that is likely to have increased impacts on the operational railway. There may be different land requirements relating to a wider structure, and different impacts;
- f. It follows that there is no “worked up” alternative to the Promoter’s scheme which can be properly considered;
- g. It is inevitable that rejecting the Promoter’s proposals will at the very least delay the benefits of the wider L2C scheme. Accordingly, so far as there is a balance to be struck at all, the delay to the substantial public interest in

delivering L2C must be weighed against any benefits which *might* be derived from pursuing a different bridge design;

- h. The position of the local highway authority is a matter which should be given considerable weight given that the Promoter is not the body responsible for the arrangement of Bedford's road network. Whilst a clearer articulation of BBC's position might have assisted, the bottom line is that they do not object to the Order scheme. They have entered into an agreement with the Promoter and have accepted the highway design which is in the proposals before this Inquiry. BBC is the "custodian" of the interests of the users of the highway, and it clearly has accepted that those interests are adequately served through these proposals, since otherwise it would doubtless have pursued its representations in this process.

14. In that context, there is a fundamental question as to the materiality of CCNB's objection to the Secretary of State's decision. Alternative proposals are not automatically relevant to planning decisions; generally speaking they become material when there is a substantial planning objection to the proposal, and an alternative has been properly evidenced: see *R (Langley Park School for Girls) v Bromley LBC* [2010] 1 P&CR 10, per Sullivan LJ at [51]-[55]. In that case, the Court of Appeal accepted that relevant factors in assessing whether an alternative proposal was material (i.e. whether it needed to be considered at all – rather than the weight to be attached to it) included the nature and degree of the harm arising from the proposal, the nature and urgency of the need, and the extent to which the feasibility of such alternatives had been demonstrated.

15. The Promoter submits that in this case, there is no planning harm arising from the replacement bridge proposals. The replacement bridge is no worse – in fact marginally better – for road users. Further, the alternative, whilst undoubtedly feasible as a matter of pure engineering, has not been assessed or costed, and hence no decision has been made to fund it from the public purse. Like the case discussed in *Langley Park* at [51], "an unlikely possibility that a more acceptable scheme might be devised could not, on any rational basis, be a reason for refusing planning permission for a scheme to which there was no planning objection". When the nature and urgency

of the need for the replacement bridge is also taken into account, there is clear case for saying that the alternatives canvassed by CCNB are simply not relevant to the Secretary of State's determination.

16. Even if the CCNB proposals are treated as relevant, they should be given limited weight. The desirability of improving cycle provision in Bedford is accepted but:

a. There is no specific planning policy support for a segregated cycleway on Bromham Road Bridge. Mr Blakeman points to three documents to advance his contrary argument. The first is Figure 20 of the 2002 Local Plan (NR51, p 116). That figure appears to indicate a cycle route across Bromham Road Bridge (without specifying the form of such a route). However, Figure 20 is in the supporting text to policy T14, which has not been saved. Accordingly this represents an historical development plan position, and not the current state of policy. The second is a "background paper" to the 2013 Allocations plan (NR87). That background paper is not part of the development plan. Whatever it said about Bromham Road was not, in fact, translated into development plan policy. Moreover whilst the document identified Bromham Road Bridge as a "required improvement" to the cycle network, the form of such improvement is not specified. The third document is the Bedford Central Town Masterplan (NR55). That is proposed to be an SPD to the emerging local plan, and hence it is currently neither part of the development plan nor adopted SPD. Moreover, in Figure 16 it does *not* show a cycle route over Bromham Road Bridge;

b. A longstanding aspiration to achieve an improvement for cyclists in this location does not equate to policy support for such a position, nor to a planning objection to the Order proposals. It is an aspiration to which the Promoter is sympathetic, but it is not one which should weigh against these proposals.

17. As to CCNB's argument for a rearrangement within the proposed "road bed" (Proof 6.2.7.2.2), this is ultimately a matter which is answered by the fact that BBC do not object to the proposed road layout. Within the physical constraints of the bridge (both

its width and its structural constraints), BBC is the arbiter of the road arrangements. It would be inappropriate in these circumstances for the Promoter to advance a road layout which is different from that agreed with BBC.

18. The Promoter's sympathy for the interests of cyclists in Bedford is not hollow. It has agreed with BBC that it will contribute to the design of a separate cycle bridge over the railway in the vicinity of Bromham Road; it has further waived certain rights which it would have in respect of a new crossing of the railway, and in doing so has contributed to the viability of such a scheme. Ultimately, however, such proposals are not before the Inspector or the Secretary of State.

19. For all those reasons, the Promoter respectfully submits that CCNB's objection, does not weigh against the Order scheme.

(b) Construction impacts

20. There will inevitably be disruption to users of the bridge during its demolition and reconstruction. The Promoter considers that those effects have been mitigated so far as possible, and again the absence of objection by the local highway authority is material here.

21. One of the means by which the disruption during construction of the bridge is mitigated is through the provision of a temporary footbridge over the railway. The Promoter considers this necessary to ensure a degree of connectivity during the construction period. The footbridge is authorised by Article 4(3)(e) of the draft Order and, so far as it is required, would benefit from deemed planning permission under the request since it would form part of the "works" authorised under the Order. However, the precise form of the footbridge is not settled. The Promoter continues to work up a scaffolding design which will best address the relationship with adjacent residential properties at Granet Close, and any impacts on the established trees at Spenser Road.

22. As to the former, the Promoter has reached an in principle agreement with the Guinness Partnership for the use of the land at Granet Close, and for the mitigation of impacts through (a) providing suitable hoarding on the bridge and (b) so far as necessary, offering to place privacy film on windows of flats in Granet Close. The

execution of that agreement by Guinness is awaited, and expected next week. However, in any event, these impacts can be addressed through the proposed planning condition.

23. As to the latter issue, there is a clear desire on behalf of the Promoter to protect the three established Plane trees regardless of the fact that they are no longer subject to a TPO. It has assessed their condition, and is now evaluating designs to minimise the impact on those trees. There is likely to be an impact through the need to prune or lop branches from at least one tree. As explained by Mr Butterworth, impacts on the root systems can be minimised or excluded through placement of the scaffolding.
24. These are all matters of detail which, whilst advanced, are not finalised. For that reason, the Promoter proposes a prior approval condition which will ensure that the local planning authority is satisfied as to these issues before the temporary bridge is installed.
25. As to other construction impacts, there will be an impact on the station car park through the siting of a crane. This will require the suspension of parking bays, although the time period for that has been minimised (and the scope reduced) during the evolution of the design, as explained in Mr Glynn's proof (p 17). Notably, the disruption to the car park will now be reduced to a three month period. The Promoter is hopeful that an agreement will be reached with Govia Thameslink to address their outstanding objection in the coming week.
26. For those reasons, the construction impacts of the scheme have been shown to be minimised and capable of being adequately managed. They do not present any reason for rejecting the Order scheme.

Irthlingborough Road

27. Bovis Homes' objection has been resolved. It is now a matter of agreement that the works proposed will not frustrate the delivery of the Stanton Cross scheme, and the Promoter continues to work with Bovis Homes to deliver "Route 2", a new crossing of the railway. As has been made clear in correspondence, if Route 2 can be delivered in a timely fashion and Irthlingborough Road is permanently stopped up, then the Order powers will not be relied on. However, it is clearly inappropriate to assume that

this will happen and to make no provision for the reconstruction of the existing bridge, since the delivery of Route 2 is dependent on Bovis Homes progressing that scheme.

28. Cadent's objection has been in substance resolved, and upon execution of the agreement it is understood that it will be withdrawn. It is hoped that this will be resolved within the next week.

The viaducts

29. In light of Bovis's withdrawal, there is no outstanding objection to the powers in respect of the three viaducts. The limited rights sought here are clearly necessary and appropriate to deliver the electrification of the railway.

Conclusions

30. The Promoter submits that all the evidence to this Inquiry demonstrates a compelling case for the Order, both in terms of the works authorised and the land and rights to be acquired. They will ensure the timely delivery of the very significant public benefits of L2C. Accordingly, we invite the Inspector to firmly recommend the confirmation of the Order to the Secretary of State.

Richard Turney

Landmark Chambers

7 February 2019