

**THE NETWORK RAIL (EAST WEST RAIL BICESTER TO BEDFORD
IMPROVEMENTS) ORDER**

STATEMENT OF COMMON GROUND

**NETWORK RAIL INFRASTRUCTURE LIMITED & NATURAL
ENGLAND**

[Page left intentionally blank]

1. Introduction

- 1.1 Network Rail Infrastructure Limited (Network Rail) made an application on 27 July 2018 for an order under the Transport and Works Act 1992 to authorise the construction and maintenance of improvements to the railway between Bicester and Bedford entitled The Network Rail (East West Rail Bicester to Bedford Improvements) Order (the Order).
- 1.2 Natural England submitted a representation in relation to the Order (OBJ/242) dated 5th September 2018 and a Statement of Case on 22nd October 2018 (REP/10).
- 1.3 As stated in the Proof of Evidence of Suzanne Crutchley dated 23 January 2019, Natural England had concerns around the failure of the East West Rail Phase 2 Scheme (the Scheme) to commit to delivering a net biodiversity gain, and with the impacts of the works authorised principally under the Order on the following protected species and their habitats:
- 1.3.1 bats;
 - 1.3.2 great crested newts;
 - 1.3.3 otter;
 - 1.3.4 hazel dormice;
 - 1.3.5 water vole; and
 - 1.3.6 badgers.
- 1.4 Following the submission by Network Rail to Natural England of further information and draft licence applications, Natural England has revised its position and this was presented in its Position Statement dated 9 April 2019 OBJ242/5.
- 1.5 This document summarises:
- 1.5.1 The matters which have been resolved where Natural England can issue a Letter of No Impediment (LoNI);
 - 1.5.2 The matters which are not yet resolved but it is agreed are capable of being resolved by both parties and for which a clear route to agreement exists. Although no LoNI can yet be issued for these matters, it is anticipated that an LoNI will be issued once they are resolved.
 - 1.5.3 The matters on which the parties are still working but are not yet resolved and for which no clear route to approval exists at this time. No LoNI can yet be issued for these matters. The parties should be able to provide updated information by mid June.

2. Matters which have been resolved

- 2.1 It is agreed by NR and Natural England that:
- (a) Natural England has no objection to the Scheme on the basis of any effects on protected sites, including Sheephouse Wood SSSI, ancient woodland, veteran trees, or any terrestrial or freshwater habitat.
 - (b) Natural England has no objection to the Scheme on the basis of any effects on aquatic or terrestrial invertebrates (including white-clawed crayfish), fish, reptiles, or birds (including barn owls).
 - (c) Having received further information and assurances from Network Rail, Natural England no longer has an objection on the grounds of hazel dormice, water voles and otter.

- (d) Network Rail has received instruction from the East West Rail Company (EWRCo) dated 21st December 2018 (NR207) remitting the East West Rail Phase 2 project to achieve a biodiversity net gain outcome. Following confirmation of acceptance of that instruction, and agreement on scope to deliver it between Network Rail and EWRCo (NR208 and NR209) Network Rail, has written to Natural England (6 February 2019) setting out the steps it proposes in order in seeking to deliver a net gain in biodiversity of 10% according to the Defra 2.0 metric. Subject to the suitable wording of a planning condition to secure this, Natural England no longer retains its objection on the grounds of biodiversity net gain.

3. Matters which the parties agree are capable of being resolved

- 3.1 Network Rail and Natural England are yet to agree on the detail of the following matters, but agree that they can be resolved subject to further information or assurances being provided by Network Rail.

Badgers

- 3.2 Network Rail has provided a draft badger mitigation strategy and draft licence applications. Natural England's concerns regarding licensing this work are:

- (i) Network Rail has confirmed that where appropriate sett locations on third party land cannot be agreed, artificial setts will be located within the Order land within a suitable distance from any main sett to be lost (no further than 150m). This resolves Natural England's concern regarding the ability of Network Rail to deliver artificial sett locations by agreement.
- (ii) Following advice from the Animal and Plant Health Agency (APHA), Natural England has concerns regarding the risks of the transmission of bovine tuberculosis from badgers to cattle, which is identified as a low risk, but with high uncertainty. (Whilst there have been several studies of the perturbation effects of badger culling on disease transmission, there are none on the effects of large scale sett closures such as those proposed.) APHA has advised that suitable precautions will be to provide biosecurity advice to farmers in the area, and potentially to carry out a targeted badger vaccination programme. Full details have not yet been provided, but Network Rail expects that it will be able to comply with APHA's reasonable advice on disease transmission. Subject to this, Natural England should be able to remove its objection on this point.
- (iii) On the basis of the baitmarking survey results to date, it is not possible to demonstrate unequivocally that every suggested location for a proposed artificial sett is in the correct badger territory. However most artificial setts will be located so close to the sett to be lost that they are highly likely to be in the correct territory. There is one artificial sett, in route section 2E, that is proposed to be further away than would theoretically be ideal, but has been identified by Network Rail as better for badger welfare due to risk of disturbance from the HS2 works. Network Rail confirms that up-to-date baitmarking results will be provided to demonstrate that the artificial setts proposed are located in the correct territory. Natural England will not be able to provide a letter of no impediment without provision of this additional information, however, once the suitable position of artificial setts can be appropriately demonstrated there should be no impediment to the issue of a licence.

Great Crested Newts

- 3.3 Network Rail has provided draft licence applications for all route sections for review by Natural England and Natural England has responded with a Further Information Request. Natural England's main concerns regarding Great Crested Newts are:

- (i) Due to incomplete survey work and a lack of detail provided concerning the construction phases, it is not yet possible to fully characterise the significance of impacts to

metapopulations of newts affected by the Scheme. Network Rail has confirmed that further survey work is underway, that all metapopulations will be clearly identified and a detailed breakdown of temporary and permanent impacts will be provided when a licence submission is made.

(ii) Natural England has concerns that because of the above, it cannot yet confirm that suitable mitigation and compensation has been proposed to justify relying upon Natural England's "new licensing policies". Network Rail has provided an undertaking that:

- There will be a ratio of at least 3 new ponds created for each pond occupied by great crested newts lost or damaged by the scheme. Other ponds (i.e. those that are located close to known Great Crested Newt ponds and are suitable for foraging) that will be lost or damaged by the scheme will be compensated on a 1:1 ratio
- There will be a ratio of at least 2:1 of suitable terrestrial habitat provided where habitat is permanently lost.
- All terrestrial habitat temporarily lost or damaged will be reinstated, following completion of construction activities within the relevant area of the scheme
- That for any meta-population where Natural England are not satisfied that adequate compensation can be provided to justify use of the new licensing policies, Network Rail would apply for a licence to trap and translocate as required using standard licensing approaches.
- If a traditional licensing approach was taken, receptor sites would be provided within the Order land. Receptor sites and any compensation habitat to be created will be suitably located to address areas of impact with sufficient connectivity to known meta-populations.

3.5 Subject to reviewing these assurances, Natural England expects to be able to remove its objection on Great Crested Newts.

4. **Matters which are not yet resolved**

Bats

4.1 Natural England has reservations over the level of bat survey which has been undertaken, and hence the reliability with which impacts can be predicted and mitigation or compensation provided. This view is presented in its Position Statement dated 9 April 2019. Network Rail's rebuttal of this position with reference to the precautionary approach taken was provided in the oral evidence of Dr. Stephanie Wray. The parties are proposing to meet to work through these issues in mid May and intend to provide a further statement on whether they can be resolved by mid-June.



Signed by (on behalf of Network Rail): Colin Murphy

A handwritten signature in black ink, appearing to read "C Murphy", written over a horizontal line.

Position: Head of Consenting and Environment

Date: 30/04/19

Signed by (on behalf of Natural England): Richard Broadbent

A handwritten signature in black ink, appearing to read "R Broadbent", written over a horizontal line.

Position: Head of Legal Services

Date: 30/04/19
