

The Secretary of State for Transport
c/o Transport Infrastructure Planning Unit
Department of Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Your Ref:
Our Ref: FMO.NOR103.425
Doc No: 31979758v4
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By special delivery and by email: transportinfrastructure@dft.gov.uk

Dear Sirs

**Transport and Works Act 1990
The Northumberland Line Order (the "Order")
Objection on behalf of the Northumberland Estate**

1. We act on behalf of the various individuals, trusts, companies and other businesses comprised within the "Northumberland Estates" (being the term used to represent all the business and other interests of the Duke of Northumberland (from time to time) and the Percy family) which are or may be affected by the Order including (but not limited to) the Honourable Matthew White Fifth Viscount Ridley the Honourable James William Eustace Percy and the Most Noble Ralph George Algernon Twelfth Duke of Northumberland (in their capacity of Trustees of various Trusts of the Northumberland Estates), Northumberland Estates Limited, Northumberland Estates Investments Limited, and any other interests or group of companies related to these interests (all of whom are collectively referred to in this letter as the "Estate"). The Estate have been served with Notices of the Application dated 27th May 2021 relating to the Order to "acquire land or rights in land compulsorily, to extinguish rights over land and to use land temporarily".
2. On behalf of the Estate we hereby object to the Order.
3. The Estate expressly reserves its position as regards the service of notices on Viscount Ridley. As the applicant for the order was made aware, Viscount Ridley has retired as a Trustee and his interest in any of the affected Trust properties transferred to and vested in the other trustees and a new trustee. It is furthermore noted that Viscount Ridley also owns land in his own right and which is not part of the Estate.
4. For the avoidance of doubt the Estate welcomes the broad objectives of the Northumberland Line Scheme ("the Scheme") in so far as it seeks to promote economic regeneration in Northumberland and the wider region. However the content of the application, the lack of clarity as to delivery and the absence of any meaningful evidence base in respect of the future operation of the Scheme gives substantial cause for concern.
5. The Estate's comments and objections are set out as follows:
 - Statutory context and legal tests;

- The structure of the Order and delivery roles ;
 - Prematurity;
 - Lack of operational case;
 - Measurement of outcomes;
 - Article 35;
 - Specific sites.
6. We note the statutory context in which the application is submitted and the broad ambit of the 1992 Act. However, the Act is not without limit or constraint and, as further set out below, we consider that vires issues arise, particularly in regard to Article 35.
 7. We note that the onus is firmly on the applicant for a TWA Order, ie Northumberland County Council (NCC), to justify that the Order is warranted in all regards. Where compulsory purchase powers are sought, with concomitant impacts on those whose interests are to be expropriated, it is necessary for an applicant to demonstrate a "compelling case in the public interest". That is a high threshold. In addition the Secretary of State's guidance in respect of TWA Orders identifies the purpose of the procedure to be followed is "to allow the Secretary of State... to come to an informed view on whether it is in the public interest to make the TWA Order" and that "the outcome is certainly not a foregone conclusion". It is therefore clearly incumbent upon the applicant to provide sufficient evidence in support of the proposed Order and Scheme to enable an informed view to be reached. To date there are substantial and fundamental gaps in the case that has been advanced including in respect of delivery and operation of the Scheme.
 8. It is also something of a peculiarity that NCC is the applicant. Whilst no point is made as to its legal capacity to apply for such Order, NCC is not a rail authority. Furthermore the bulk of the funding for the project (£140m) comes from the Department of Transport's Rail Network Enhancements Pipeline Fund (RNEP). There is a concerning absence of detail as to how precisely NCC will effect the delivery of the Scheme. It is understood that NCC will itself deliver the non-rail elements of the Scheme such as public highway works and that Network Rail and/or other parties will deliver the rail elements. Thus the role of the applicant for the Order is at best semi-detached from actual delivery of the core rail elements of the Scheme. Indeed, it is noted that paragraph 1.1 of NCC's Guide to the Application refers to "the specific role that the Order will play in providing NCC with powers to support the delivery of the Project". Even on its own terms NCC does not seek to deliver the project, but rather to "support" its delivery.
 9. There is thus a gap as to how precisely the Scheme will be delivered in terms of land ownership and the contractual terms between the various parties. The onus is squarely on the applicant to explain how, if the Order were to be confirmed, NCC will effect the delivery of the Scheme, contractually and in all other ways, by third parties. In short, who precisely is to do what and on what basis?
 10. For example, the diffuse nature of responsibility for the Scheme has already had practical consequences for affected landowners. Whilst SLC has been appointed by NCC to treat with affected landowners, the core rail design requirements are controlled by a third party, Network Rail. Notwithstanding that NCC is the applicant for the Scheme it is difficult to see that it has any meaningful degree of control over its precise design. To that extent meaningful discussion with NCC on such matters is compromised.

11. By way of further example, the supporting documents for the Order set considerable store by reliance on permitted development (p.d.) rights enjoyed by Network Rail. As NCC is aware those GPDO 2015 rights are available to railway undertakers on their operational land in connection with the movement of traffic by rail. They therefore apply to the existing rail network. However what is unclear is whether reliance on p.d. rights is only in respect of works to the existing network or also to new operational land to be delivered by the Scheme and, if so, to what extent.
12. More broadly, to what extent is it intended that land or interests acquired under the Order will be transferred by NCC to Network Rail or any other third party in order to deliver the Scheme? Clarification is required in respect of this.
13. It is also noted that the land-take proposed in many instances reflects a lack of certainty as to the Scheme's requirements. Given that the Order contains a hierarchy of appropriation or use, from outright acquisition of land or interests to creation of new rights and temporary uses of land, it is reasonable to expect that the applicant is clear as to precisely what it requires. However, in the absence of planning permissions and final design it is clear that NCC has at this stage erred on the side of caution to an unwarranted degree to include as "pink land" areas that cannot possibly be required outright. To this extent the Order is clearly premature and is being promoted in advance of reasonable certainty and clarity as to land-take requirements. In any event a thoroughgoing review of land-take is required to be undertaken by the applicant.
14. At the heart of any decision in respect of the Order is the need for sufficient certainty that it will be operationally viable. If the Order is to be justified it is essential that a clear operational case is made out and that it is demonstrated that there is no likelihood that it will be a "White Elephant" and future burden on the public purse. In the present context no informed comment can be made on the operational case for the Northumberland because no such case has been made out with only very tentative reference being made to a Train Operating Company (TOC). The absence of such justification means that on the present basis the Secretary of State must decline to make the Order.
15. In addition the Order is ambitious in the nature and extent of its aims and objectives. What is absent however is what level and nature of economic growth, i.e. both quantifiable and qualitatively assessed, comprises such aims. The absence of identifiable targets undermines the credibility of the aims. In any event, what methodology is proposed to be used to identify and attribute any future growth to the Scheme and therefore assess whether aims and objectives have been achieved?
16. Of particular concern to the Estate is the inclusion in the Order of Article 35. It seeks modification of agreements relating to land, namely wayleave agreements between the Estate and Network Rail ("the Wayleave Agreements"), and further states:
 - Art 35 (2): *On the bringing into use of all or any part of the development any obligation under the relevant wayleave leases to pay the rent is to cease to have effect.*
 - Art 35 (3) *Network Rail must pay to the landowner a capitalised sum by way of compensation for any loss arising from the operation of paragraph (2), such compensation to be determined, in case of dispute, under part 1 of the 1961 Act.*
17. The Explanatory Memorandum to the Order states:
 - *Article 35 ...makes provision to modify agreements relating the land on which part of the railway are built. These agreements date back to the 19th century and were entered into by the railway company and the landowners when the railway between*

Ashington and Newcastle was originally constructed following authorisation by local Acts.

- The agreements include wayleave leases for terms of up to 1000 years which confer rights on the railway company to construct, maintain and use the railway on the land, and contain provisions relating to payments to the landowner in respect of the transport of freight and passengers on the railway. The provisions in respect of payments do not reflect the way in which the modern railway is owned and operated and give rise to the potential for disagreement between the parties, particularly as the use of the railway is increased to include passenger services. Paragraph (2) therefore provides that Network Rail must pay to the relevant landowner a capitalised sum by way of compensation for such losses arising as a result of paragraph (2) with such compensation to be determined in case of dispute under Part 1 of the Land Compensation Act 1961*

18. The Estate's objections to Article 35 include:

- Article 35 is unnecessary. The existing Wayleave Agreements provide sufficient rights to operate the Line. That right extends to the use of the line for both freight and passenger trains.
- The justification put forward that such "payments do not reflect the way in which the modern railway is owned" is both inadequate and inaccurate. There is nothing unusual about such agreements. Agreements of this kind apply elsewhere on the wider rail network.
- The Wayleave Agreements reserve royalties/rents not just in respect of passenger trains but also freight trains. The operating of freight trains already occurs on the line and is not part of the Scheme. For Article 35 to in effect terminate the requirement to for Network Rail to pay royalties/rents in respect of freight trains is unnecessary and there can be no "compelling case in the public interest" to justify this. It is quite clearly ultra vires.
- The inclusion of Article 35 crystallises the tension in the Order between NCC being the applicant, Network Rail's role and indeed the role of a TOC. We note that it is expressly not stated that Article 35 is necessary to make the Scheme operationally viable. Indeed it appears wholly opportunistic to attach such provision to the Order.
- Notwithstanding the scope of an Order under the 1992 Act, it is therefore quite evident that Article 35 is ultra vires in going beyond what reasonably relates to the terms of the Order. Furthermore it is submitted that the Order cannot legitimately terminate the Wayleave Agreements in respect of land to which the Order does not apply.
- Article 35 should accordingly be deleted.
- It is also notable that in any event Article 35 provides that it is for Network Rail, not NCC, to pay compensation. To date the Estate has had no contact from Network Rail or its agents in that regard and no effort made to engage in discussions around the terms of the Wayleave Agreements.

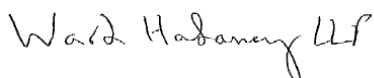
19. As regards site-specific aspects of the Order the following are highlighted.

20. The Estate have a particular concern arising out of the Order in respect of works proposed to Algernon Bridge ("the Bridge"). Whilst there is an agreement (a deed dated 22 November 2002) pursuant to which Nexus has certain maintenance responsibilities in respect of the

Bridge, the Bridge is owned by the Estate. As part of the Order we understand that it is proposed that works be undertaken to construct a staircase / lift shaft and "tie-in" these works to the structure of the Bridge. The Estate is concerned as to the significant additional liability that could arise as a result of these works both during construction and as part of any subsequent use and the Estate requires clarification as to who is to take on responsibility for such works and how this will be addressed through the Order so as to ensure that the Estate is not left with any liability in relation to the maintenance and use of the Bridge or any part of it. It would be wholly inappropriate to expect a private landowner to retain responsibility and liability for what is quite clearly a piece of public infrastructure even if only in part. The Order does not deal with this issue at all despite this point having been raised by the Estate on numerous occasions in meetings with the Applicant and its agent.

21. The Estate objects to the proposed compulsory acquisition of plot 95a together with the extinguishment of the private right of way comprised in the Holywell user-works railway crossing (between points P23 and P23a on sheet 3). It is not apparent in particular what the claimed justification is for the acquisition given that rights for railway use appertain through the Wayleave Agreements. In addition the proposed freehold acquisition would unjustifiably remove all other rights enjoyed by the Estate through its ownership of the land, such as bridging rights.
22. Furthermore the proposed acquisition, to the north of plot 95a, of plots 102a -106 inclusive for the purposes of a new underpass are excessive in terms of proposed compulsory purchase of freehold interests. As noted above, and more generally, railway rights of use are already in place pursuant to and by virtue of the Wayleave Agreements. In addition, Article 19 of the Order expressly authorises the acquisition of subsoil interests in land. Any acquisition should therefore be limited to such rights/interests as are necessary and in conjunction with the deletion of Article 35 Estate interests should be retained.
23. Plot 64 comprises a multi-story car park ("MSCP") adjacent to the proposed Northumberland Park station. It is included in Schedule 6 as being land over which new rights may be acquired for the specific purpose of "access for station". It is unclear why the entirety of the MSCP has been included. It is presently leased to Nexus, as the Book of Reference recognises. It is notably not proposed compulsorily to acquire the MSCP but rather to create new rights. Further clarification is sought as to the nature and extent of such rights and the justification for such rights over the entirety of Plot 64 and in particular the MSCP.
24. The Estate accordingly objects to the Order on the above basis and expressly reserves the right to amend or add to such objection.
25. We should be grateful if the Secretary of State would confirm receipt of this objection
26. We confirm that a copy has been sent to the applicant.

Yours faithfully



Ward Hadaway LLP

+44 (0) 330 137 3515
frank.orr@wardhadaway.com