

Rail Directorate

Buchanan House

58 Port Dundas Road

Glasgow

Mr Stephen Wiggs
John Kennedy & Co
Minerva House
5 Montague Close
London
SE1 9BB

Your ref:

Our ref:

Date:

27 November 2012

Dear Mr Wiggs,

Light Railways Act 1896 – Banchory and Crathes Light Railway Order

I refer to the application submitted on behalf of your client Deeside Railway Company Ltd (DRCL) on 12 December 2007 for the making of the Banchory and Crathes Light Railway Order (LRO) under the Light Railways Act 1896. A Draft Decision Letter was issued to you in August 2011.

However, an error was subsequently identified which noted that the amended commencement point would have meant that railway started at the same location as the Inverey fishing hut and the length of line and crossing points were also incorrect. Consequently the line was measured and the crossing points checked resulting in the revised Decision Letter. These amendments are technical changes to the Order and not substantive.

This letter conveys the Scottish Ministers' decision on the application.

Purpose of LRO

The purpose of the LRO is to authorise the construction and maintenance of a Light Railway line within the local government area of Aberdeenshire Council, partly on the same lines and levels as the former railway between Banchory and Milton of Crathes.

The Application

DRCL submitted an application to Transport Scotland on 12 December 2007. The application was for a Light Railway line commencing at a point adjacent to the former council depot at Station Road, Banchory and terminating at a point 30 metres west of the centre line of the access road leading to Milton of Crathes.

An environmental statement (ES) was submitted in addition to the application. Notice of the application for the LRO was advertised in the Press and Journal on 14 December 2007 and in the Edinburgh Gazette on 21 December 2007.

Control of Land and Planning Permission

The deposited plans, which accompanied the application, illustrate that the line can be broken down into 2 sections. Section 1 runs from Milton of Crathes (OS grid reference point 374128/796234) on land which is owned by the Leys Estate to the boundary where there is a change of ownership to Aberdeenshire Council. From this boundary to the original Banchory Station yard (OS grid reference point 370616/795675) is section 2.

DRCL applied to Aberdeenshire Council for planning permission to build on the land under application number M/APP/2000/0003 and this was granted for section 1 and for section 2 up to the Inverey fishing hut (OS grid reference 370954/795793). Planning permission for the land westwards of the Inverey fishing hut to the original Banchory Station yard has been refused.

Furthermore, at the time the application was made DRCL did not own the land on which the railway was to be built, rather it has a lease for section 1 from the Leys Estate and section 2 was owned by Aberdeenshire Council and no lease had been entered into.

Objections

Following the advertisements placed in the Press and Journal and Edinburgh Gazette, Transport Scotland received 14 objections to the LRO application. These objections were in relation to the land between the Inverey fishing hut and the old Banchory Station yard and the impact the Light Railway Line would have on the surrounding environment. The objections received included ones from Aberdeenshire Council, the Church of Scotland and the local nursery school.

When objections are raised to a proposed order it is the responsibility of the applicant, in this case DRCL, to address and resolve the points raised. Following the 14 objections being raised a considerable amount of time was given to DRCL to resolve these objections.

In August 2010 Transport Scotland received a copy of a signed Minute of Agreement between DRCL and Aberdeenshire Council. In brief, the Minute of Agreement set out that if the order was to be granted in its current terms then DRCL would not implement that part of the order which covers the land between the Inverey fishing hut and the old Banchory Station yard, unless it was to obtain planning permission for this area of the land. Based on this Aberdeenshire Council has started to draw up a lease for the land east of the Inverey fishing hut.

Environmental Statement (ES)

DRCL has carried out a consultation exercise involving residents, statutory consultees – including the Scottish Environmental Protection Agency (SEPA) and Scottish National Heritage – and representatives from other groups interested in the study area.

Both SEPA and Scottish National Heritage raised a number of points which were adequately addressed in the ES. The ES also addresses and resolves the environmental concerns raised by the objectors.

Scottish Ministers Decision

The Scottish Ministers have carefully considered:

- the application;
- the objections;
- the ES;
- the planning permission; and
- control of the land;

and have concluded that the objections relating to environmental matters have been addressed by DRCL in the Environmental Impact Assessment. Due to the objections that were raised regarding the area of land between the Inverey fishing hut and the old Banchory station yard not having been satisfactorily resolved, the planning permission does not extend to that area of land.

Scottish Ministers have concluded that the Order should be made subject to modifications. As a result Scottish Ministers are mindful to grant the order from Milton of Crathes (OS grid reference point 374128/796234) to a point adjacent to the Inverey fishing hut (OS grid reference 370954/795793).

Scottish Ministers are aware that the DRCL is negotiating a lease with the Council for only part of section 2 and that once the lease is signed, DRCL will be able to demonstrate control over the stretch of line to the Inverey fishing hut but no further. The Ordnance Survey grid points listed have been changed to reflect the modifications of the order.

Draft Order

Scottish Ministers have decided to make the Order subject to the following modifications:

- A modernised preamble will be substituted as follows—
The Scottish Ministers make the following Order in exercise of the powers conferred by sections 7, 9, 10, 11, 12 and 18 of the Light Railways Act 1896 (a), and all other powers enabling them to do so.
In accordance with section 2 of that Act the Deeside Railway Company Limited made an application to Scottish Ministers for the making by them of this Order.
In accordance with section 7 of that Act Scottish Ministers are satisfied that its requirements in relation to the publication and service of notices and consideration of objections have been met.
Scottish Ministers have considered the Order in accordance with section 9 of that Act
- article 6 (2) will be deleted as there are no bridges and as a result this article is not required;

- in article 8 (2) the reference to the Secretary of State will be changed to Scottish Ministers;
- Schedule 1 The length of the line will be changed to 3460 metres to reflect the fact that the line is not to pass through the area of ground from the Inverey fishing hut to the former council depot.
For the reference to “the former council depot at Station Road, Banchory (OS grid reference point 370616/79565)” there shall be substituted “the Inverey fishing hut, Banchory (OS grid reference point 370954/795793)”
The ordnance survey grid reference point for the termination point will be modified to “(OS grid reference point 374128/796234)” a more exact reference for that point.
- Schedule 2 paragraph 1 Public footpath crossing located at a distance 190 metres from the zero point giving access to the west end of Banchory Ternan churchyard. This reference shall be removed as it is no longer within the area of the modified order.
- Schedule 2 paragraph 2 Public footpath and private vehicular crossing giving access to the east end of Banchory Ternan churchyard, the Inverey fishing hut and supermarket located at a distance 355 metres from the zero point. This reference shall be removed as it is no longer within the area of the modified order.
- Schedule 2 will now include a new paragraph “Public footpath crossing located at a distance of 125 metres from zero point giving access to a supermarket”.
- The remaining paragraphs in the Schedule will be renumbered and the distances contained in the paragraphs will be modified to reflect the fact that there will be a new starting point for the railway.

Availability of Decision

A copy of this letter has been sent to all those consulted on the order and will be published on the Transport Scotland website.

Yours sincerely

Aidan Grisewood
Director, Rail

Cc Mr John Hopkins
Deeside Railway Co. Ltd. and Royal Deeside Railway Preservation Society

2012 No.

TRANSPORT

The Banchory and Crathes Light Railway Order 2012

Made - - - - 2012

Laid before the Scottish Parliament 2012

Coming into force - - 28th December 2012

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 7, 9, 10, 11, 12 and 18 of the Light Railways Act 1896^(a) and all other powers enabling them to do so.

In accordance with section 2 of that Act, the Deeside Railway Company Limited made an application to the Scottish Ministers for the making by them of this Order.

In accordance with section 7 of that Act, the Scottish Ministers are satisfied that its requirements in relation to the publication and service of notices and consideration of objections have been met.

Scottish Ministers have considered the Order in accordance with section 9 of that Act.

1.Citation and Commencement

1. This Order may be cited as the Banchory and Crathes Light Railway Order 2012 and comes into force on 28th December 2012.

2.Interpretation

2. —a) In this Order—

“the Company” means The Deeside Railway Company Limited, a company limited by guarantee incorporated under the Companies Act 1985^(a), company

^(a) 1896 c.48 as amended by Section 68 of the Railways Act 1921. The functions of the Minister under that Act vested in the Secretary of State for Transport by virtue of S.I. 1970/1681, 1979/571 and 1981/238. The functions of the Secretary of State for Transport transferred to the Scottish Ministers in respect of the promotion and construction of railways in Scotland by virtue of the Scotland Act 1998 (Modification of Schedule 5) Order 2002 (S.I. 2002/1629). In terms of section 22 of the Transport and Works (Scotland) Act 2007 (asp 8), no order under the 1896 Act is to be made by the Scottish Ministers on or after the day on which section 1 of the 2007 Act comes into force (28th December 2007). Article 4(1) of S.S.I. 2007/517 does, however, remove this restriction in a case where application for the order was made before that date.

registration number SC241603, and having its registered office at Milton of Crathes, Banchory, Aberdeenshire AB31 5QH;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections deposited in respect of the application for this Order with the Scottish Ministers and prepared in accordance with the Ministry of Transport (Light Railways) Procedure Rules 1927^(b);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the Communications Act 2003^(c);

“the former railway” means so much of the former railway referred to in Schedule 1 to this Order as is situated within the limits of deviation;

“the limits of deviation” means the limits of deviation shown on the deposited plans;

“the railway” means the railway authorised by article 3 and described in Schedule 1 to this Order including all lands and works relating thereto;

“the zero point” means that point being the point of commencement of the railway specified in Schedule 1 to this Order.

(1) Any enactment by which the construction and operation of the former railway was authorised shall have effect subject to the provisions of this Order.

(2) All distances, lengths, measurements and directions stated in any description of powers or lands shall be construed as if the words “or thereby” were inserted after each such distance, length, measurement and direction, and distances between points on a railway shall be taken to be measured along the railway.

3.The railway

3. —b) Subject to the provisions of this Order, the Company may on lands owned by or leased to or licensed to the Company construct, make and maintain a railway as described in Schedule 1 to this Order with all necessary works and conveniences connected therewith and work the same as a light railway under the provisions of the Light Railways Act 1896 and in accordance with the provisions of this Order.

(1) The Company shall obtain all additional certificates and authorisations required for the operation of the railway from the Office of Rail Regulation in terms of the Railways and Other Guided Transport Systems (Safety) Regulations 2006^(d).

4.Permitted deviation within limits

4. In constructing or maintaining the railway the Company may—

- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards as may be necessary or expedient.

^(a) 1985 c.6.
^(b) S.I. 1927/196.
^(c) 2003 c.21.
^(d) S.I. 2006/599.

5.Application and incorporation of enactments

5. —c) The following provisions of the Railway Clauses Consolidation (Scotland) Act 1845^(a) so far as the same are applicable for the purposes of, and are not inconsistent with or varied by, the provisions of this Order, are incorporated with and form part of this Order:—

Section 16 (Works to be executed);

Section 18 (Alteration of water and gas pipes, &c.);

Section 19 (Company not to disturb pipes until they have laid down others);

Section 20 (Pipes not to be laid contrary to Act of Parliament, and 18 inches surface road to be retained);

Section 21 (Company to make good all damage);

Section 22 (When railway crosses pipes, Company to make a culvert);

Section 23 (Penalty for obstructing supply of gas or water);

Section 60 (Works to be executed for the accommodation of adjoining lands);

Section 68 (Penalty on persons omitting to fasten gates);

Section 79 (Company to employ locomotive power, carriages &c.).

(1) Section 5 (Penalty for avoiding payment of fare) of the Regulation of Railways Act 1889^(b) shall apply to the railway.

6.Transfer of rights and obligations to Company, etc.

6. Except as may be otherwise provided in this Order, as from the date of coming into force of this Order—

- (a) the railway or any part of it shall continue to be subject to all statutory and other provisions applicable to the former railway at that date (in so far as they are still subsisting and capable of taking effect); and
- (b) the Company shall, to the exclusion of BRB (Residuary) Limited—
 - (i) be entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the former railway; and
 - (ii) be subject to all obligations, statutory or otherwise, relating to the former railway (in so far as they are still subsisting and capable of taking effect), to the intent that BRB (Residuary) Limited shall be released from all such obligations.

7.As to footpath and accommodation level crossings

7. —d) The Company may make and maintain the level crossings specified in Schedule 2 to this Order with all the necessary works and conveniences connected therewith.

(1) The Company shall carry out and maintain such other works as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction of said level crossings.

8.Operation of railway, etc.

8. —e) The Company may operate and use the railway as a system, or part of a system, of transport for the carriage of passengers and goods.

(1) Subject to paragraphs (3) and (4), the motive power to be used on the railway shall be steam, diesel-electric, diesel, internal combustion, electric-battery or such other motive power as the Scottish Ministers may in writing approve.

^(a) 1845 c.33.

^(b) 1889 c.57.

(2) Nothing in this Order shall authorise the use of electrical power as motive power on the railway unless such power is obtained from storage batteries or from a source of generation entirely contained in, and carried along with, the engines and carriages.

(3) If electrical power is used as motive power on the railway, such electrical power shall not be used in such a manner as to cause, or be likely to cause, any interference with any electronic communications apparatus or with the use of such apparatus.

(4) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993^(a).

(5) The railway shall be operated on a gauge of 1.435 metres (four feet eight and one half inches).

9. For protection of public gas suppliers

9. Nothing in this Order shall prejudice or affect the rights of any public gas supplier within the meaning of Part 1 of the Gas Act 1986^(b) in any apparatus belonging to them or for the maintenance of which they are responsible, or any structure for the lodging therein of apparatus, being any apparatus or structure situate under, over or upon lands in or upon which the railway or any part thereof is constructed.

10. For protection of sewerage and water undertakers

10. For the protection of sewerage and water undertakers (in this article referred to as “the undertakers”) the following provisions shall, unless otherwise agreed in writing between the Company and the undertaker concerned, apply and have effect:

- (a) in this article, “the relevant pipe” in relation to an undertaker means any mains sewer or water supply pipe passing under or through the railway;
- (b) the Company shall not raise, sink or otherwise alter the position of, or in any way interfere with, any relevant pipe without the consent in writing of the undertaker concerned, such consent not to be unreasonably withheld;
- (c) where any relevant pipe is situated in or under any land owned or held for the purposes of the railway the Company shall at their own expense maintain all culverts over such relevant pipe which are in existence at the coming into force of this Order so as to leave the relevant pipe accessible for the purposes of repairs;
- (d) where any relevant pipe is required to be diverted for the purpose of the construction of the new railway, the Company shall undertake such diversion at their own expense;
- (e) the Company shall afford reasonable facilities to the undertakers for the execution and doing of all such works and things as may be reasonably necessary to enable them to inspect, repair, maintain, renew, replace, remove, alter or use any relevant pipe;
- (f) nothing in this Order shall prejudice or affect the rights of the undertakers in respect of any relevant pipe or the provisions of any agreement regulating the relations between the Company and the undertakers with regard to any relevant pipe whether made before or after this Order comes into force;
- (g) any difference arising between the Company and the undertakers under this article (other than a difference as to its meaning or construction) shall be referred to and settled by arbitration as regulated by the Arbitration (Scotland) Act 1894^(c).

^(a) 1993 c.43, as amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c.14).

^(b) 1986 c.44.

^(c) 1894 c.13, which Act is prospectively repealed by the Arbitration (Scotland) Act 2010 but is currently in force for the purpose of statutory arbitration.

A member of the staff of the Scottish Ministers

St Andrew's House,
Edinburgh
12th December 2012

SCHEDULE 1

Article 3

THE RAILWAY

A railway 3460 metres in length within the local government area of Aberdeenshire Council, partly on the same lines and levels as the former railway described in and authorised by the Deeside Railway Act 1852^(a), commencing at a point adjacent to the Inverey fishing hut, Banchory (OS grid reference point 370954/795793) and terminating at a point 30 metres west of the centre line of the access road leading to the Milton of Crathes (OS grid reference point 374128/796234).

^(a) 1852 c.xi.

SCHEDULE 2

Article 7

FOOTPATH AND ACCOMMODATION LEVEL CROSSINGS

1. Public footpath crossing located at a distance of 125 metres from the zero point giving access to a supermarket.
2. Public footpath crossing located at a distance of 700 metres from the zero point giving access to Silverbank Caravan Park.
3. Public footpath located at a distance of 1580 metres from the zero point giving access between West Lodge and the riverside path.
4. Private vehicular crossing giving access to Birkenbaud Cottages at a distance of 2035 metres from the zero point.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made following an application by The Deeside Railway Company Limited (“the Company”), empowers the Company to construct, make and maintain a railway on lands owned by, leased or licensed to the Company.

Article 2 makes provision as to interpretation.

Article 3 authorises the Company to construct the railway which is described in Schedule 1 to the Order. It also makes clear that the Company must obtain any other certificates or authorisations required for the operation of the railway under the terms of the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

Article 4 provides for the limits of deviation for the railway.

Article 6 transfers the rights and obligations relating to the former railway from BRB (Residuary) Limited to the Company.

Article 7 permits the Company to make and maintain level crossings specified in Schedule 2.

Article 8 sets out the motive power to be used on and the gauge of the railway.