

WEST AREA PLANNING COMMITTEE

13th September 2016

Application Numbers: 16/01410/VAR: Vibration monitoring on plain line, route section H (re - 13/03202/CND, Condition 3)

16/01411/VAR: Vibration monitoring at switches and crossings, route section H (re - 14/00232/CND, Condition 3)

16/01406/VAR: Noise monitoring route section H (re - 15/00956/CND, Condition 4)

16/01412/VAR: Vibration monitoring on plain line, route section I-1(re - 15/03587/CND, Condition 3)

16/01409/VAR: Noise monitoring route section I-1 (re - 15/03503/CND, Condition 4)

Decision Due by: 22nd August 2016

Proposal: Applications under Section 73 of the Town and Country Planning Act, 1990 to vary conditions in relation to noise and vibration monitoring in route sections H and I-1.

Site Address: Chiltern Railway From Oxford To Bicester **Appendix 1**

Ward: St Margaret's, Summertown, and Wolvercote Wards

Agent: ERM

Applicant: Network Rail

Recommendation

West Area Planning Committee is recommended to approve these applications for the following reasons and subject to and including:

- the conditions listed below (*conditions are in part dependent on the determination of applications 16/01858/VAR and 16/01861/VAR earlier in this Agenda*); and,
- conclusion of a Unilateral Undertaking (to monitor vibration for four days at 3 properties close to the line in route section H) the decision upon which to be delegated to the Head of Planning and Regulatory Services:

16/01410/VAR: approve subject to conditions 1 and 3 below and conclude a Unilateral Undertaking

16/01411/VAR: approve subject to condition 1 below

16/01406/VAR: approve subject to conditions 1, 2, and 3 below

16/01412/VAR: approve subject to condition 1

16/01409/VAR: approve subject to conditions 1, 2, and 3 below

Reasons for Approval

- 1 The proposed monitoring makes satisfactory provision to help secure a reasonable level of mitigation of the noise and vibration impacts of the scheme on local residents.
- 2 Officers have considered carefully all objections to these proposals. Officers have come to the view, for the detailed reasons set out in the officers report, that the objections do not amount, individually or cumulatively, to a reason for refusal and that all the issues that have been raised have been adequately addressed and the relevant bodies consulted.

Conditions (to be applied as relevant to the permissions being varied):

- 1 Development in accordance with application documents
- 2 Implementation of SilentTrack
(dependent on the determination of applications 16/01858/VAR and 16/01861/VAR earlier on this Agenda)
- 3 Monitoring in accordance with submitted scheme

Note about additional condition previously imposed by the Committee

The Committee will recall that when approving the original applications to which these variations refer, a condition was applied restricting train movements in accordance with condition 19 of deemed permission. The condition read:

“Passenger train movements on Section H between 0700 hours and 2300 hours shall not be in excess of 8 movements per hour. Freight train movements between 2300 hours 0700 hours on the following day shall not exceed 8.

Reason - to ensure compliance with condition 19 of the planning permission deemed to have been granted (ref TWA/10/APP/01)”

The Committee was advised by officers at the time that in their opinion this form of condition would not meet the legal or policy tests of the NPPF. Officers remain of that view and are not recommending its re-imposition.

Principal Planning Policies

Oxford Local Plan 2001-2016

CP6 - Efficient Use of Land & Density

CP10 - Siting Development to Meet Functional Needs

Core Strategy 2026

CS13_ - Supporting access to new development

CS27_ - Sustainable economy

Other Main Material Considerations

- National Planning Policy Framework
- National Planning Policy Guidance
- Environmental Information
- The deemed planning permission of 23rd October 2012 and documents related to it including the Noise and Vibration Mitigation Policy (January 2011)

Relevant Site History

13/03202/CND - Details submitted in compliance with condition 19 (operational noise and vibration) of TWA ref: TWA/10/APP/01 (The Chiltern Railways (Bicester to Oxford Improvements) Order - deemed planning permission granted under section 90(2A) of the Town and Country Planning Act 1990). 13/03202/CND – vibration: plain line, section H. PERMITTED 30th June 2015.

14/00232/CND - Details submitted in compliance with condition 19 (operational noise and vibration) of TWA ref: TWA/10/APP/01 (The Chiltern Railways (Bicester to Oxford Improvements) Order - deemed planning permission granted under section 90(2A) of the Town and Country Planning Act 1990). 14/00232/CND – vibration: switches + crossings, section H. PERMITTED 30th June 2015.

15/00956/CND - Details submitted in compliance with condition 19 (operational noise and vibration) of TWA ref: TWA/10/APP/01 (The Chiltern Railways (Bicester to Oxford Improvements) Order - deemed planning permission granted under section 90(2A) of the Town and Country Planning Act 1990). PERMITTED 30th June 2015.

15/03587/CND - Details submitted in compliance with condition 19(2) (Vibration - Section I1) of TWA ref: TWA/10/APP/01 (The Chiltern Railways (Bicester to Oxford Improvements) Order - deemed planning permission granted under section 90(2A) of the Town and Country Planning Act 1990). PERMITTED 9th February 2016.

15/03503/CND - Details submitted in compliance with condition 19(2) (Noise - Section I1) of TWA ref: TWA/10/APP/01 (The Chiltern Railways (Bicester to Oxford Improvements) Order - deemed planning permission granted under section 90(2A) of the Town and Country Planning Act 1990). PERMITTED 9th February 2016.

Consultations

Statutory Consultees

- Natural England – no comment
- Historic England – no heritage assets affected therefore no comment
- Highways Authority – no comment
- Thames Water Utilities Limited – no comments received
- Environment Agency Thames Region – no comments received
- Oxfordshire County Council – no comment

Representations

Representations have been received from 33 addresses including: Stone Meadow, Blenheim Drive, Lakeside, Bladon Close, Linkside Avenue, First Turn, Carey Close, Fairlawn Flats, Quadrangle House, Upper Close, Cyprus Terrace, and First Turn. 5 representations had no residential address given. The MP for Oxford West and Abingdon also commented.

The main points relevant to monitoring raised in those representations are:

- The additional monitoring required by condition 4 was inserted by the planning committee specifically to compensate for the uncertainty about Phase 2 of East West Rail
- Future noise monitoring is one of the few realistic protections we have to help gain the best protection at the outset
- The original requirement for four episodes of monitoring as specified in the Noise and Vibration Mitigation Policy should be adhered to
- Verification of the achievement of residual noise levels set out in the Environmental Statement requires monitoring to be done after the introduction of Phase 2 of East West Rail - it would be unreasonable and inconsistent with the TWAO for residents affected to be denied this verification
- The 72 month monitoring period should be maintained
- The purpose of monitoring is to check that the noise mitigation measures satisfied the requirements specified in the original approval
- It is not the case that network rail is simply seeking to reinstate the original monitoring conditions
- There must be a second program of monitoring in order to gauge the actual impact of noise levels after commencement services on East West Rail Phase 2
- The noise predictions are unreliable therefore the second phase of monitoring is required - there is a need to check actual not predicted noise level after the full range of East-West rail passenger and freight trains have been introduced
- The City Council does not have the power to amend the planning permission;
- some especially vulnerable properties very close to the railway are omitted from the monitoring scheme: the City Council's own properties in Sheriff's Drive, Wolvercote Primary School, and properties in both St Peters Road and Ulfgar Road. Network rail are seeking to save costs at the expense of residents reasonable expectation of the quiet enjoyment of their homes;
- The requirements of the TWA order should not be watered down in favour of the short-term budget consideration of Network Rail;
- The application is made purely so that Network Rail can avoid the risk of having to compensate local householders.

The Purpose of this Report

1. The purpose of this report is to consider and recommend on the acceptability of NR's proposals to vary the conditions for monitoring operational noise and vibration on East West Rail Phase 1 which were applied by the Council and were additional to the monitoring requirements laid down by the Secretary of State in the deemed planning permission.

Background

The deemed planning consent for EWRP1

2. The Transport and Works Act Order (TWAO) and deemed planning permission for East West Rail Phase 1 (EWRP1) ("the scheme") was granted, subject to conditions, on 17th October 2012. The original permission was described in terms of Phases 1, 2A and 2B – these phases are all now encompassed in the term East West Rail Phase 1 (EWRP1) which covers the line from Bicester to Oxford.
3. *Sustainability*: in granting deemed planning permission for the scheme, the Secretary of State concluded that there is a compelling case to increase rail capacity between Oxford and London, and that the scheme would bring substantial transport benefits in terms of reduced travel times, better public transport connectivity, and better rail network capability. In the decision, the Secretary of State weighed these sustainability benefits against the potential adverse impacts that the scheme might cause. Those considerations gave rise to several of the planning conditions dealing with the natural environment and residential amenity.

The prescribed approach to monitoring operational noise and vibration

4. Condition 19 of the deemed planning permission (**Appendix 2**) focusses on operational noise and vibration and was imposed in order to:

“ensure that operational noise and vibration are adequately mitigated at residential and other noise sensitive premises”.
5. Condition 19(2) of the deemed permission for the scheme requires the submission of Noise Schemes of Assessment (NSoAs) and Vibration Schemes of Assessment (VSoAs) and associated proposals for monitoring and mitigation of the operational noise and vibration of the passenger and freight services on the rail line.
6. Condition 19(6) states that monitoring of noise and vibration shall be undertaken in accordance with the approved schemes of assessment and the Noise and Vibration Mitigation Policy (NVMP) which was approved by the Secretary of State as part of the deemed planning permission (**Appendix 3**).
7. In respect of monitoring the operation of the scheme the NVMP states that (with officer highlighting):

*“1.11 After each Phase of works, **the effectiveness of the noise insulation measures installed will be monitored, as detailed in para 2.11”***

8. The NVMP prescribes the form of the monitoring scheme in the following terms:

“2.11 A noise and vibration monitoring scheme for the Phase 1 and 2A works will be implemented to ensure that the performance of the mitigation measures that are installed achieve the levels of noise mitigation predicted by the design contractor, whose design instructions will include the requirement to achieve the residual noise levels set out in the Environmental Statement. The monitoring scheme will include the carrying out of surveys, the first being undertaken at around 6 months after the opening of the railway for Chiltern Railways passenger services, at locations agreed with the local planning authorities. A second survey will be undertaken 18 months after opening. If defects in construction or performance are identified in the first survey, these will be corrected in a timely manner by the contractor. If any defects in construction or performance are found in the second survey, these will also be corrected in a timely manner by the contractor. The same procedure for post construction monitoring surveys and the remedy of defects or performance will be undertaken after the Phase 2B works have been completed and EWR services introduced.

2.12. The results of the Phase 1 and 2A monitoring will be published in an easily accessible format on the Chiltern Railways website and in the project newsletter and will be made available, either in hard copy or in electronic format, to any person requesting the information. Arrangements for publishing the surveys after Phase 2B will be agreed with the local planning authorities”.

9. In summary, condition 19 of the deemed permission and the NVMP require monitoring to be undertaken only of the performance of any installed noise and vibration mitigation; this to be achieved through surveys at 6 and 18 months after the opening of the line from Bicester to Oxford. **This monitoring will have to be undertaken by NR regardless of the Committee’s decision on the current applications – the local planning authority cannot change the Secretary of State’s decision.** The only involvement of the local planning authority in the monitoring scheme prescribed by the NVMP is to agree the monitoring survey locations – in practice, this is achieved through approval of the NSoAs and VSoAs.

The monitoring schemes in the approved NSoAs and VSoAs

10. The NSoA and VSoAs for Section H of the scheme were approved by West Area Planning Committee (WAPC) on 30th June 2015 (13/03202/CND 14/00232/CND and 15/00956/CND). The NSoA and VSoA for route section I-1 of the scheme were approved by the WAPC on 9th February 2016 (15/03587/CND and 15/03503/CND).

11. The approved NSOAs include noise monitoring in accordance with the scheme prescribed in the NVMP. One noise monitoring programme is proposed (because EWRP1 is being implemented in one phase rather than two phases) undertaken at approximately 6 and 18 months after the opening of the railway for passenger services. It consists of noise measurements taken at key receptors where mitigation has been installed, the locations to be agreed with the Council. It also includes modelled predictions of the impact of freight movements from EWRP2. Measurements will also be made at an open location where no mitigation is required to ensure that the unmitigated train noise levels are consistent with the assumptions made in the modelling.
12. The approved VSOAs do not include proposals for monitoring because the NVMP requires monitoring only of the performance of the mitigation that is installed. Given that no vibration mitigation is proposed, no vibration monitoring is proposed.

The Council's planning condition requiring additional monitoring

13. When approving these NSOAs and VSOAs, the City Council imposed on each permission a condition regarding additional monitoring respectively of noise and vibration which reads:

“Section H/1 shall not be made available for use by trains until provision for continuous monitoring of noise/vibration has been effected for noise sensitive properties throughout section H/1 in accordance with a scheme previously approved in writing by the Council. The results of such monitoring shall be provided to the Council on each of six months, eighteen months, thirty months, forty-two months, fifty-four months, sixty-six months and seventy-eight months from the date on which Section H is first made available for use for trains. In the event that the monitoring results provided to the Council exceed the noise thresholds in the Noise and Vibration Mitigation Policy then additional mitigation measures shall be effected within six months in order to ensure that those levels are not again exceeded.”

Reason: to ensure compliance with condition 19 of the planning permission deemed to have been granted (ref TWA/10/APP/01)”

14. The West Area Planning Committee imposed this condition because it was concerned to know not just how the mitigation was performing but also what the actual noise and vibration levels of the operating service would be (passenger and freight and including East West Rail Phase 2 – Bicester to Bletchley). The Committee wanted to be in a position to assess the impacts of those levels on residential and other amenity and to determine whether any additional noise or vibration mitigation would be required. They came to this view because of what they regarded as uncertainties in the assumptions used to predict operational noise and vibration, and uncertainties about the patterns of services into the future and the types and quality of rolling stock. The Committee decided that additional noise and vibration monitoring, over and

above the requirements of the deemed planning permission and the Noise and Vibration Mitigation Policy should be required.

15. The Committee was advised by officers at the time that in their opinion this form of condition would not meet the legal or policy tests of the NPPF.

NR's revised proposals for monitoring

16. NR's proposals for monitoring are summarised in the table below:

	Current planning ref:	Subject	Proposal
1	16/01410/VAR relating to 13/03202/CND Condition 3	Vibration monitoring on plain line, route section H	Remove condition 3 but in view of previous written undertaking to carry out vibration monitoring in this section, conclude a Unilateral Undertaking to monitor vibration for four days at 3 properties close to the line (1 in Quadrangle House and 2 in Bladon Close)
2	16/01411/VAR relating to 14/00232/CND Condition 3	Vibration monitoring at switches and crossings, route section H	Remove condition 3 because there are no properties near enough to be affected by vibration (70m away) (Notwithstanding previous written undertaking to carry out vibration monitoring in this section)
3	16/01406/VAR relating to 15/00956/CND Condition 4	Noise monitoring route section H	Vary condition 4 to require monitoring at 6 and 18 months in line with the original deemed permission condition 19(1, 6). This to be at 5 locations: Lakeside; Five Mile Drive; Bladon Close; Quadrangle House; and Blenheim Drive.
4	16/01412/VAR relating to 15/03587/CND Condition 3	Vibration monitoring on plain line, route section I-1	Remove condition 3 because no vibration mitigation is proposed and the NVMP only requires the performance of installed mitigation to be monitored
5	16/01409/VAR relating to 15/03503/CND Condition 4	Noise monitoring route section I-1	Vary condition 4 to require monitoring at 6 and 18 months in line with the original deemed permission condition 19(1, 6). This to be at 3 locations: Cox's Ground, Stone Meadow and Navigation Way.

17. Bearing in mind the reasons why the Committee imposed these conditions, officers asked NR to consider amending proposals 3 and 5 in the table above, effectively to extend the assessment of measured noise within each scheme so as to report on the residual mitigated and unmitigated noise levels at each receptor, comparing these to the baseline levels in the Environmental Statement and stating whether the residual unscreened and screened levels were above or below predicted. While accepting that this did not go as far as the Committee wanted as set out in the condition, the suggestion was made because in the view of officers this would be a relatively straightforward exercise which would go some way to achieving the Committee's aim – it

would be a similar commitment to that made for proposal 1 above in respect of vibration in the form of a Unilateral Undertaking.

18. NR considered this proposed amendment but has declined to pursue it on the grounds that:

- i. the vibration standards are simply expressed as absolute VDV values in the NVMP and the locations at risk have been very clearly identified as the 'worst cases'. With noise there isn't an equivalent situation – there are several parameters and trigger values and no "worst case" locations have been identified, thus it will not be feasible to formulate similar parameters for noise;
- ii. in practice, monitoring will compare the measured/extrapolated noise levels at the receptors with those predicted at the same location using the model, as part of the analysis of barrier performance and this information will be published; and,
- iii. it is an unreasonable expectation that NR should have to provide additional mitigation for differences that arise, for example, from the Calculation of Railway Noise methodology or from differences in operating conditions (for example train speeds) from those modelled.

19. NR's proposals are therefore to be considered by the Committee in their original form (table above).

20. Members might wish to note that the data generated from NR's noise monitoring proposals will include measurements at unscreened locations. Such data could be considered to represent relevant post-scheme residual unmitigated noise levels and thereby will enable comparison with the pre-scheme base levels as envisaged in paragraph 17 above.

Officers Assessment

21. At the West Area Planning Committee in June 2015 in relation to route section H, officers advised against the imposition of conditions requiring monitoring additional to that prescribed by the Secretary of State. Officers remain of that view.

22. The monitoring proposals before the Committee go beyond what was prescribed in the deemed permission but not as far as the additional monitoring that the Committee required in the condition it applied to approval of the NSoAs and VSoAs. In the view of officers therefore, the proposals should be approved.

Conclusions

23. It is concluded that the proposals are acceptable and may be approved as making satisfactory provision to help secure a reasonable level of mitigation of the noise and vibration impacts of the scheme on local residents.

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to grant planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Background Papers: 13/03202/CND, 14/00232/CND, 15/00956/CND, 15/03587/CND, 15/03503/CND, 16/01410/VAR, 16/01411/VAR, 16/01406/VAR, 16/01412/VAR, 16/01409/VAR

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Date: 5th September 2016