

THE NORTHUMBERLAND LINE ORDER

CLOSING SUBMISSIONS ON BEHALF OF THE PROMOTER

References to documents are in the form in which they are listed on the inquiry website, followed by page and paragraph numbers [ref/page/§para]. External rather than internal page numbers are used.

Introduction

1. The Promoter (“NCC”) seeks an Order under the Transport and Works Act 1992 which would enable the re-introduction of rail passenger services between Ashington and Newcastle (“the Scheme”). The Scheme is designed to stimulate economic activity, create job opportunities and improve transport links across South Northumberland.
2. The Scheme involves the construction of six new stations along an existing freight line. Trains will run from a new passenger terminus in Ashington, twice an hour, to Newcastle Central. New services will call at Bedlington, Blyth Bebside, Newsham, Seaton Delaval, and Northumberland Park where there will be an interchange with the Metro. To the south of Northumberland Park, trains will run on to the East Coast Mainline and from there to Newcastle Central. The journey from Newcastle Central to Ashington will take about 35 minutes.
3. The role of the Order in authorising the Scheme is limited but essential. Most of the works required for the Scheme have been or will be authorised through the planning system. Permission for the new stations has been or will be granted by the relevant local planning authorities. Some of the necessary works within the operational rail corridor have been or will be carried out under permitted development rights. The Order which NCC seeks at this Inquiry does not authorise these works.

4. The purpose of the Order is to authorise the acquisition of land and rights to enable the Scheme's implementation. In summary, the Order would provide:
 - a. Powers for the compulsory purchase of land and rights over land;
 - b. Powers to use land temporarily to construct works that have been authorised through the planning system;
 - c. Authorisation for the closure of level crossings and for associated extinguishments and diversions of public rights of way; and
 - d. Through the application for deemed planning permission, authorisation for ancillary works, such as the construction of temporary worksites.
5. These closing submissions first address the Scheme in general before addressing the specific objections that have been raised. Accordingly the following structure is followed:
 - a. The aims, objectives and need for the Scheme (Matters 1 and 2);
 - b. Funding and no impediments (Matter 6(c));
 - c. Compliance with national and local policy;
 - d. Compelling case in overview (Matter 6);
 - e. Consultation (Matter 8);
 - f. Management of environmental effects (Matter 5);
 - g. Order powers and objections to them:
 - i. Ashington Station car park (Matters 3(e) and 6);
 - ii. Hospital Underpass (Matter 3(c));
 - iii. Bedlington station (Matter 3(d));
 - iv. Northumberland Park Station (Matters 3(b) and 6);
 - v. Article 34 (Matter 6);
 - vi. Order powers not in dispute and withdrawn objections (Matters 4 and 6);
 - h. Deemed planning permission (Matter 7);
 - i. Open space (Matter 10);
 - j. Conclusions.

The aims, objectives and need for the Scheme

(i) Need

6. The real and pressing need for the Scheme is not seriously disputed. The case for it is summarised in the Statement of Case and developed further in Mr McNaughton's oral and written evidence. The case is clear, well-evidenced, and frankly indisputable. Mr Cooper's casual allegation in opening the case for Malhotra Commercial Property Limited ("Malhotra") that NCC "makes sweeping generalised statements" [INQ-21/1/§2] about the need to rejuvenate an area that has experienced deprivation did not come close to being made good. Even a cursory consideration of the Statement of Case and Mr McNaughton's evidence shows that, far from being "sweeping generalised statements" the need for the scheme is carefully articulated and well-evidenced. That is so, though it is also clear from a visit to a town such as Ashington that the benefits of a reliable train link to Newcastle and beyond is a "no-brainer".
7. South East Northumberland has undergone significant economic decline since the 1980s, when the key industries upon which the region relied – ship building and mining – collapsed [APP-44/23/§6.1]. The region now has high levels of unemployment and deep pockets of social deprivation. As Mr McNaughton explained in his evidence, much of this is concentrated along the Northumberland Line corridor, particularly around the north of the line in the towns of Ashington, Bedlington and Blyth and in communities along the River Tyne including North Shields, Wallsend and Byker [APP-W1-1/5/§3.1]. As the Inquiry heard, data from the 2011 census demonstrates that residents in Wansbeck – an area that can be taken to be reasonably representative of the wider region – have poorer average health, educational and housing outcomes than residents of the North East and England [APP-W1-1/5/§3.2]. The need for regeneration is tangible and pressing.
8. Poor public transport connectivity compounds these problems [APP-44/24/§6.3]. There are good highway links from the region to North Tyneside and Newcastle, but the network is congested in peak periods and journey times can be unreliable. A comprehensive bus network connects South East Northumberland with Tyne and Wear, yet journey times can be long and unpredictable, and services are often congested [APP-W1-1/6/§3.4.4]. Cramlington and Morpeth have rail services, but residents in other South East Northumberland towns like Ashington and Blyth lack access to

train links. In short, the region lacks a reliable, affordable and comprehensive public transport network that connects its communities to the key economic hubs of Tyne and Wear [APP-44/24/§6.3].

9. As Mr McNaughton has explained, existing public transport options do not therefore meet the needs of Northumberland residents. A lack of available services, long journey times and high public transport costs mean that public transport is not a viable option for many people [APP-W1-1/6/§3.4.5]. This has led to higher private car usage than the national average and a significant outflow of commuters from Northumberland [APP-40-0/25/§3.3], which has resulted in congestion on the road network into Tyne and Wear (particularly at the A19/A189 Moor Farm roundabout) [APP-W1-1/6/§3.4.3] and air quality becoming a major concern for the North of Tyne Combined Authority [APP-W1-1/6/§3.4.6]. Overall, the region's poor transport connectivity not only restricts the potential for residents of South East Northumberland to access employment, education, and leisure opportunities, it also reduces the attractiveness of the region as an area in which to invest [APP-W1-1/5/§3.3].
10. If these problems remain unaddressed – and opportunities to improve the region's public transport infrastructure are not seized – several consequences will occur [APP-W1-1/6/§3.6]. First, there will be an overreliance on private car travel into neighbouring authorities to access opportunities, in keeping with the current trend of increasing private car ownership and population movement into outlying parts of Northumberland [APP-44/17/§6.5] [APP-40-0/25/§3.3]. This will exacerbate local congestion issues and increase demand on the key radial routes into Tyne and Wear, which are already congested [APP-W1-1/6/§3.6.1]. Second, people who do not have a car will become even more isolated from economic and social opportunities, which will exacerbate the region's high levels of social deprivation [APP-W1-1/6/§3.6.2]. Lastly, the region's poor transport connectivity will affect the ability of Northumberland and the wider North East region to attract inward investment [APP-W1-1/6/§3.6.3].
11. With the assistance of proper intervention, South Northumberland has the conditions to prevent these consequences from occurring. As Mr McNaughton notes, there are significant business clusters across the region. In Blyth, Northumberland Energy Park has the potential to create 10,000 new jobs, and the BritishVolt Gigafactory has recently received planning consent [APP-W1-1/7/§3.10]. There are also economic assets in the Tyne and Wear conurbation and in the south

east of the region which could provide employment and training opportunities for residents across South Northumberland if better transport infrastructure is put in place. As Mr McNaughton explained in his oral evidence, businesses in the Cobalt Business Park in North Tyneside occupy over 1.6 million square feet of Grade A office space, host approximately 14,000 employees and now want to expand [APP-W1-1/13/§5.16], yet they have had difficulty in attracting new employees due to connectivity issues.

12. Fortuitously, much of the basis for intervention already exists. A trainline passes through these communities and continued demand for freight traffic has kept it operational despite the historic mistake of abandoning the route for passenger services. As Mr McNaughton put it at the inquiry, there is already a “backbone” which any proposed intervention can build upon. As such, the region has both the conditions in which to thrive and basic means for doing so.

(ii) *Benefits*

13. The benefits of the Scheme’s intervention are clear and profound. This is reflected in public support for the Scheme: over 1,000 responses were received during the consultation period and, of these, 92% were supportive, with only 5% unsupportive [APP-04/16/§3.28]. It is also reflected in the fact that no objector at the inquiry took issue with the Scheme’s overall benefits. Indeed, every objector who attended expressly lent his or her support to the Scheme’s objectives and confined any objections to specific aspects of the Scheme’s delivery.¹ It is important to bear in mind the benefits that the Scheme will bring, even though they are not substantially in doubt. That is because any objection to the Order must be weighed against those benefits and the extent to which the objection would reduce or put at risk those benefits.
14. The Scheme has the potential to transform the economic landscape of South Northumberland. It will help residents access existing employment opportunities (both established and nascent) in business clusters along the Northumberland Line corridor, for example at the Northumberland Energy Park in Blyth and in the Tyne and Wear conurbation [APP-W1-1/7/§3.10-11]. It will also improve access to and incentivise the expansion of new employment and training opportunities across the region, particularly in the growing renewable, advanced manufacturing and robotics sectors [APP-W1-1/7/§3.8]. As Mr McNaughton explains, this will attract new investment to the

¹ See, for example: Northumberland Estates and Lord Hastings’ comment that “Neither objector objects in principle to the Northumberland Line proposals (“the Scheme”). Both welcome the broad objectives of the Scheme in so far as it seeks to promote economic regeneration in Northumberland and the wider region overall objectives” [INQ-25/1/§3]; or Malhotra’s comment that “We are... ad idem with the applicant, that this part of Northumberland is in dire need for good transport infrastructure” [INQ-21/1/§1]; or Cllr Ball’s comment that “I am supportive of the reopening of the passenger railway and the inward investment in Ashington Central” [INQ-22-1/1].

region and help North of Tyne’s communities and businesses transition from “a proud industrial legacy to a clean growth future” [APP-W1-1/7/§3.9].

15. Although the Scheme is proudly of this region in nature, its economic benefits will extend to the surrounding areas and indeed to the country. Since the region brings together the borderlands, the Scheme would help build an East Coast economic powerhouse from Edinburgh to Leeds that is built on clean energy, historic cultural assets, and radically better connectivity [APP-W1-1/6/§3.7]. The national economy will also benefit from the economic growth that will undoubtedly flow from linking economic centres with one another and connecting business with labour pools.
16. As Mr McNaughton notes, in light of the downturn caused by the pandemic, it has never been more important than now to reduce the productivity gap between the North East and other parts of the country [APP-W1-1/6/§3.6]. Though covid has changed working patterns to some extent, transport infrastructure remains one of the most important ways to promote economic activity, increase access to education and leisure opportunities, and reduce reliance on environmentally unfriendly modes of transport [APP-W1-1/6/§3.5]. By helping the region to capitalise on the opportunities of inward investment, and to accelerate its (increasing) gross value added for the UK economy, the Scheme will provide considerable economic benefits at a time when they are most urgently needed [APP-W1-1/7/§3.12].
17. By stimulating economic activity and providing access to higher skilled jobs, rail schemes such as the present proposal can significantly address social deprivation [APP-W1-1/7/§3.11]. As Mr McNaughton explained at the inquiry, the primary purpose of the Scheme is to ensure that local communities and businesses benefit, which is why “social value” is embedded not only in the Scheme’s objectives, but also in its delivery. For example, “social value obligations” will be agreed with contractors during the Scheme’s construction. As Mr Sindall explained in cross examination, the project continues to consider ways in which the social value of the Scheme can be maximised.
18. In addition to the economic opportunities which the Scheme will provide, the Scheme will also address social isolation by connecting people with cultural and historic centres and by creating new opportunities for travel. Once the Scheme is operational, the journey time from Ashington to Newcastle would be 35 minutes by public transport [APP-44/25/§6.9] [APP-40-0/71/§3.2]. This

would open up employment, education and leisure opportunities to people who would not otherwise have them and enhance the profile of the region as an attractive place to live and visit. Again, the Promoter intends for the Scheme itself to provide a site of social opportunity. As Mr McNaughton explained during oral evidence, NCC has plans to engage with local schools to provide learning opportunities about the railway and to provide historical walking trails that run from station to station. This will help to support safe and positive interactions with the railway, build pride and local ownership of the railway in the community, and encourage improvements in the natural and physical environment for the benefit of the community [APP-W1-1/15/§6.17].

19. The Scheme will also bring considerable environmental benefits. The Scheme itself will use an existing line, resulting in relatively limited construction works. In terms of its effects, the Scheme would secure a 4% modal shift from car to public transport within the Northumberland Line corridor (increasing to 7% when considering trips travelling directly into Newcastle) [INQ-17/§21-22]. This would improve local air quality and reduce highway congestion at key bottlenecks on the highway network between South East Northumberland, North Tyneside, and Newcastle [APP-44/26/§6.12].
20. Several objectors have queried why the Scheme will open with diesel trains. The cost of electrification of the line is prohibitive, but battery operated trains will be part of the future of the Scheme. As Mr Sindall explained, it is not possible to procure Battery Electric Multiple Unit (“BEMU”) trains for the start of operations. As a relatively new technology, they have only recently entered the market [APP-W2-1/12/§3.42]. NCC expects BEMUs to be operational from 2026 [APP-W1-1/10/§5.1.5] and, as Mr Sindall explained during XX, it is likely that BEMUs *will* be introduced by this date given that major manufacturers are currently working on battery provision and the DfT is in the process of considering “very large” orders of BEMUs. The temporary use of diesel trains will allow the Promoter to take advantage of existing funding opportunities and ensure the Scheme can start delivering its benefits (including its environmental benefits) without delay [APP-W2-1/12/§3.43]. As Mr Emms recognised during XX, it would not be sensible to delay the Scheme to wait for battery operated trains. NCC should instead, as Mr Emms put it, “take the Scheme with both hands”.
21. The business case for the Scheme has been examined through the preparation of the Outline Business Case (“OBC”) and work towards the Full Business Case (“FBC”). In considering the benefit-to-cost ratio, the Scheme delivers “very high value for money” [APP-W1-1/14/§6.4]. The

Scheme is predicted to generate 1.45 million return journeys by 2028 [APP-W1-1/14/§6.9] and has a benefit-to-cost ratio of around 4:1 when wider economic benefits are included [APP-W1-1/15/§6.11].

(iii) *Alternatives*

22. The alternatives considered in the development of the Scheme were summarised in Mr McNaughton's written evidence [APP-W1-1/7/§4]. Each of the alternative interventions was considered as part of a long list of alternatives. The rationale of the selection of the Scheme, together with the detail of the options, has been explained by Mr McNaughton. No objector has suggested any alternative to the Scheme.

Funding and impediments

23. The question for the Secretary of State is whether the "scheme is reasonably capable of attracting the funds required to implement it" [APP-W1-1/16/§7.10] and whether "the necessary resources are likely to be available to achieve" the implementation of the Scheme within a reasonable timescale [APP-W1-1/16/§7.13]. It is not necessary to show that funding has been secured.
24. The Scheme is in fact very advanced in terms of its funding. As Mr McNaughton explained in his evidence, the Scheme has received three tranches of funding from DfT to date and has the support of partners within the North East, including the North East Joint Transport Committee [APP-W1-1/16/§7.7]. The FBC is now being reviewed by the DfT. The "very high value for money" which the Scheme provides means that there is no funding impediment; indeed there are clear funding commitments to it. The funding position thus plainly passes the "reasonably capable" or "likely" tests: indeed it is beyond reasonable doubt that the Scheme will be funded.
25. At the inquiry, Mr Cooper for Malhotra seemed to set considerable store by the fact that the Scheme's FBC has not yet been published. He contended that "no explanation of monies is available" [INQ-21/1/§3] and that he does not know "who is providing the money". However, Mr McNaughton's evidence describes in detail the funding commitments that the Scheme has already received, how the OBC has been carried out in accordance with DfT guidance, and the timetable for publishing the FBC [APP-W1-1/13/§6.1]. It is puzzling that Mr Cooper did not know how the Scheme was to be funded, given the detail provided by Mr McNaughton. It is more puzzling still

that he did not put these points directly to Mr McNaughton. No weight should be given to such unevidenced submissions which did not in any event appear to be a part of his client's substantive case.

26. Indeed, Mr Cooper's submission was directly contradicted by his own witnesses' evidence. Mr Emms declined to describe the non-publication of the FBC as a "lacuna" in the determination of the Order and, during XX, accepted that there was nothing about the OBC or FBC process which prompted him to comment in his proof of evidence. Mr Emms then accepted that he had no fundamental concerns with the OBC and that the Scheme was in fact reasonably capable of attracting funding. Malhotra's other witness, Mr Farr, also agreed during XX that the Scheme had no funding impediments. It does not seem to be disputed, then, that the Scheme is reasonably capable of attracting funding. No other party to the Inquiry questioned the funding position, and in those circumstances the clear evidence of the Promoter should be accepted.
27. In terms of other impediments, there is no suggestion that there is any other impediment to the Scheme. Some of the works still require planning permission (and applications are undetermined), but for the reasons given in Ms Healey's evidence, where she has addressed the compliance of each proposal with the development plan and considered any other material considerations, there is no impediment to the grant of those permissions.

Policy position

28. As explained in Opening, the Scheme complies with, and furthers, national, regional and local policy. The detailed analysis in Ms Healey's evidence [APP-W4-17-17/§5] was not questioned barely challenged at the Inquiry, and should be accepted.
29. At the national level, the social, economic and environmental benefits of the Scheme support the National Planning Policy Framework's ("NPPF") [APP-28/6/§11] presumption in favour of sustainable development and its support for sustainable transport [APP-28/30/§104]. Ms Healey's written evidence provides a detailed analysis of compliance with the NPPF [APP-W4-1/9/§5.9], which is not repeated in these submissions. The Scheme also accords with the National Policy Statement ("NPS") for National Networks [APP-27], which sets out the Government's strategic objectives for national networks, because it would "support national and local economic activity, facilitate growth and create jobs", support the delivery of environmental goals, and "join up

communities” to one another [APP-27/10/§2]. Paragraph 1.4 of the National Networks NPS states that the NPS may be a material consideration in decision-making on schemes which fall outside the NSIP threshold, and the Secretary of State should have regard to it [APP-27/7/§1.4].

30. At the regional level, the Scheme furthers strategic transport plans. The North East Transport Plan [APP-36] provides clear support for the re-introduction of passenger services on the Northumberland Line to widen access to jobs, grow the economy and reduce social deprivation. Similarly, the Transport for the North Strategic Transport Plan [APP-37] emphasises the importance of more efficient, reliable and sustainable rail journeys in growing the Northern Powerhouse.
31. At the local level, the Scheme complies with planning policies, transport policies and economic strategy. The detailed planning case has been articulated and accepted in the context of the planning permissions already obtained in connection with the Scheme. The emerging Northumberland Local Plan [APP-30], which has been through examination and main modifications consultation, provides clear and express support for the Scheme including through the safeguarding policy in TRA5 (see further below). This reflects, and builds on, the support for and safeguarding of the Scheme in the Wansbeck District Local Plan [INQ-10]. The North Tyneside Local Plan [APP-31] requires future transport provision to consider economic and housing growth. The Northumberland Local Transport Plan [APP-32] considers the current problems with public transport to be a reason for supporting rail travel, before identifying the re-introduction of passenger services on the Northumberland Line as a principal element of its rail strategy. And the Northumberland Economic Strategy [APP-35] highlights the Scheme as a key means of improving connectivity in the region and delivering industrial growth, identifying it as a “major priority” [APP-35/19].

The compelling case: general submissions

32. In light of the above matters, the Promoter’s position on the compelling case to justify the acquisition of land or rights over land is clear. The Scheme will deliver major social, economic and environmental benefits. It is firmly supported by national, regional and local policy. The powers of compulsion contained in the Order are required to deliver these benefits. There is no policy or statutory definition of what amounts to a compelling case in the public interest, but it is clear that societal benefits such as those which will be delivered by this Scheme give rise to such

a compelling case. This a Scheme which the Secretary of State should embrace and encourage, including through giving the Promoter the power to acquire the necessary land and rights to deliver it.

33. For the same reasons, the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected. The measures are both necessary to achieve the aims of the Scheme and proportionate to those aims. The landowners will be entitled to compensation in respect of interference with their land and rights in accordance with the Compensation Code. In those circumstances the interferences accord with the rights in Article 1 of the First Protocol and, where relevant, Article 8. See the further analysis at [APP-44/31/§8.38-8.45].
34. The need for the specific land and rights in question has been set out in the evidence and is mentioned further below. The compelling case for specific powers is addressed in respect of relevant objections below.

Consultation and compliance with statutory requirements

35. The Promoter has explained how each of the statutory requirements has been met: [INQ-02]. Nonetheless, several objectors have expressed concerns about the consultation on the Scheme. As Mr McNaughton explained in his evidence, the proposals have been subject to consultation both in the context of the proposals for the Order, and in respect of the specific planning applications. One of the features of the consenting strategy adopted by the Promoter is that it has meant that interested parties have been afforded the opportunity to make representations directly to the local planning authority as well as to the Secretary of State through this Inquiry process. It is right to note that the consultation processes have occurred, in part, over periods when movement and social contact has been restricted as a result of the pandemic. It is also notable that this Scheme has taken a faster course through the Order making process than many others, with the impetus of Project SPEED. However, there have been multiple opportunities for views to be expressed and indeed there has been no shortage of engagement with the proposals, as is clear from Mr McNaughton's evidence and also the Committee reports on the various planning applications. That engagement has continued as is evidenced, for instance, by the recent on-site meeting with residents of Fenwick Close which included representatives from the contractor engaged to deliver the construction works.

36. In terms of negotiations with landowners, again the timescales have been more compressed than they may have otherwise been. However, those negotiations have in large part been successful as has been evidenced by the absence of objection or the absence of appearance at this Inquiry. The issues raised by those objectors who did appear are addressed further below.

Environmental effects

37. Although the Secretary of State has identified the environmental impacts of the Scheme as a matter which he wishes to consider, the purpose and effect of the Order needs to be borne in mind. The main works comprised in the Scheme are the subject of planning permissions (or pending planning applications) determined by the relevant local planning authorities (NCC and North Tyneside Council). Those permissions each contain relevant controls to ensure that the development authorised is acceptable in planning terms. NCC has also ensured that the Scheme as whole has been screened for the purposes of EIA, and the conclusion is that the Scheme does not comprise EIA development. The Secretary of State has reached the same conclusion in respect of the Order proposals.
38. The developments comprised in the Scheme are each subject to a suite of environmental controls, secured by planning conditions. The controls are summarised in Ms Healey's written evidence [APP-W4-1/9.7-9.13]. Whilst it is acknowledged that there will be impacts from the Scheme, in each instance these matters can be properly controlled and made acceptable. The development which is the subject of the application for deemed planning permission is limited in nature and the environmental effects are limited: [APP-44/Section 11] and [APP-W4-1/9.3-9.6]. The proposed planning conditions do not appear to be in dispute. These conditions address, in particular, the noise impacts of construction and measures to protect where possible ecological interests and trees and planting. In terms of operational noise, the impact of noise from the operation of the proposed stations has been addressed in the context of the planning applications. Specific measures have been made in respect of, for instance, PA system noise. The operation of the railway is not authorised by the Scheme, but the impacts of operational noise have been considered by the relevant planning authorities in determining to grant the permissions.

Order powers and objections to them

Ashington Station car park

39. As Mr McNaughton has explained, the location of stations has been determined by the line of the existing railway and has been influenced by historical and geographical reasons [APP-W1-1/12/§5.6]. The need to comply with modern design requirements, provide distinct catchment areas and ensure stations are sufficiently dispersed across the line are all factors which restrain the locations that can be used [APP-W2-1/8/§3.9]. Ashington Station will be located on the site of the former station because there are significant centres of population and employment surrounding the site [APP-W1-1/12/§5.11]. Its proximity to the Wansbeck Square and Portland Park developments means the station will play a key role in regenerating Ashington, which, as the 2016 Station Assessment Report noted, has suffered from significant economic decline since the closure of the mining industry [APP-W1-3/27].² Its central location and proximity to Ashington's bus interchange will enable rail users to access to the station by sustainable modes of transport [APP-W1-1/12/§5.11].
40. Plots 323 and 324, which are currently owned by Malhotra, need to be compulsorily acquired in order to provide a car park for Ashington Station that will satisfy future demand. The purpose of the redesigned car park is to both meet demand for the railway, and to replace the existing car park which is in part lost to the footprint of the station and related infrastructure. As Mr Sindall outlined in his evidence, the car park has been located adjacent to the station so that it can comply with the relevant Network Rail standards and NCC requirements for accessible parking, drop off, cycling, and maintenance access provision [APP-W2-1/29/§6.5]. The technical justification for compulsorily acquiring plots 323 and 324 is that, without it, a new car park at grade is likely to be full within the first four years of operation, even if a pessimistic assessment of the impact of Covid is taken [APP-W2-1/32/§6.5].
41. As well as supressing demand and undermining the benefits of a project designed to enhance the local economy and Ashington in particular, NCC would then be faced with considerable additional disruption and cost associated with retrofitting a second level to a congested car park [APP-W2-1/32/§6.5]. Furthermore, as Mr Sindall explained, since Malhotra's land would provide pedestrian

² The Station Assessment Report 2015 [APP-W1-2] provides detailed information about the reasons why the location of the Station has been selected and the benefits that the Station will bring to both Ashington and the surrounding area.

access to the car park, landscaping and recycling, additional benefits would be lost without the compulsory acquisition of the land. Alternatives to purchasing the plots were considered by NCC, in particular the construction of a multi-story car park. However, this option would be considerably more expensive and uneconomical from the point of view of taxpayers [APP-W2-1/32/§6.9] [APP-W2-3/4/§12] and, as above, would mean that the integrity and coherence of the Station's design (including access routes and landscaping design) are compromised.

42. A comprehensively designed car park has been granted planning permission. As is clear from the General Arrangement plan [INQ-12], the car park is laid out over parts of the existing car park, open space, and the Malhotra land. The Malhotra land provides a landscaped buffer to the south of the car park; a vehicular exit from the car park; a pedestrian walkway from Kenilworth Road; a pedestrian access from Oakland Terrace; landscaped areas; circulation space for vehicles and pedestrians. In other words, the land is not just used for parking spaces. The planning authority has concluded that the parking space proposed is required to make the development acceptable, and relevant conditions have been imposed as follows [APP-W4-3/531/Appendix I]:

- a. Development of the car park shall not be commenced until the Malhotra land is acquired for the proposed development. The station shall not become functional for passenger rail services until the development of the car park has been fully completed (Condition 15);
- b. The car park shall not be made available for public use until the car parking spaces have been formed and marked out in accordance with the plans (Condition 16);
- c. Highway works, the details of which are to be approved, must be completed prior to the public use of the car park including (Condition 19):
 - i. New access junction to Kenilworth Drive (southern access);
 - ii. Improved pedestrian connectivity between the southern access and the pedestrian routes to the north of Ashbourne Crescent;
 - iii. Pedestrian connectivity to Oakland Terrace.

43. These conditions cannot be met without the use of the Malhotra land.

44. Mr Cooper, on behalf of Malhotra, presented wide-ranging objections to the proposed acquisition of plots 323 and 324. A number of the contentions in Malhotra's Statement of Case [OBJ-22] and

in Mr Cooper's opening submissions [INQ-21] were abandoned or materially altered at the inquiry and in Mr Cooper's closing submissions [INQ/26]. For example, in his opening submissions, Mr Cooper alleged that the effects of the pandemic had not been considered by the Promoter but he later abandoned the submission and took issue with the methodology used to take into account the impact of the pandemic on transport demand [INQ-26/2/§9].

45. Mr Cooper's objections in relation the wider funding of the Scheme, and the use of diesel trains have been addressed above. Mr Cooper's specific objections in relation to the compulsory acquisition were, in summary, that:

- a. First, the compulsory acquisition serves an (unlawful) dual purpose because it would provide spaces to people who would not use the railway [INQ-26/1/§3].
- b. Second, the acquisition fails to comply with planning policy because it is not allocated or safeguarded in NCC's development plan [INQ-26/1/§3].
- c. Third, the determination of Malhotra's planning application for a care home has been delayed excessively by NCC [INQ-26/2/§7]. When balanced against the car park, the care home proposal should be favoured [INQ-26/2/§8].
- d. Fourth, NCC has provided insufficient information about the total capacity and usage of other car parks, the proposed management measures at Ashington Station car park and the frequency and length of the trains [INQ-26/1/§5].
- e. Fifth, NCC has failed to provide data which justified why demand for the Scheme is forecasted to be at such a level as to require the use of plots 323 and 324 [INQ-26/2/§9] [INQ-26/3/§18]. NCC also failed to adjust its modelling to take into account the impact of the pandemic on passenger demand in a post-covid world [INQ-26/2/§9].
- f. Sixth, NCC should have conducted a survey to assess the land's suitability at an earlier stage than it did [INQ-26/3/§11].
- g. Seventh, negotiations for the voluntary acquisition of the land have not been speedy, open or transparent, and have thus offended the Crichel Down rules [INQ-26/19/§19].

46. Each of these objections is without substance.
47. First, it is wrong to suggest that one of the “dual purposes” of the compulsory acquisition of Malhotra’s land is to provide car parking spaces for the town centre. The land adjacent to the proposed station is currently used as a car park that serves the town centre. NCC simply proposes to *retain* those spaces while providing new spaces for rail users. It is entirely appropriate for NCC to retain existing spaces when the primary purpose of the overall Scheme is to regenerate towns, such as Ashington, which have experienced economic decline, but which can reap the benefits of new development, investment and job opportunities if provided with the necessary transport infrastructure [APP-W1-3/27]. As Mr Emms accepted in XX, if there is insufficient car parking in Ashington, the town centre’s economy will be adversely affected, which will undermine a key purpose of the Scheme. As Mr Sindall explained, before the pandemic the current car park was full at busy times. There are some 122 parking spaces at present.
48. Second, proposed acquisition obviously complies with planning policy. Mr Emms gave evidence that Malhotra’s “site is neither allocated nor safeguarded for any use associated with the Northumberland Line in either the adopted or emerging statutory development plan” [OBJ-22-2/10/§4.6]. In his view, WDLP Policy 1 allocates part of Malhotra’s land as safeguarded park and open space and depicts Ashington station within the track bed and adjacent railway corridor [OBJ-22-2/10/§4.7], while Emerging NLP Policy TRA 5 fails to safeguard a specific site for the proposed Ashington Station and any land required for associated facilities such as car parking [OBJ-22-2/11/§4.8]. However, as the LPA considered when it granted planning permission, both policies *do* nevertheless support the allocation and safeguarding of Malhotra’s land for use as a car park [APP-W4-1/48/§11.7].
49. It is correct to note that the Malhotra land is not washed over on the proposals map as allocated for the Scheme, but nor is any other land save for the route of the existing train line. As the Officer’s Report noted ahead of the LPA’s determination of the car park’s planning application, policy T1 nevertheless “aligns well” with the site location [APP-W4-3/508/§7.3]. Furthermore, as Ms Healey explained in her written and oral evidence, whilst the car park is not specifically safeguarded in policy T1, it is reasonable to assume that the policy has wider safeguarding capability given that car parking infrastructure is not shown at any of the other safeguarded locations [APP-W4-1/48/§11.8]. In relation to policy TRA 5, the policy intends that development which has the potential to prejudice the reintroduction of passenger services, “along with

associated stations, facilities and access to them from adjacent highways... and supporting infrastructure” will not be supported in planning policy [APP-30/207]. The terms of the recent grant of planning permission make clear that this land is required for facilities and infrastructure connected with the Scheme.

50. Further, the proposed alternative use of the Malhotra land is as a care home. Mr Emms had not engaged with the fact that his client’s own planning application did not find any support in the emerging Local Plan. The draft plan states that the Council’s “latest assessments identify no immediate need for new care home accommodation, and that there is sufficient capacity through vacancies and permitted schemes to meet future needs” [APP-30/143/§7.10]. The draft Local Plan also states that “while there will be some demand for care home accommodation, no new provision is specifically sought in the Plan, as there are around 300 bed-space vacancies in the County’s current 115 care homes plus a large new care home under construction” [APP-30/172/§7.62]. Mr Emms tried to circumvent these clear policy steers by claiming that they refer to a lack of “generic” rather than “specific” need and by arguing that there must be need because Malhotra had decided to build a care home as a commercial venture in Ashington. However, it is obvious that NCC considers the development of new care homes to be unnecessary, irrespective of their commercial viability, and that on any balancing exercise, a care home should not be favoured by the LPA as Mr Cooper contends [INQ-21/2/§8]. There is also no disadvantage to Malhotra to locate the care home elsewhere. In planning terms, therefore, the use of the land in connection with the delivery of the Scheme is clearly to be preferred.
51. Third, the delay to Malhotra’s own planning application – which is nothing to do with the Promoter – has in fact neither been excessive nor deliberate. As Mr Emms acknowledged in oral evidence, after Malhotra submitted its care home planning application, there were various representations by statutory consultees. One representation was made by the Local Flooding Authority, who raised an objection pending the provision of further information by Malhotra. Malhotra provided that information, as Mr Emms explained to the inquiry, as late as October 2021, which necessarily prevented the LPA from determining its application. Malhotra has not acted expeditiously itself to progress the application. The baseless allegation that NCC “contrived to delay [Malhotra’s] applications for their own ends” [INQ-21/2/§6] is embarrassing and should not have been pursued, particularly after Mr Emms had agreed that outstanding queries from statutory consultees had only recently been addressed.

52. Fourth, NCC has provided sufficient information about the total capacity and usage of other car parks in the town centre, and the proposed management measures at Ashington Station car park. Data on the capacity of existing car parks in Ashington town centre is set out by Mr Sindall at **[INQ-07]**: there are 529 public spaces and 611 private spaces. As Mr McNaughton explained in oral evidence, NCC will oversee the management of the car park, which will be carried out in accordance with standard NCC methods. It will comply with Network Rail's standard design principles, include CCTV monitoring, and be free of charge (as is standard practice across NCC car parks) for at least the first 12 months of use.³ Mr Cooper's questions regarding the trains' frequency and length get Malhotra's case nowhere. As Mr Coates explained during XX, the number of trains each day is not required for demand forecasting because the model works on the peak and interpeak service frequencies. It is also unnecessary to know the length of the trains because the model is not capacity constrained. Accordingly, there is no deficiency in NCC's demand forecast modelling for the car park.
53. Fifth, NCC has provided sufficient data – adjusted to address the impact of the pandemic – to justify why demand for the Scheme is forecasted to be at such a level as to require the use of plots 323 and 324. Mr Coates has set out the bespoke methodology that was used for the demand forecast at the inquiry and at Appendix B of **[APP-W2-3]**. As Mr Coates explained, the first step involved establishing demand for the line. To this end, a logic function was used to determine the extent to which people would use different modes of transport between defined zones **[APP-W2-3/13/§2.5]**, which was sense-checked through a benchmarking process (in this case, comparing the results against current demand figures at an analogous route into Newcastle) **[APP-W2-3/15/§2.11]**. The model was updated throughout the process, with the last iteration being produced in 2021, and has included OBC submissions **[APP-W2-3/15/§2.12]**. As Mr Coates explained during XIC, the model uses a sensitivity analysis (looking towards 2028) to ensure that the recessionary and behavioural impact of Covid was taken into account when establishing rail demand. The economic effects of Covid are already in part accounted for in the updated economic forecasts which have informed the preparation of the FBC, before sensitivity testing. The projected number of passengers at each station is set out at Table 1 of Mr Coates' proof of evidence: **[APP-W2-3/15/§2.15]**.

³ See the conditions attached to the car park planning permission. For example, Condition 17 requires a car parking management strategy to be submitted and approved by the LPA and Condition 25 requires the use of CCTV **[APP-W4-3/524-527]**.

54. The model then translates demand at Ashington Station into demand for the car park. It necessarily relies on a number of assumptions, such as zones in which residents could be expected to walk or drive to the Station [APP-W2-3/16/§2.17]. As Mr Coates explained, there will clearly be people living in “walking catchments” who will drive (or cycle or use the bus), and people living in beyond those areas who will walk. There will also be people who reside in the catchment for Ashington Station but who may use Blyth Bebside Station, just as there will be people who reside in the Blyth Bebside catchment but who will use Ashington Station. The model accounts for the proportion of rail users who will rely on “kiss and ride” and uses car occupancy rates to translate demand from “people into cars” [APP-W2-3/17/§2.21-22]. The model then provides a range of car park spaces that is likely to be required [APP-W2-3/17/§2.25].
55. The final estimated ranges are set out at Table 6 of Mr Coates’ proof of evidence [APP-W2-3/19/§2.31].
- a. In the FBC, the range of demand will be 104-188 spaces by 2039. The “selected” value is 137;
 - b. In the Covid sensitivity test, the range of demand will be 86-155 spaces. The “selected” value is 113.
56. Pausing here, it follows that in the FBC case some 259 spaces would be required to meet the “selected” demand plus replace the existing parking spaces; and 235 spaces to meet the Covid adjusted demand. These figures are for 2039. Clearly, the demand for the railway does not arise immediately upon opening. However, it is entirely appropriate to plan, design and acquire land for the 2039 design year, otherwise the realisation of the benefits of the Scheme would be dependent on future consents and land acquisition, the prospects of which would be uncertain.
57. Mr Sindall’s evidence is that without the Malhotra land, some 130 to 150 spaces could be provided. The shortfall is clear. A multi-storey car park would be required within the first four years of operation, which would not only produce fewer spaces (246) than the proposed car park but would cost c. £5.3 million (£3.2 million more than the £2.1 million required to build sideways and acquire the Malhotra site) [APP-W2-3/4/§11]. As Mr Emms recognised in XX, Malhotra has not produced any alternative figures and its witnesses did not take issue with Mr Sindall’s figures

in their proofs of evidence. It would clearly be unreasonable to put the project to such an inordinate cost to avoid the use of the Malhotra land.

58. It is also worth noting the considered way in which the LPA dealt with demand for car parking spaces when it determined the planning application and, in particular, the comments in the Officer's Report [APP-30/172/§7.62]:

"7.14 The level of car parking proposed must balance the anticipated demand suggested by the modelling with the impacts associated with both providing too much car parking as well as too little car parking. Excessive levels of car parking can encourage the use of cars over multi-modal sustainable transport trips to the station, such as walk-train or cycle-train, or leave areas of the car park underused with impacts upon amenity. An under provision of car parking can lead to parking problems in surrounding residential areas that will have impacts upon residential amenity and highway safety. It is the opinion of County Highways that the level of car parking proposed provides an appropriate balance to these matters with a slight reduction on the worst case scenario shown in the modelling being appropriate in the situation where both station and town centre car parking will occur within the car park. In addition, providing appropriate levels of car parking will encourage the use of the train services over longer distance car trips only. The modal shift from single mode car journeys for travel to destinations on the Northumberland Line, to multimodal trips is a more sustainable form of transport as the private car is only part of any journey or for some trips (e.g. cycle or walk – train) is not used at all." (my emphasis added).

59. Finally on this point, it is worth considering the possible effects of under-provision of car parking:
- a. Restricting rail demand due to lack of convenient car parking;
 - b. Reducing the attractiveness of Ashington town centre as a shopping and leisure destination;
 - c. Causing problem parking of the type feared by Cllr Ball.
60. None of these outcomes is desirable or in the public interest. This is reflected in the reasoned decision of the LPA to grant planning permission whilst requiring the delivery of the car park prior to the opening of the station.
61. Sixth, recent survey activity is in anticipation of construction, not to establish the suitability of the Malhotra land for a surface level car park. It is unrealistic to suggest that somehow such survey work goes to the principle of the use of the Site for car parking, nor that it should have occurred before planning permission was sought.

62. Seventh, the conduct of the negotiations has been appropriate and there is no issue with the Crichel Down rules. NCC made two offers to Malhotra based on a valuation of the land [APP-W3-3/18] and offering a premium for an early sale, whilst Malhotra never presented an alternative valuation of the site. As Mr Farr acknowledged in XX, when a party wishes to negotiate seriously, it normally provides an alternative valuation. The reason why Malhotra did not provide a valuation, according to Mr Farr, was that Malhotra did not wish to sell the land “at any acceptable price to NCC”. At no point did Malhotra raise a concern about the conduct of the negotiations, and their purported non-compliance with the Crichel Down rules, with NCC. NCC approached the negotiations transparently and sincerely, but they were destined to fail given Malhotra’s position that the land should not be sold for any acceptable price.

Hospital Crossing

63. A number of objectors have taken issue with the proposed underpass as the means of diverting users from the Hospital Crossing in Ashington.

64. There is no substantive objection to the closure of Hospital Crossing. That is scarcely surprising given that it appears to be a magnet for antisocial behaviour. Mr Lord’s evidence presents a compelling case for closure. The crossing is heavily used by school children. The effect of introducing more frequent and faster trains is that the crossing will move to an ALCRM score of C2 (A being the highest score for individual risk, and 1 the highest score for collective risk). In a national ranking of crossings by risk, the crossing will be ranked 4th in terms of risk out of 2,412 crossings of this type in the country [APP-W5-1/31.6.3]. Such an increase in risk should obviously be avoided if possible. Closure is clearly the appropriate solution for the reasons described by Mr Lord. Any suggestion that the crossing should be controlled by miniature stop lights plainly would not address the fact that the crossing is at present misused, and there is no reason to believe such misuse will not continue if different measures are put in place.

65. Alternative means of crossing the railway have been the subject of consultation. As explained by Mr Sindall, there are real concerns about providing a bridge structure in proximity to the crossing due to its likely visual effects. The bridge would have to be of considerable scale, including ramps of c. 180m length, extending circa 90m to the north of the bridge span. It is also unclear how a bridge structure would better address the concerns about antisocial behaviour than an underpass would. The bridge is likely to have to be enclosed. For that reason, the Promoter concluded that an underpass would be the best option to cross the railway.

66. The underpass proposals have encountered considerable opposition, primarily on the grounds of fear of antisocial behaviour. Mr Sindall explained how the risk of antisocial behaviour and crime has been addressed in the design of the underpass: a wide passageway of 5m, good lighting, chamfered corners, four exits, CCTV, and public art [APP-W2-1/21/3.99]. This is an appropriate design response, consistent with the approach advocated by Councillor Ball⁴. There is no reason to think that antisocial behaviour in the area would be worsened by the proposed development.
67. Nonetheless, in light of the extent of objections to the undetermined planning application for the underpass, the Promoter has agreed to reconsider options for the crossing. These considerations will include closure without the provision of an alternative crossing, and the provision of a bridge in a different location, closer to the proposed station at Ashington. If an alternative approach is found to be workable, the Promoter and Network Rail will pursue such an alternative through other statutory means [INQ-17/4/§21-22]. If no such alternative is possible, then the LPA will be asked to determine the application on the basis that it is the only appropriate means of achieving the closure of the crossing and, with it, the delivery of the Scheme.
68. Accordingly, the Inspector can report that the Order proposals for Hospital Crossing should be made as drafted. Article 7(3) provides that the closure will not take place until the replacement crossing is provided. The underpass will be authorised by through the planning process unless an alternative is alighted upon and consented by other means. This is an appropriate way of allowing time to reconsider alternatives, whilst ensuring that the delivery the Scheme is not held up.

Bedlington Station

69. Objections in respect of Bedlington Station have centred upon the impacts of construction and in respect of the land take to the west of the railway line to form the new station platform. The Promoter has significantly reduced the extent of land to be taken from Mrs Hopwood (OBJ/15) and this appears to have satisfied the objector although formal conformation has not been received. In respect of the Bernicia Group (OBJ/25), the concerns have centred upon the construction and operational noise effects of the station development. These concerns were canvassed and considered at length in the consideration of the planning application: see [INQ/13-1]. They have resulted in a series of protective conditions which must be discharged: [INQ/13-2]. Recognising the importance of protecting the residents of Sleekburn House, the Promoter has

⁴ See the BRE Briefing Paper at [INQ-22-2]

engaged extensively with Bernicia during the course of the Inquiry and has settled a site-specific mitigation plan which has now satisfied Bernicia's concerns. Bernicia has therefore withdrawn its objection.

Northumberland Park Station

70. Local residents from Fenwick Close have raised a series of concerns about the construction of the proposed station at Northumberland Park⁵. Mr Sindall explained the process for constructing the station in his Proof [APP-W2-1/37/§6.36-6.42]. Essentially, parts of the Fenwick Close development will be required for temporary construction use. The proposals will result in the loss of some of the trees between the dwellings and the railway. However, these impacts will be managed and mitigated in accordance with the planning permission for the station [APP-W4-3/Appendix B]. Those impacts have been found to be acceptable through the planning system. The measures that will mitigate these impacts have been set out in [INQ-34]. In summary, the construction will be managed in accordance with a Construction Environmental Management Plan ("CEMP") which is secured by the planning permission. The Contractor (Morgan Sindall) will be responsible for producing the final CEMP in accordance with the requirements set out in the outline CEMP. Production of the final CEMP is a condition of the planning permission to be agreed with and approved by NTC before commencement of development (condition 3) [APP-W4-3/48]. The CEMP will therefore evolve and is subject to refinement, amendment and expansion as necessary. The key provisions of the CEMP will be:

- a. Community engagement largely via a site-based Community Liaison Officer (see section 2.6 of the CEMP);
- b. A programme of training will be set up to enable all site personnel to be aware of the potential risk to the environment during the construction period and an Environmental Manager will be appointed (see section 3);
- c. A Construction Traffic Management Plan (CTMP) will be prepared as part of the final CEMP that outlines a range of measures to minimise potential traffic impacts arising from

⁵ OBJ/08, 16, 18, 23

the construction associated with the planning application. The CTMP is secured via condition 3 of the planning permission;

- d. The Contractor's environmental management system will include procedures for implementing the requirements of the CEMP with respect to noise and vibration (see section 7);
- e. Appropriate measures will be put in place to safeguard biodiversity during construction, including pre-construction surveys and habitat management (see section 11); and
- f. Measures relating to reducing potential impacts on landscape and visual resource, including in relation to tree removal and replacement planting (see section 12).

- 71. Construction noise has been addressed through the imposition of Condition 5 on the planning permission which requires the submission and approval of a detailed construction noise and vibration assessment [**APP-W4-3/49**]. Where entitled, residents of Fenwick Close will be able to claim compensation for losses relating to the construction of the Scheme. The relevant compensation provisions were summarised for residents at a recent meeting (see the note at [**INQ-34**]).
- 72. In short, whilst the construction of Northumberland Park station will undoubtedly bring some measure of disruption, those effects will be mitigated. The impacts have been considered by the local planning authority and found to be acceptable.
- 73. The interface between the Scheme and the Metro system, operated by Nexus, at Northumberland Park and further south at Palmersville Dairy has been the subject of a holding objection by Nexus. The Promoter has now agreed protective provisions with Nexus which ensure that an "interface agreement" will be concluded with Nexus prior to the works being implemented. Nexus has confirmed that it is satisfied with these arrangements.
- 74. The final point to mention at Northumberland Park is the objection by Northumberland Estates in respect of the Algernon Road Bridge. The Promoter, Network Rail and Nexus have agreed that the maintenance liability will be shared between Network Rail and Nexus, that the works will be carried out to an appropriate standard, and that appropriate insurance cover will be in place. In those circumstances there is no separate concern for Northumberland Estates.

Article 34

75. The final objection heard at the Inquiry relates to the Article 34 of the proposed Order. The objection is by Lord Hastings (OBJ/12) and Northumberland Estates (OBJ/21). The existing railway line is, almost uniquely, in part not owned by Network Rail but rather operates under a “wayleave” which allows the railway to operate over land owned by others. These legal agreements date from the mid-nineteenth century and essentially were entered into as a means of avoiding the compulsory acquisition of land [APP-W3-1/10/§5.2]. The freeholders in question are each landed estates.
76. The wayleave leases contain rent provisions which are archaic, and predicated on the original primary purpose of the railway to serve coal mines. Thus a formula exists to calculate a rent for the transport of coal and coal products. If less than £500 per year in rent is received for such products, then a further rent of 2% of the gross receipts from transporting other goods or passengers is required to be paid [APP-W3-3/27/§3.1].
77. These provisions are completely antithetical to the operation of the modern railway. Neither freight nor passengers are accounted for in respect of the mile of land they cross. Freight statistics cannot be readily extracted to identify what has passed over the land. Passenger fares are not received by the owner and operator of the railway, but by the train operating company.
78. In fact, the rent provisions of the wayleaves have proved highly contentious [APP-W3-3/29/§4.10]. This has culminated in the Duke of Northumberland twice threatening to terminate the wayleaves in a dispute over rent, including after this application for the Order was made with an extraordinary demand for almost £600,000 in rent [APP-W3-3/90]. Provisions which give an individual such a stranglehold over a public resource are inappropriate. Whilst at this Inquiry the objectors have tried to suggest that these threats were not serious, such an argument is made for convenience. The threats – written by solicitors, a matter of months ago – should clearly be treated as serious. In an attempt to address this concern, the objectors have offered an “undertaking” not to attempt to exercise the powers of re-entry in the wayleaves, but no formal agreement has been offered or given. The Inspector and Secretary of State should proceed on the basis that whilst the imminent threat has been withdrawn, it may return.
79. Without Article 34:

- a. A rent will have to be calculated each year depending on usage of the railway;
- b. The objectors will command a new and increased rent as a direct consequence of the expenditure of public money on the introduction of passenger services;
- c. The objectors will be able to threaten or take proceedings which may put the operation of the railway at risk in the event of disputes [**APP-W3-3/31/§5.1**].

80. The remedy in Article 34 is in principle a simple one. The rent provisions will be removed from the wayleaves, and the landowners will be compensated for the losses which flow from that. The provision avoids the acquisition of the objectors' land and thus minimises the interference with their interests.

81. The landowners object strongly to these provisions. At the outset, it is right to note that the engagement with the landowners prior to the application was poor. However, the decision to deal with the wayleaves in this way was taken shortly before the application had to be made to continue on the ambitious timetable for the delivery of the Scheme. It is regrettable that more was not done to work with the landowners prior to submission. Nonetheless, the objection pursued is a fundamental one: the landowners are flatly resistant to the interference with their rents.

82. The landowners argue that there is no compelling case for the inclusion of Article 34. This argument depends on the late disavowal of any attempt to prevent the operation of the railway over rent disputes. The landowners argue that the rent can simply be settled by agreement or by arbitration if necessary. This deals with only part of the problems set out above. First, an annual rent will need to be settled depending on usage. Second, the rent will necessarily be inflated by the Scheme. Third, the railway will remain vulnerable to threats such as those made in July 2021. The introduction of the Scheme – with the vast public benefits it brings – creates a compelling case to deal with these dated provisions.

83. The landowners go on to argue that, if Article 34 is included, the compensation provisions will result in some unfairness. Their argument on these issues is confused, and the closing submissions were not consistent with the answers given by Mr Cottage in cross examination. First, the landowners contend that it is inappropriate to apply provisions of the Compensation Code because no land is to be taken. The obvious reason for making this argument is to seek to do better than

the Compensation Code would permit. However, as Mr Cottage agreed, the landowners should be compensated on the principle of equivalence: their position should not be better, and not be worse, because of the Scheme. That means it is necessary to ensure that any compensation provided does not result in increased compensation *because of the Scheme*. But that is precisely what the landowners contend for in their submissions.

84. Mr Cottage was clear in his answers to cross examination: it would not be in the public interest for his clients to receive a windfall as a result of the Scheme. The Scheme is to be funded with public money with no contribution from the landowners, so it would be plainly contrary to the public interest for the landowners to profit from it. Yet that is precisely what would happen if their objection is upheld and either (a) Article 34 is removed altogether or (b) it is reworded to remove the “no scheme” assumption.
85. The solution proposed by the Promoter plainly strikes an appropriate balance between the interests of the landowners and the public purse. The landowners will receive a single capitalised payment in respect of the rents which they will no longer receive. That payment will not be inflated by the Scheme; rather any increase in rent as a consequence of the Scheme will be disregarded. Mr Cottage essentially accepted that this was a fair and reasonable approach in cross examination. It would be perverse for the landowners to receive more money for the modification of the wayleave than they would be entitled to if their land was acquired outright. Again, that proposition was apparently accepted by Mr Cottage, but then disregarded by the landowners in closing. In those circumstances, the approach in the Order (as amended) is clearly justified.
86. Finally, it should be borne in mind that the Promoter is not seeking to acquire the landowners’ land. Such an acquisition may have been justified. But the lesser interference of modifying the wayleaves can resolve the issues identified above, and allow the landowners to retain their freehold interests. This clearly demonstrates that an appropriate balance has been struck between the interests of the landowners and the public interest in this Scheme.

Other locations

87. No other specific locations affected by the Order have been the subject of representations at the Inquiry. The case for the powers in the Order is summarised in the Statement of Case and in the written evidence:

- a. Powers for the compulsory purchase of land and rights over land and powers for temporary use: see the evidence of Mr Sindall [APP-W2-1] in respect of the need for the land in question, and [INQ-30];
- b. Level crossing closures and modifications and associated diversions: see the evidence of Mr Lord [APP-W5-1] and Mr Sindall [APP-W2-1/§3.75-3.115].

88. The Promoter has provided updates in respect of other landowners. In summary:

- a. Mr and Mrs Doyle (OBJ/26): as Mr Orr confirmed, an agreement has been reached with the Doyles and once executed, the objection will be withdrawn;
- b. Blagdon Estates (Viscount Ridley and Plessey Checks) (OBJ/13): it is expected that the objection will be withdrawn today;
- c. McLagan/Asda (REP/04): the Promoter is waiting to hear from the objector in respect of any outstanding issues. The impact on the supermarket and drive-thru coffee shop (Matter 3(a)) has been addressed through the removal Plot 257A, as confirmed by Mr Mills in his oral evidence.

89. In respect of statutory undertakers (Matter 4):

- a. Northern Power Grid (OBJ/11) have failed to engage with the Promoter until the 11th hour, writing on 26 November 2021 to say that they were unsatisfied with the protective provisions in the Order. The Promoter has had no prior opportunity to engage with this objector on this point, having not had a substantive response before now. The Promoter maintains that the protective provisions, which are in standard form for utilities companies, are appropriate. It will engage further with Northern Power Grid to seek to resolve its objection after the close of the Inquiry;
- b. Agreement has been reached with Nexus (OBJ/20) including in terms of protective provisions which are included in the latest draft Order. The objection is expected to be formally withdrawn shortly.

The application for deemed planning permission

90. There are no objections to the application for deemed planning permission. The scope of and reasons for each of the works to be authorised by the Order, along with the proposed conditions, are summarised in Ms Healey’s evidence [**APP-W4-1/Sections 7 and 8**]. In the absence of any objections and the clear need for these works to enable the delivery of the Scheme (with the concomitant benefits as set out above), deemed planning permission should be granted.

Open space

91. Some of the land affected by the Order is “open space”. Relevant certificates have been sought from the Secretary of State for Levelling Up, Housing and Communities. No objections have been made to those certificates, and accordingly they should be granted. The basis for the applications is summarised at [**APP-44/29/§8.22-831**]

Conclusion

92. The benefits of the Scheme are clear and compelling. This Order will allow those benefits to be realised. This is a once in a generation opportunity to turn a train line which currently is used only by occasional freight services into an asset to serve the community of South East Northumberland. The objections to the Order are limited and have been addressed in full by the Promoter. The use of land and rights to secure the profound benefits of the Scheme is fully justified. The Order should be made without delay.

Richard Turney
Landmark Chambers

30 November 2021