Supplementary report to the Scottish Ministers

The Scottish Government

TRANSPORT AND WORKS (SCOTLAND) ACT 2007

NETWORK RAIL (GLASGOW QUEEN STREET STATION) ORDER

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)(SCOTLAND) ACT 1997

Report by Karen Heywood and Robert Seaton, reporters appointed by the Scottish Ministers

- Case reference: TAWS04
- Site Address: Glasgow Queen Street Station, Glasgow
- Application for the Order by Network Rail dated 11 September 2015
- Listed building consent application reference 15/02321/DC dated 11 September 2015
- Conservation area consent application reference 15/02325/DC dated 11 September 2015
- The works proposed: redevelopment of Queen Street Station concourse, comprising removal of south and west facades, demolition of offices, minor alterations to roof and columns, demolition of Consort House and the Dundas Street canopy, demolition of the 1970s extension and alterations to the Millennium Hotel and the reconstruction and extension of Queen Street Station
- Date of inquiry: 9 to 25 May 2016 (8 days)
- Dates of accompanied site inspections: 8 March 2016 (internal areas of the station); 26 May 2016 (outside the station and the Millennium Hotel)

Date of this report and recommendation: 20 March 2017

1.0 Introduction

1.1 We submitted a report on the above application to the Scottish Ministers on 4 October 2016. By letter dated 9 March 2017 Ministers have sought clarification on four points in respect of our report. Our response is set out below.

2.0 Article 19 – Temporary use of land for construction of works

Clarification 1:

2.1 Ministers have asked the reporters to clarify whether they consider the drafting of article 19(1)(a) read with Part 3 of Schedule 8 is sufficiently broad to enable plot 2C to be used as "associated working space". The background to the question is that we had recommended the deletion of schedule 7 in the draft order as proposed by Network Rail. The schedule had contained that phrase relating to the use of plot 2C. Since schedule 7 is not in the current draft before Ministers, we refer to it below as "the former schedule 7".

2.2 In brief, our response is that the order provides power to Network Rail to take possession of plot 2C for purposes that can be referred to as "associated working space" in the context of the order. There are qualifications on this power, but those are not related to the deletion of the former schedule 7 or of the term "associated working space" as part of the former schedule 7.

2.3 The order as submitted was drafted by Network Rail. The particular text on which Ministers have requested clarification resulted substantially from amendments proposed by Network Rail on 10 June 2016, just at the start of the inquiry[1]. Network Rail had originally proposed not only the compulsory purchase and demolition of the 1970s extension to the Millennium Hotel, but also temporary possession of the remaining Georgian building[2]. Before the commencement of the inquiry, Network Rail agreed with Archyield, the hotel's owner, that temporary possession was required only of part of the hotel to allow works to be carried out to separate the Georgian building from its extension. On the basis of this agreement Archyield partially withdrew its objection to the order. We understood at the inquiry that the amendments to the draft order of 10 June 2016 were proposed by Network Rail as a consequence of an agreement between Network Rail and Archyield.

2.4 As reporters, we claim no special skill in statutory interpretation. Any insight we have into the effect of provisions and the drafters' intentions comes either from a close reading of the draft order or from the evidence we received at the inquiry. Our sole reason for recommending the deletion of the former schedule 7 was that it appeared to us to be redundant text, not referred to in the body of the draft order. We do not consider that the restoration of the former schedule 7 would change the effect of the order at all.

[1] Revised filled up order and list of amendments, 10 June 2016
[2] NR-2 Draft Order

2.5 The former schedule 7 in the original draft order submitted with the application permitted the temporary occupation of the Georgian building of the Millennium Hotel. Network Rail's amendments of 10 June 2016 removed reference in the body of the order to the former schedule 7. However, they also amended the former schedule 7 itself.

2.6 The amended text of the former schedule 7 provided a description of the purpose for which Network Rail could take temporary possession of plot 2C as follows: "Carrying out works to separate the hotel buildings and associated working space". It seems clear that "associated" meant associated with the works to separate the Georgian building from its extension. The former schedule 7 also provided that Network Rail could take temporary possession of plots 2A and 2B for the purpose solely of "carrying out works to separate the hotel buildings".

2.7 It might seem that any space required to be occupied for the separation works could be called "associated working space". However, given the different treatment of plots 2A and 2B as compared with plot 2C, it appears that the expression "associated working space" may have been intended to mean something more than simply space for carrying out the separation works. One might speculate that it could refer to a storage area for tools, a workshop or worker facilities ancillary to the separation works themselves or other ancillary facilities (or a combination of these). However, the nature of any distinction between land required for the works themselves and "associated working space" is not otherwise evident from the draft order and was not discussed in evidence.

2.8 Nonetheless, in our view, even if "associated working space" is to be distinguished somehow from land directly required for separation works, Network Rail still has a (qualified) power to take occupation of plot 2C for purposes that can be referred to as "associated working space".

2.9 Article 19(1)(a)(i) provides Network Rail with power, in connection with the carrying out of the authorised works, to enter upon and take temporary possession of plots 2A, 2B and 2C to the extent and for the purposes set out in Part 3 of schedule 8. These terms suggest that the purposes for which the power may be used must be specified expressly in the schedule. Paragraph 25 of the schedule provides that Network Rail may take temporary possession of plots 2A, 2B and 2C for the purpose of carrying out separation works for which it is responsible.

2.10 "Separation works" is a defined term. The definition requires future agreement between Network Rail and the hotel owner on various aspects relating to the separation of the hotel's 1970s extension from the Georgian building and making good the west wall of the Georgian building. "Separation works" is defined to include ancillary works (although the scope of these also forms part of what is to be agreed). The term "works" is also defined as including operations.

2.11 Once agreement has been reached on the scope of separation works, the hotel owner and Network Rail must agree how much of the work is to be done by the hotel owner. Thereafter Network Rail may do what remains.

2.12 Insofar as works are agreed as required for separation of the Georgian building from its extension and those works fall to Network Rail, then article 19(1)(a) gives Network Rail power to take possession of plot 2C for the purpose of those works.

2.13 There is a great range of works ancillary to separation works that might be agreed as necessary. In our view, this might include our examples above of establishing and operating a tool store, workshop or ancillary worker facilities. Possession of land in order to carry out ancillary works can, in our view, be referred to as possession of "associated working space".

2.14 It may be that Network Rail's amendments of 10 June 2016 removed reference to schedule 7 in error. Even so, the evidence suggests that Network Rail did not regard the change to schedule 7 as anything more than consequential to the changes to article 19(1)(a) and the insertion of the new Part 3 of schedule 8. Network Rail submitted a document to the inquiry explaining their proposed revisions to the draft order[3]. In respect of proposed amendments to article 19(1)(a), the former schedule 7 and schedule 8 (then schedule 9) part 3, this states:

> "This is a package of measures for the protection of the Millennium Hotel. If the order is made, Archyield and Network Rail have agreed a methodology for carrying out the authorised works while allowing the hotel to remain in possession of the Georgian building. To achieve this, the whole of the Georgian building is outside the Order limits (shown on the revised sheet no. 2 of the Order plans) and the area which may be occupied by Network Rail is very much reduced in size, limited to the new plots nos. 2A, 2B and 2C (amendment 16). Amendment 16 also ensures that those plots may be occupied only for the purposes set out in the new protective provisions in Part 3 of Schedule 9 … . These limitations are reflected in the amended Schedule 7 (amendment 39). …"

2.15 From this explanation, it appears the intention of the drafters was that article 19(1)(a) and part 3 of schedule 8 should provide Network Rail with the powers it required for occupation of plots 2A, 2B and 2C. The change to the former schedule 7 merely "reflected" these changes (as Network Rail's submission put it).

2.16 The amendments of 10 June 2016 retained and amended the former schedule 7 while depriving it of any effect. If the amendments had been solely the work of Network Rail, it might have been possible to draw from this the conclusion that the failure to refer to schedule 7 in the body of the text was simply a drafting error. However, so far as we understand, the amendments were the product of negotiation and agreement between Network Rail and Archyield. We therefore doubt it is possible to draw any straightforward conclusion from the form of the amendments of 10 June 2016 about the intention of the drafters as regards the former schedule 7.

2.17 We would make one further observation (as above, subject to the reservation that we claim no special skill in statutory interpretation). Since it appears to us that the

[3] Explanation of amendments to order, revised to take account of closing submissions

former schedule 7 had no legal effect in the order as drafted, and consequently in our view its removal has no legal effect, Ministers might equally - without changing the order's legal effect - retain the schedule.

3.0 Amendment (xxiii) – Article 38 – environmental assessment of reserved matters

3.1 We proposed to apply an adapted version of the multi-stage consent regime in the *Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011* (referred to below as "the 2011 Regulations") to the determination of any application for approval of matters reserved under conditions of deemed planning permission. Our reasoning for doing so is set out at paragraphs 6.87 to 6.92 of our main report. In brief, applications for approval of matters reserved under conditions of deemed planning permission are not presently subject to those regulations. The remaining three clarifications requested by Ministers relate to the revisions to the order that we proposed in order to apply the 2011 Regulations to such applications.

Clarification 2:

3.2 We have been asked by Ministers to expand upon the explanation for the proposed insertion of a new regulation 27A in the 2011 Regulations. In particular, we have been asked to say what it adds to regulation 23(2) of the 2011 Regulations.

3.3 At paragraph 6.91 of our report, we noted that where details of a development are reserved for subsequent approval, significant environmental effects may be identified at the approval stage that were not previously anticipated or assessed.

3.4 Our proposed regulation 27A mirrors the drafting of regulation 33 in the proposed new Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations (to be laid before Parliament shortly). It applies expressly to a situation where an application for multi-stage consent is made in respect of a proposed development and an environmental statement has previously been submitted for that development. It imposes an absolute duty on the planning authority to request additional information from the developer in respect of a significant environmental effect that has not previously been identified. We consider that approach taken for applications for multi-stage consent should reflect the approach to such applications contained in the proposed new regulations.

Clarification 3:

3.5 Ministers asked whether the reference in our proposed regulation 27A(b) to an "EIA report" was actually intended to refer to "environmental information".

3.6 The use of the terms "EIA report" and "report" in our proposed regulation 27A(b) was indeed an error on our part. If in letter (b) the words "a report referred to by the developer as an EIA report" are replaced with the words "a statement referred to by the applicant as an environmental statement", the proposed regulation will have the effect we intended. The term "environmental information" is rather too broad, since it

encompasses not only the environmental information submitted by the applicant, but also representations of statutory consultees and the public. The term "environmental statement" is defined in regulation 2(5) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 to include any revised, updated or supplementary environmental statement submitted by the applicant.

Clarification 4:

3.7 Ministers asked whether we would agree that adding the words "and assessed" at the end of letter (c) of proposed regulation 27A would be a clarification we would recommend.

3.8 It is perhaps possible that environmental effects have been identified but not described or assessed during the application process. We agree therefore that the insertion of the words "and assessed" at the end of our proposed regulation 27A(d) would be a useful clarification.

Additional note on the effect of the draft new Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations

3.9 The draft of the new Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations indicates the new regulations are intended to come into effect on 16 May 2017. If passed as drafted, these regulations would:

- revoke the existing 2011 Regulations (with certain reservations), and
- automatically treat an application for consent under a condition of deemed planning permission for EIA development granted by a direction under section 57(1) of the Town and Country Planning (Scotland) Act 1997 as an application for multi-stage consent subject to the assessment regime provided in those regulations (see article 2(1) of the draft).

3.10 We therefore understand that any application for approval of matters reserved under a condition of deemed planning permission issued in relation to the order, if made after 16 May 2017, would be subject to the environmental impact assessment regime as a consequence of the new regulations (notwithstanding our proposed reference to the 2011 Regulations inserted by amendment (xxiii)). This appears to us to make it unnecessary to insert special provision in the order to ensure the environmental impact assessment regime is applied to such applications made after 16 May 2017.

3.11 If Ministers consider it unlikely that any such application for approval will come forward before 16 May 2017, they might consider simply leaving out of the order all reference to environmental impact assessment of such applications.

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