



Felixstowe Branch Line and Ipswich Yard Improvement Decision Letter

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Our Ref: TWA/05/APP/04
Your Ref: HB/84260/120004

22 July 2008

Dear Sirs,

Transport and Works Act 1992

Town and Country Planning Act 1990

Applications for the proposed Felixstowe Branch Line and Ipswich Yard Improvement Order and for deemed planning permission

1. I am directed by the Secretary of State for Transport to say that consideration has been given to the report of the Inspector, Mr C J Tipping MA(Cantab), who held a public inquiry between 13 March and 28 September 2007 into the applications made by your clients, the Felixstowe Dock and Railway Company (FDRC), for:

- a. the Felixstowe Branch Line and Ipswich Yard Improvement Order (the Order), to be made under sections 1 and 5 of the Transport and Works Act 1992 (the TWA); and
- b. a direction as to deemed planning permission for the development provided for in the Order, to be issued under section 90(2A) of the Town and Country Planning Act 1990.

2. The Order, if made, would authorise FDRC to dual about 7 kilometres of the Ipswich to Felixstowe branch railway line and to carry out improvements to the Ipswich Yard and Westerfield level crossing. The proposed Order includes provision for, among other things, the permanent acquisition of land; temporary possession of land; stopping up, diverting or changing the status of highways; altering or closing level crossings; carrying out street works; and for transferring the powers in the Order to Network Rail.

3. A copy of the Inspector's report is enclosed. His conclusions are set out in section 7 of his report and his recommendations are at section 8.

Summary of the Inspector's recommendations

4. The Inspector recommended that the Order be made, with the modifications in inquiry document APP/166, and subject to the retention of Grimston Lane level crossing (see paragraph 38 below). He recommended also that deemed planning permission be granted for the development provided for in the Order, subject to the conditions set out in the Schedule to his Report.

Summary of the Secretary of State's decisions

5. For the reasons given in this letter, the Secretary of State has decided to make the Order, with modifications, and to direct that planning permission be deemed to be granted, subject to the conditions set out in Annex 1 to this letter.

Secretary of State's consideration

6. Careful consideration has been given to all the arguments put forward by, or on behalf of, the parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs, with the relevant paragraph numbers of the report given in brackets for ease of cross-reference.

The aims and objectives of, and the need for, the scheme

7. The Inspector noted from FDRC's evidence, as supported by the evidence of rail operators, freight handlers and shippers, that the freight capacity of the rail route to the Port of Felixstowe was already at or close to practical saturation (7.2.1, 7.2.5). With the Felixstowe South Reconfiguration (FSR) scheme to expand the Port in place, the annual throughput of containers was predicted to expand by 40%. The objective of the rail enhancement scheme was to permit a significant proportion of this additional freight to be carried by rail rather than road (7.2.1). By effectively doubling the freight capacity of the line, the aim was to increase the modal share of rail freight at the Port to 26% (7.2.2, 7.2.3).

8. The Inspector noted also that, in deciding to approve the FSR scheme, the Secretary of State for Transport and the First Secretary of State concluded that the expansion of the Port of Felixstowe was vital in the national interest. Since the proposed rail improvements formed part of the FSR section 106 obligation, the Inspector recognised that unless these improvements were provided the FSR could not proceed in the absence of further agreement. He considered that on this ground alone the need for the scheme was established, but his view was reinforced by confirmation from supporters of the scheme that they would use the increased rail freight capacity and by FDRC's substantial financial commitment to the scheme (7.2.4, 7.2.5, 7.2.8). The Inspector accordingly concluded that the scheme would meet the aims and objectives set out by FDRC and that a pressing need for the scheme had been demonstrated (7.2.9, 7.15.1).

9. The Secretary of State agrees with the Inspector, for the reasons given in the Inspector's report, that a compelling need for additional capacity on the Felixstowe branch line has been clearly established.

Consistency with national, regional and local planning and transport policies

10. The Inspector noted that the European Transport White Paper contained policies to link different modes of transport and to promote the carriage of freight by rail. At the national level, improving port access by modes other than roads was a stated aim of 'Modern Ports'; and the 2004 White Papers 'Future of Transport' and 'Future of Rail' included policies to maximise the use of rail rather than road (7.3.1). At the regional level, the scheme was compliant with policies in RPG6 and, at county level, with policies of the Suffolk Structure Plan. It also found support in the relevant Local Plans and formed part of the Local Transport Plan (7.3.2). The Inspector therefore concluded that the scheme was consonant with European, national, regional and local policy (7.3.4, 7.15.1).

11. The Secretary of State agrees with the Inspector, for the reasons he gives, that the scheme enjoys considerable support in a wide range of adopted policies at all levels.

Main alternatives

12. The Inspector noted that, as part of the preparation for the FSR proposal, a Joint Study Group was set up consisting of representatives of FDRC and of the Strategic Rail Authority. The Group studied a number of options for enhancing the capacity of the rail infrastructure serving the Port of Felixstowe (7.4.1, 7.4.2). The Inspector also had regard to the alternatives proposed by two objectors, Mr Cowan and Dr Glaccum. Mr Cowan considered that additional capacity could be provided by more efficient use of the branch line without improvements. Dr Glaccum suggested that an expansion of water-borne transport of containers might render the dualling unnecessary, by diverting container traffic to ports elsewhere in the United Kingdom (7.2.6, 7.2.7). The Inspector considered, however, that there was no cogent evidence from which he could conclude that either of these alternatives could address the need for significant intensification of freight transport capacity which would arise from implementation of the FSR (7.4.6).

13. The Inspector concluded that the choice of measures now proposed had been justified by FDRC's case and that none of the alternatives considered by the Joint Study Group or put forward by objectors would meet the aims and objectives of the scheme more effectively (7.4.7, 7.15.1). The Secretary of State agrees with the Inspector, for the reasons he gives, that none of the other options referred to would adequately meet the freight transportation requirements of the expanding Port of Felixstowe. Transportation, economic and social benefits of the scheme.

14. The Inspector considered that expansion of the capacity to carry freight to and from the Port was essential in order to realise the national and local economic benefits of the proposed Port expansion. Furthermore, there were clear benefits flowing from the transfer of freight from road to rail. Failure to provide the improved modal share for rail freight sought by FDRC would lead to significant further growth in lorry traffic both nationally and locally (7.5.1 and 7.5.2). The Inspector concluded that clear transportation, economic and social benefits would flow from implementation of the scheme (7.5.3). The Secretary of State agrees with the Inspector, for the reasons he gives.

The likely impacts of the scheme on local residents and the environment

Effects of noise and vibration

15. The Inspector noted that, as recognised by FDRC, there would be some significant impacts from noise and vibration arising during construction, chiefly though not solely arising from the track laying process. However, as track laying was a progressive linear operation, properties in the vicinity would typically be exposed to such noise on only 5 to 10 days during the construction period (7.6.2). The Inspector appreciated that it would be necessary for some of the track laying to take place at night and at weekends. He noted that in the case of properties worst affected, FDRC was offering mitigation in the form of noise insulation or temporary re housing (7.6.3). Vibration during construction would be at levels well below those at which any structural damage to properties might be anticipated (7.6.4).

16. With regard to the noise impacts of intensified use of the branch line after dualling, the Inspector noted that the general increase in noise levels amounted to only 1.5dB in the daytime and 3dB at night. Nowhere was an increased noise level of greater than minor significance predicted, although four properties might nevertheless qualify for noise insulation (7.6.5). The dualling and the bi directional signalling proposed would reduce the number of occasions on which trains were held at signals causing noise intrusion from idling locomotives, which was a concern of some local residents (7.6.6, 7.6.17).

17. The Inspector observed that no-one who took a passenger train along this stretch of line could fail to be struck by the number of occasions on which the train horn was sounded. He recognised that an increase in the number of trains of some 60% would, unless the rules relating to the sounding of train horns changed, cause a similar increase in the frequency with which horns would be sounded on the approach to the level crossings on the branch line, with a disproportionate increase in such soundings at night. He noted, however, that the rules relating to horn sounding were set to change, and that more flexible rules on the sound levels of horns had already been introduced. He therefore considered it unlikely that the impact of train horns arising from intensified use of the branch line would prove unacceptable. Indeed, he considered that the existing impact might well be significantly reduced, especially if some train horns were silenced at night (7.6.7-7.6.9).

18. The Inspector had regard to the concerns of residents of Ranelagh Road about the adverse noise impacts of intensified use of Ipswich Yard. However, taking into account the introduction of modern Class 66 diesel locomotives with their lower noise and exhaust emissions, and the provision of targeted mitigation in the form of a noise barrier, he concluded that the impact of the Yard would be no worse than at present, and that there was likely to be some improvement (7.6.10).

19. With regard to two residents, Mr Flower and Ms Malcolm, who probably lived closer to the branch line than any other objector, the Inspector recognised that there would be potentially major adverse construction noise and vibration impacts on them, albeit of short duration. He noted, though, that in addition to the general mitigation proposed in the draft Code of Construction Practice (âCoCPâ), the construction impacts on them would be specifically addressed by the provision of a zone of protection around their property, and that mitigation had also been offered to them in the form of insulation or temporary rehousing. The Inspector concluded that, having regard to the short-lived nature of the adverse construction impacts and the proposed mitigation measures, the impacts on their property would not be unacceptable (7.6.13, 7.6.16).

20. In regard to operational disturbance to Mr Flower and Ms Malcolm from intensified use of the branch line, the Inspector considered that whilst dualling would bring passing trains some 3 metres nearer to their property, the removal of the noisy fish-plate joint at a nearby crossing would result in a decrease in noise levels, and air quality should improve as a result of increasing use of Class 66 locomotives. He did not accept that the adverse impacts of the scheme, once operational, would be such as to render their property uninhabitable (7.6.14; 7.6.16).

21. With regard to concerns expressed by Mr and Mrs Seaman and their neighbour Mr Couszins about two signals located close to their properties, the Inspector noted that the installation of an environmental board relating to Signal No. CO632 had afforded a degree of relief and that Signal No. CO624 was to be relocated. Moreover, the dualling and the proposed bi-directional signalling system were likely to lead to

fewer occasions when locomotives were held idling at signals (7.6.17).

22. Overall, the Inspector concluded that, while there would be some significant adverse noise and vibration impacts during construction, with mitigation these would be acceptable. With the scheme in operation, additional noise impacts would nowhere be more than minor, and in some cases the scheme would bring minor but significant relief (7.6.19).

23. The Secretary of State agrees with the Inspector's conclusions on the likely noise and vibration impacts of this scheme on those living near to the branch line and to the Ipswich Yard. With regard to the rules relating to the sounding of train horns which the Inspector understood were set to change, it can be confirmed that with effect from April 2007 the rail industry changed the rules in relation to footpath crossings, to the effect that horns would not normally be sounded between 11pm and 7am. Outside of these hours, only the lower tone of two-tone horns would normally be sounded where possible.

Landscape and visual impacts

24. The Inspector considered that the proposed widening of the railway, an existing linear feature, and an increase in the number of passing trains, would not have any significant impact on the Suffolk Coasts and Heaths Area of Outstanding Natural Beauty. Having regard to the proposed planning conditions relating to landscaping and to the site management provisions of the CoCP, the Inspector was satisfied that the adverse visual impacts of construction would not be unacceptable and that the scheme would not have significant residual adverse landscape and visual impacts (7.6.20-7.6.23). The Secretary of State agrees with the Inspector's conclusions on this issue, for the reasons he gives.

Effects on nature conservation, air quality, water resources and contaminated land

25. The Inspector noted that, taking into account a range of measures proposed to protect wildlife and trees and vulnerable plants, no residual adverse ecological impacts were anticipated either from construction of the scheme or its subsequent operation (7.6.24-7.6.25). He recognised that there was some potential for adverse air quality impacts from construction, especially from dust, but he noted that well-tried methods for controlling dust emissions would be applied by the proposed CoCP. Whilst additional trains would have some adverse impact on air quality, he was mindful that the adverse air quality impact of the carriage of an equivalent volume of freight by road would, in broad terms, be worse by about 100% (7.6.26-7.6.28).

26. The Inspector noted that drainage systems would be installed on the dualled track and at Ipswich Yard in accordance with Network Rail standards. Appropriate contaminated land and water pollution control schemes would also be required under the proposed planning conditions (7.6.29). No significant adverse impacts on archaeological features were predicted, though investigation was provided for in the proposed planning conditions (7.6.30).

27. The Inspector concluded that the scheme was unlikely to have any significant residual adverse impacts in these respects (7.6.31). The Secretary of State agrees with the Inspector, for the reasons he gives.

Effects of the increased use of the Ipswich locomotive fuelling point

28. The Inspector noted that the impact of noise and exhaust emissions resulting from the existing and proposed intensified use of the Ipswich fuelling point (âIFPâ) was a major concern of objectors. The Ramsey Park Residentsâ Association (âRPRAâ) believed that the scheme should be rejected unless and until mitigation was provided for the additional impacts which residents feared would ensue (7.6.32). The Inspector recognised that the properties in Ramsey Park and the long-established IFP made uncomfortable neighbours. He considered, however, that it was not part of his remit to resolve the existing problems with the IFP. His proper concern was to consider whether any likely additional impacts on residents resulting from the scheme were acceptable (7.6.33-7.6.36).

29. As far as air quality was concerned, the Inspector noted the agreed position of FDRC and Ipswich Borough Council (âIBCâ) that, even in the âworst-caseâ scenario, air quality objectives were unlikely to be exceeded (7.6.36). He did not consider that the evidence of the RPRA on this matter, which seemed to him to postulate an unlikely combination of events, justified reaching a contrary conclusion (7.6.38).

30. As regards noise, the Inspector noted that FDRC and IBC were agreed that, in the âworst-caseâ scenario, the overall noise emissions from the IFP would be no worse and probably marginally better than at present; although IBC argued that in assessing the impact of the scheme on the IFP no account should be taken of the beneficial effects of phasing out of Class 57 locomotives as this was due to happen anyway. The Inspector considered, however, that in assessing the impact of the potential intensified use of the IFP, he needed to compare the position now against the position in 2023, taking all likely circumstances into account. He concluded that the intensification of use of the IFP would not have any significant additional adverse impact on the amenity of local residents such that he should recommend that the scheme should not proceed or that additional mitigation measures were required. He also did not accept that there would be any disproportionate breach of the right to respect for private and family life under the European Convention on Human Rights (7.6.39-7.6.47).

31. The Secretary of State agrees with the Inspectorâs conclusion that air quality objectives are unlikely to be exceeded as a result of intensification of use of the IFP. She also accepts his advice that overall noise emissions from the IFP are unlikely to worsen by 2023, and may even improve, compared to the present situation. She recognises that this is because, in the short term, there is likely to be a perceptible improvement in noise levels resulting from the proposed introduction of Class 66 locomotives, whereas over the longer term some - or, in the worst case scenario, all - of this improvement is likely to be overtaken by increased noise resulting from intensification of use of the IFP. She also notes from the evidence that, even if the benefits of replacing the Class 57s were discounted, the extent to which the scheme itself would be likely to result in increased noise levels could vary between 1 to 3 dB, depending upon the amount of future Port business awarded to Freightliner - which FDRC and IBC disagreed on, and which could mean the difference between the increase in noise levels being perceptible or not in normal circumstances. Taking all these considerations into account, including the difficulties in predicting the 2023 situation with any certainty, the Secretary of State is not persuaded that the impacts of the scheme on the amenities of residents who live near to the IFP are likely to be so detrimental as to warrant rejecting the scheme, especially when weighed against the very compelling case for the proposed railway enhancements as set out elsewhere in this letter. She has considered a post-inquiry representation from the Chairman of the RPRA about the possible increased use of the IFP as a result of the proposed upgrading of the Peterborough to Nuneaton route for rail freight traffic, but this does not lead her to come to a different conclusion.

Impacts of proposed construction site on Reeve Lodge, Trimley St Martin

32. The Inspector noted that, in response to objections about locating a construction site adjacent to Reeve Lodge residential home, FDRC had proposed that it be relocated to land some 350 metres to the south west. It was accepted by objectors that at this distance the construction site would not be likely to have any significant adverse impacts on the residents of the Lodge, but concerns remained about the uncertain availability of that land for construction purposes beyond 2011 (7.6.48-7.6.50).

33. The Inspector considered it likely, however, that the scheme (if approved) would be fully implemented before the land proposed for the relocated construction site was required by its owners for other purposes. If, nevertheless, the site adjacent to Reeve Lodge should need to be used, he was satisfied that adequate protection would be in place for the residents under proposed planning condition 25, which afforded the local planning authority a considerable measure of control (7.6.51). He was, furthermore, not persuaded by the concerns of other objectors that use of the proposed relocated construction site would alter its planning status so as to facilitate an application for planning permission for residential development of the land. He considered that it would be outside his remit to make any recommendation regarding the future use of this land (7.6.52-7.6.54).

34. The Secretary of State notes FDRC's intention to relocate the worksite which was originally to be located adjacent to Reeve Lodge. Since use of the alternative site does not form part of the applications which are currently before her, planning permission would need to be obtained separately from Suffolk Coastal District Council, although the Secretary of State notes that the Council did not express any objections at the inquiry to its temporary use as a worksite. Furthermore, whilst the Secretary of State notes that the alternative worksite may not be available after 2011, she agrees with the Inspector that the proposed planning condition 25 should give sufficient protection to residents of Reeve Lodge in the event that the original worksite should eventually be required. She considers further that it would not be appropriate for her, in the context of the current applications, to give any ruling or opinion as to what might be an appropriate use in the future of the alternative temporary construction site. This would be for the local planning authority to consider on its own merits at the appropriate time.

Impacts of the scheme on traffic and the rights of way network

35. With regard to the impacts of construction activities, the Inspector considered that the limited one-way restriction proposed on the Old Felixstowe Road was desirable if unacceptable traffic conflicts were to be avoided (7.7.1). As for the temporary closure of at-grade crossings during the construction period, he noted that diversions would be available, closures would be publicised in advance and that full access for emergency vehicles at vehicular crossings would be assured throughout. In the Inspector's view, improvements to the crossings that were to be retained would go some way to mitigating the short-term adverse impacts of construction (7.7.2).

36. The Inspector noted that in operation the scheme would result in longer barrier down periods both at the four vehicular crossings along the branch line and at Westerfield. However, the predicted maximum total hourly barrier down time at Westerfield - the busiest crossing - would be well below the maximum recommended by HM Railway Inspectorate. The emergency services had no objection on this account. The Inspector was satisfied also that queuing traffic would not breach national air quality

standards (7.7.3-7.7.4). He concluded that the additional delay and inconvenience experienced by road users would be acceptable and proportionate to the benefits resulting from the scheme (7.7.6).

37. The Inspector noted that FDRC was proposing permanently to close Croft Lane and Gun Lane crossings because of their proximity to signals and the consequent public safety risks (7.7.8). The evidence before him indicated that those crossings were very little used and he was satisfied that there were, or were proposed, satisfactory diversions. (7.7.9-7.7.11). He did not accept that the cost and visual intrusion of replacement footbridges was warranted by the level of use of the crossings (7.7.12). He considered also that the improvements to the crossings which would remain open along the section of line to be dualled were a clear benefit arising from the scheme and would in part mitigate the closure of Croft and Gun Lane crossings (7.7.13). The Inspector accordingly concluded that these two crossings should be closed (7.7.14).

38. The Inspector noted that, by contrast, FDRC was proposing the closure of Grimston Lane crossing solely on grounds of additional noise from the sounding of train horns; safety was not claimed to be an issue (7.7.15). In this context, he noted that the placing of whistle boards was discretionary and that none had to date been thought necessary at Grimston Lane. In addition, as mentioned at paragraph 17 above, at the time of the inquiry the train horn sounding regime had recently been reviewed and relaxed and was likely to be amended further in the imminent future. Taking these factors into account, and the objections of some local residents to closure of this crossing, the Inspector concluded that no compelling reason had been advanced to justify this closure and therefore the Order should be modified to exclude it (7.7.16-7.7.17).

39. The Secretary of State agrees with the Inspector, for the reasons he gives, that the adverse impacts of the scheme on traffic are of relatively minor significance, taking into account the benefits of the scheme and the proposed mitigation measures. She similarly agrees with his recommendation that Croft Lane and Gun Lane crossings should be closed. For the purposes of section 5(6) of the TWA, the Secretary of State confirms that, where the Order extinguishes any public right of way over land, she is satisfied that either an alternative right of way is being provided or the provision of an alternative right of way is not required.

40. With regard to the sounding of train horns at Grimston Lane crossing, the Secretary of State has confirmed at paragraph 23 above that the industry rules referred to by the Inspector were revised in April 2007. She does not wish to pre-empt a decision by Network Rail as to whether it would be desirable on safety grounds for whistle boards to be erected at Grimston Lane crossing, if it is kept open across the dualled branch line, as this is a matter which should be subject to a risk assessment by them.

Nevertheless, from the evidence available to her, she is satisfied that, on balance, the advantages for local residents of keeping this crossing open would be likely to outweigh the disadvantages of any additional sounding of train horns (in accordance with the new regime) that may be required in the vicinity of this crossing. She has therefore decided to accept the Inspector's recommendation that the Order should not authorise the closure of the Grimston Lane crossing.

Impacts of the scheme on train operating companies and other businesses

41. The Inspector reported that the objections of English, Welsh and Scottish Railway and Freightliner relating to Ipswich Yard had been withdrawn following the conclusion of an agreement with FDRC. By the close of the inquiry there were no subsisting objections from Network Rail, any other train operating company or from statutory undertakers. With regard to closure of the rail access to the Lower Yard he was satisfied that this was an acceptable and necessary concomitant of putting the scheme in place. He therefore concluded that there would be no unacceptable effects on train operating and other businesses

(7.8.1-7.8.5). The Secretary of State agrees with this conclusion.

Adequacy of environmental statement (âESâ)

42. The Inspector was satisfied that the ES which was submitted with the application and the Addendum ES which was prepared following the changes proposed to the scheme in May 2006, taken together, formed an adequate ES and that all statutory procedural requirements had been complied with (7.11.1-7.11.3). The Secretary of State agrees with the Inspector that the ES (including its addendum) complies with the relevant legal requirements. She confirms that, in reaching her decisions, she has complied with the requirements of paragraphs (a) to (c) of section 14(3A) of the TWA about consideration of the ES and representations made upon it.

Proposed Code of Construction Practice (âCoCPâ)

43. The Inspector was satisfied that FDRCâs proposed CoCP, to which the relevant local authorities had contributed, contained all the in-principle elements necessary to minimise and mitigate the adverse impacts of the construction phase of the scheme. He was satisfied that the requirement in proposed planning condition 20 for the final form of the CoCP to be agreed with the local planning authorities offered adequate assurance that it would provide the maximum practical mitigation against those impacts (7.9.1-7.9.3). The Secretary of State agrees with this conclusion.

Proposed planning conditions

44. The Inspector considered that the proposed planning conditions set out in the Schedule to his report met the tests set out in DoE Circular 11/95. He noted that they had the support of the relevant local authorities (7.10.1).

45. Subject to some further amendments described below, the Secretary of State agrees that the planning conditions recommended by the Inspector are appropriate and should be attached to the direction as to deemed planning permission. The amendments that she intends to make are as follows:

- in condition 1 (time limits), to remove the words âunless otherwise approved by the local planning authorityâ, which would have allowed the normal procedure for varying planning conditions under section 73 of the Town and Country Planning Act 1990 to be circumvented;
- in condition 3 (design, external appearance and materials) to insert a requirement for the siting of the specified elements of development to be approved by the local planning authority; and
- in condition 21 (noise and mitigation during construction), to insert an express requirement that any noise attenuation measures approved by the local planning authority be implemented before, and maintained throughout, construction of the relevant stage of development.

In addition, the Secretary of State proposes to make some drafting changes to help clarify the effect of some conditions and improve their enforceability. None of these changes would alter the substance of those conditions. The conditions which she accordingly intends to impose are set out in Annex 1 to this letter.

Summary of environmental impacts

46. The Inspector said that he had been unable to identify any environmental impacts that might be characterised as major adverse. Any residual impacts, post mitigation, would be minor and proportionate to the benefits of the scheme (7.9.5-7.9.6; 7.15.2).

47. The Secretary of State agrees with the Inspector that, with all the proposed mitigation measures in place, any residual adverse impacts would be within acceptable limits and proportionate to the benefits of the scheme. Section 14(3AA) of the TWA does, however, require her to describe the main measures to avoid, reduce and, if possible, remedy any major adverse environmental effects - which means that she must first of all identify which effects would be major adverse if unmitigated. As noted in paragraph 19 of this letter, the Inspector concluded in paragraphs 7.6.13-7.6.16 of his report that there would be potentially major adverse construction noise and vibration impacts on Mr Flower and Ms Malcolm, albeit of short duration, but that with the proposed mitigation measures in place these impacts would not be unacceptable. For the purposes of section 14(3AA), those mitigation measures are described in paragraph 19 above.

The case for compulsory purchase powers

48. The Inspector concluded that since there was a pressing need for the expansion of the Port of Felixstowe, and since FDRC's rail proposals were a necessary part of that scheme, there was a compelling reason in the public interest for conferring on FDRC the compulsory purchase powers sought (7.12.2). There were in any event no sustained objections to the proposed land acquisition powers in the Order (7.12.3-7.12.4). The Inspector considered also that the proposed compulsory acquisition would not be premature and that the extent of land to be acquired was the minimum necessary for implementation of the works. He was therefore satisfied that the proposed compulsory acquisition powers were compliant with ODPM Circular 06/2004 (7.12.5-7.12.6).

49. The Secretary of State agrees with the Inspector's conclusions, for the reasons he gives.

Funding

50. The Inspector noted FDRC's evidence that the total capital cost of the scheme would be met out of its own funds or those of its holding companies, and that the enhancement of the rail infrastructure was an essential element in the expansion of its business as operator of the Port of Felixstowe. He was satisfied that the proposals were reasonably capable of attracting the necessary funding (7.13.1-7.13.2). The Secretary of State agrees with the Inspector's conclusion, and is satisfied that the scheme is likely to be implemented if approval is given.

Changes to the draft Order

51. The Inspector said that many of the changes to the Order proposed by FDRC (as set out in inquiry document APP/166) were designed to correct drafting deficiencies or to address changes to the TWA model clauses. Other changes relating to leasehold interests in Ipswich Yard had been agreed to by the affected parties (7.14.1). In addition, he recommended that the Order be modified to exclude the closure of Grimston Lane crossing (see paragraph 38 above) (7.14.2).

52. The Secretary of State agrees with the Inspector that these proposed changes to the Order should be included. She is satisfied that they do not amount to a substantial change in the proposals which would require action under section 13(4) of the TWA. The further changes she proposes to make to the Order, and the reasons for those changes, are explained at paragraph 56 below.

The Inspector's overall conclusions

53. In summary, the Inspector concluded that there was a pressing need for the scheme and that it would bring clear economic, environmental and social benefits. The principal potential adverse impacts of the scheme would be on those who lived close to the railway, including the IFP and Ipswich Yard, by reason of noise, vibration, exhaust emissions and delays at crossings. However, with mitigation in place, these impacts would be of minor significance. The Inspector concluded that the benefits of the scheme would materially outweigh its limited residual adverse impacts (7.15.1-7.15.3). He accordingly recommended that the Order be made with the modifications referred to above and that deemed planning permission be granted subject to the conditions set out in the Schedule to his report (8.1-8.2).

Secretary of State's overall conclusions and decision

54. The Secretary of State agrees with the Inspector that the case for authorising this scheme is compelling. She considers that the proposed works to enhance the freight-carrying capacity of the Felixstowe branch line are essential to the proposed expansion of the Port of Felixstowe, which in turn is vital to meeting the urgent national need for additional container handling capacity. Furthermore, she agrees with the Inspector that the benefits of the scheme would significantly outweigh the limited local adverse impacts which he has identified. She is therefore satisfied that it is in the public interest to authorise this scheme.

55. The Secretary of State has accordingly decided to make the Order as recommended by the Inspector, but subject also to the modifications described below, and to direct that planning permission be deemed to be granted, subject to the conditions set out in Annex 1.

56. The modifications to the Order which the Secretary of State intends to make, in addition to those proposed by FDRC and set out in inquiry document APP/166, are as follows:-

- to remove from the Order provisions relating to the permanent closure of Grimston Lane level crossing and to substitute provisions authorising its temporary closure during the construction of the scheme;
- to insert in article 13 (construction and maintenance of new or altered streets) a defence for FDRC in any action against it for damages for non-repair of a street similar to the defence available to a highway authority;
- to add provisions for the protection of Cable & Wireless UK, as agreed between that company and FDRC; and
- to make miscellaneous minor drafting amendments which do not affect the substance of the Order.

57. The Secretary of State is of the opinion that these changes will not make a substantial change in the proposals.

58. The letter conveying the planning direction will issue shortly, at the same time as the Order is made, following publication of a notice of the determination in the London Gazette.

Notice under section 14 of the TWA

59. This letter constitutes the Secretary of State's notice of her determination to make the Order, with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

Challenge to decisions

60. The circumstances in which the Secretary of State's decisions may be challenged are set out in the note attached at Annex 2 to this letter.

Distribution

61. A copy of this letter and the full Inspector's Report is being sent to FDRC. Copies of this letter and the Inspector's conclusions and recommendations are being sent to those who appeared at the inquiry.

Yours faithfully,

Ellis Harvey

Head of TWA Orders Unit

ANNEX 1

CONDITIONS WHICH THE SECRETARY OF STATE INTENDS TO ATTACH TO THE DEEMED PLANNING PERMISSION

In these conditions, unless the context otherwise requires:

• "building" means any structure or erection above the surface of the ground, but does not include any level crossing barrier, traffic light or sign or any plant or machinery;

• "the development" means the works authorised by the Order;

• "the Environmental Statement" means the Environmental Statement submitted with the application for the Order on 13 December 2005 as supplemented by the Addendum to the Environmental Statement, submitted to the Secretary of State on 5 May 2006;

• "the local planning authority" means the Ipswich Borough Council or the Suffolk Coastal District Council, as appropriate;

• "the Order" means The Felixstowe Branch Line and Ipswich Yard Improvement Order 200[];

• "the Planning Drawings", "the Works and Land Plans" and the "Rights of Way Plans" mean the drawings and plans of that description accompanying the application for the Order submitted on 13 December 2005 as replaced in part by the amended drawings and plans submitted to the Secretary of State on 5 May 2006;

• "the railway" means any railway authorised to be constructed or altered by the Order;

• "the relevant limits" means the limits shown on the drawings and plans referred to above within which, under the deemed planning permission to which these conditions relate, the development may be carried out; and

• "stage" means a defined section or part of the development, the extent of which is shown in a scheme submitted to and approved by the local planning authority pursuant to condition 2, and references to numbered works are references to the works set out in Schedule 1 to the Order.

1. Time limits

The development shall commence no later than the expiration of five years beginning with the date that the Order comes into force.

Reason: to ensure that the applicants have sufficient time to secure the necessary approvals from Network Rail and that development is then commenced within a reasonable period of time.

2. Stages of Development

No development shall commence until a scheme setting out the stages of the development has been submitted to and approved by the local planning authority.

Reason: to provide certainty for the discharge of planning conditions.

3. Design, external appearance and materials

No stage of the development shall be commenced until details of the design, siting, scale, appearance and facing materials of the following elements of the development within that stage have been submitted to and approved by the local planning authority:

- a) the noise attenuation barrier to be provided at the rear of 11 to 79, Ranelagh Road, Ipswich;
- b) any other building comprised in Work Nos. 1 and 2 (railways); and
- c) the realigned highway at Grimston Lane comprised in Work No.5

Reason: to enable proper control to be exercised over the design of the development.

4. Fencing and Means of Enclosure

No stage of the development shall commence until details of all permanent boundary fencing or other means of enclosure within that stage of the development have been submitted to and approved by the local planning authority.

Reason: to protect the amenity of residents, occupiers and highway users.

5. Details of Permanent or Temporary Highway Accesses

No stage of the development shall commence until details of the layout and design of any new or altered vehicular access to the highway (which will serve the works within that stage) as set out in Schedule 5 to the Order, and any highway junction improvements, have been submitted to and approved by the local planning authority. All such works necessary to ensure highway safety shall be completed before any other construction activity, served by such accesses, is commenced in that stage.

Reason: to ensure highway safety.

6. Implementation and Maintenance of Fencing

The railway, and any construction sites, shall remain securely fenced at all times during construction of the development and any temporary fencing shall be removed on completion of the development. Permanent boundary fencing shall be completed before the permanent works comprising the new railway are brought into use. Such fencing shall be maintained in a secure condition for a period of 5 years from completion of the development, or until the works comprising the development and any land acquired under the Order for the purposes of those works are transferred to Network Rail, whichever is the sooner.

Reason: to ensure public safety

7. Landscaping

No later than six months after the commencement of that stage of the development to which it relates, a landscaping scheme shall be submitted to the local planning authority for approval. That scheme shall include the details of:

- a) any hard surfaced areas to be constructed, including permanent vehicular or pedestrian access, parking and circulation areas;
- b) any structures not shown on the Planning Drawings, such as street furniture and lighting, other than structures which may be provided by the highway authority or a local authority, and
- c) any trees or shrubs to be planted, including the location, number, species, size and planting density.

Reason: to ensure appropriate landscaping of the development.

8. Implementation and Maintenance of Landscaping

All landscaping works shall be undertaken in accordance with the relevant landscaping scheme approved under Condition 7. Unless otherwise agreed by the local planning authority, planting shall take place no later than the first available planting season after the completion of the permanent works.

Any tree or shrub planted as part of an approved landscaping scheme that, within five years of the date of planting, is removed, dies or becomes, in the opinion of the local planning authority, seriously damaged or seriously diseased, shall be replaced in the first available planting season with a specimen of the same species and size as the original planted unless otherwise agreed by the local planning authority.

Reason: to ensure satisfactory implementation of the landscaping.

9. Protection of Trees

No stage of the development shall commence until measures to protect existing trees and woodland within that stage of the development which are to be retained within the relevant limits, including that at Gun Lane, Trimley St Martin, have been implemented. These measures shall conform to BS 5837: 2005 'Trees in relation to construction'. The measures shall be maintained throughout the construction period.

Reason: to ensure appropriate protection of trees and woodland during construction.

10. Archaeology

No development shall commence until a written scheme for the investigation of areas of high and medium archaeological potential (as defined in Table 4.40 in the Environmental Statement) has been submitted to and approved by the local planning authority. That scheme shall provide for further detailed walk-over surveys and document study; intrusive investigation before construction is commenced, in any location where this is necessary; a watching brief during construction, where this is necessary, and the recording, preservation and publication of the results of the investigation.

Reason: to ensure adequate protection and recording of archaeological remains.

11. Protection of Levington Park Trial Grounds

Throughout the period of occupation for the purposes of construction of any land within the relevant limits, which adjoins that part of the Levington Park Trial Grounds marked pale blue on Planning Drawing Nos. 218593-DKB-FEL-01300-1179 Rev A and 218593-DKB-FEL-01375-1180 Rev A, that part of the Levington Park Trial Grounds shall be securely fenced or otherwise protected by a structure designed to prevent damage by construction vehicles and plant, the incursion of rabbits, the deposit of construction materials or waste, or pollution by fuel or other substances.

Reason: to protect agricultural and crop research.

12. Protection of Residential Amenity at Morston Hall Cottages

The areas of land at Morston Hall Cottages (marked in purple on the Planning Drawing No. 218593-DKB-FEL-01600-1183 Rev B) shall be securely fenced throughout the construction period and shall not be used by vehicles, for the stationing of plant, for the storage of materials or for any other construction purpose.

Reason: to protect residential amenity

13. Implementation of Permanent or Temporary Footpath and Byway Closures

The permanent footpath and byway closures permitted by the Order shall not be implemented until the alternative or diversion routes specified in the Order and shown on the Rights of Way Plans are available for use. Temporary closures shall be for no longer than is necessary to enable the works to be undertaken.

Reason: to ensure that the integrity of the footpath network is maintained

14. Contaminated Land

Development shall not commence at Ipswich Yard until a scheme to deal with contamination of any land within the relevant limits at Ipswich Yard, which is likely to cause significant harm to persons, pollution of controlled waters or the environment has been submitted to and approved by the local planning authority, in consultation with the Environment Agency.

The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the local planning authority, to identify the extent of any contamination and the remedial

measures to be taken to render the land fit for the intended purpose, together with a management plan which sets out long term measures with respect to any contaminants remaining on the site.

Any approved remedial measures shall be undertaken before development at Ipswich Yard is commenced, unless otherwise agreed by the local planning authority.

Upon completion of the approved remedial measures, a validation report shall be submitted to the local planning authority.

Reason: to ensure that any necessary remediation is undertaken

15. Water Pollution Control

Development shall not commence at Ipswich Yard until a surface water drainage scheme has been submitted to and approved by the local planning authority, in consultation with Anglian Water and the Environment Agency.

In carrying out all parts of the development, all reasonable steps shall be taken to prevent the pollution of watercourses and groundwater, including the following:

(a) no contaminated material, or polluting construction or demolition material or refuse, shall be deposited within the relevant limits;

(b) no water from the construction areas shall be permitted to discharge to any watercourse, well, spring or soakaway if it is contaminated with foul sewage, suspended soil or other pollutant;

(c) any railway ballast which is to be reused shall be lifted and cleaned to remove pollutants before being relaid; and

(d) the prior approval of the design and means of construction of any storage facilities for oils, fuels or chemicals shall be obtained from the local planning authority before that facility is installed.

Reason: to ensure that pollution of watercourses and groundwater is prevented

16. Bat Surveys

No stage of the development shall commence until a further survey of the trees specified in Table 4.37 of the Environmental Statement has been undertaken in respect of that stage to confirm whether bats are present in any of those trees to be removed or lopped during the works. No development of the relevant stage shall commence until the survey and any protection and mitigation measures proposed have been submitted to and approved by the local planning authority and undertaken in accordance with any relevant guidance produced by Natural England and/or Defra.

Reason: to ensure that any bat found is suitably protected.

17. Protection for Nationally Scarce Plants

No development shall commence until a scheme for the protection or translocation of any nationally scarce plant species (as identified in paragraphs 4.5.42 and 4.5.45 of the Environmental Statement) has been submitted to and approved by the local planning authority. Such protection measures or translocations shall take place before any construction activity commences in the vicinity of those plants.

Reason: to ensure that impacts on nationally scarce plants are properly mitigated.

18. Protection of Reptiles

No development shall commence until a strategy for the protection or translocation of any reptiles likely to be adversely affected by the works (as identified in Table 4.36 of the Environmental Statement) has been submitted to and approved by the local planning authority and such measures have been implemented.

Reason: to ensure that reptiles are properly protected.

19. Restoration of Land Used Temporarily for Construction

Any land within the relevant limits which is used temporarily for construction shall be reinstated to its former condition, or such condition as the local planning authority may approve, within one year of completion of the permanent works.

Reason: to protect amenity and restore landscaping and habitats

20. Code of Construction Practice

No development shall commence until a Code of Construction Practice, which shall cover all matters specified in the Revised Draft Code of Construction Practice, dated 20 September 2007, has been submitted to and approved by the local planning authority. All works shall be undertaken in accordance with that Code, unless otherwise agreed by the local planning authority.

Reason: to protect residents and amenity during construction.

21. Noise Monitoring and Mitigation during Construction

No development shall commence until a scheme for noise monitoring and attenuation during construction has been submitted to and approved by the local planning authority. This scheme shall contain predictions of likely noise levels and durations during construction at sensitive receptors as identified in Table 5.4 in the Environmental Statement. It shall set out proposals for the attenuation of significant adverse noise impacts at locations where these are likely to occur during construction. The noise attenuation measures shall be implemented before and maintained throughout construction of the relevant stage of the development.

Reason: to ensure that construction noise is adequately mitigated.

22. Noise Monitoring and Mitigation during Operation

- (a) The noise attenuation barrier to be provided at the rear of 11 to 79 Ranelagh Road shall be installed as soon as possible after, and no later than 6 months after, the commencement of the works at Ipswich Yard.
- (b) Before the permanent works on the Felixstowe Branch Line are brought into use, improvements to the existing track shall be completed by making good or replacing rail joints at Trimley Station, Morston Hall and Levington Level Crossings unless the same shall already have been provided prior to commencement of the works.

Reason: to ensure that operational noise is adequately mitigated at nearby residential premises.

23. New footways at Levington Bridge and Thorpe Lane Crossing

Development shall not commence within the relevant stage until details of the design of footway improvements at Levington Bridge, which shall accord with Drawing No 218593-DPA-FEL-01355-0055.P4, and at Thorpe Lane Crossing, which shall accord with Drawing No 218593-DPA-FEL-00000-0056.P2, have been submitted to and approved by the local planning authority. Such works shall be completed before the permanent works are brought into use.

Reason: to improve pedestrian safety and amenity at these locations.

24. Environmental Mitigation Measures

Where the siting of any works is to deviate materially, horizontally from the centre line or vertically from the sections shown on the Works and Land Plans, an appropriate scheme of environmental mitigation measures shall be submitted to and approved by the local planning authority. This approval shall not be withheld unless the local planning authority considers that the scheme is insufficient to mitigate any environmental impact arising from the proposed deviation that was not taken into account in the Environmental Statement.

Reason: to ensure that mitigation of any additional environmental impacts arising from any deviation from the centre line or sections is properly assessed and provided.

25. Reeve Lodge Construction Worksite

The area of land shown coloured Green, adjacent to Reeve Lodge and Trimley High Road, on Drawing AP004 shall not be used by vehicles or plant or for the storage of materials or for any other construction purpose, unless and until the replacement worksite indicated at RWS on Drawing AP004 forming part of Inquiry Document APP/163, ceases to be available on or after 1 January 2011. The area of land coloured Green shall not be used as a construction worksite, for any of the above purposes, until a scheme setting out the activities and hours of use to be permitted and any necessary mitigation measures, has been submitted to and approved by the local planning authority.

Reason: to protect residential amenity, particularly at Reeve Lodge.

26. Approvals

Where under any of these conditions, the approval of the local planning authority is required, all such approvals shall be given in writing.

Reason: to ensure that approvals are properly recorded.

27. Implementation

All works or matters which require approval under these conditions shall be carried out in accordance with that approval, unless otherwise approved by the local planning authority.

Reason: to ensure that these works or matters are implemented as approved.