

## WEST AREA PLANNING COMMITTEE

21 February 2017

**Application Number:** 16/02507/CND for route section H

16/02509/CND for route section I-1

**Decision Due by:** 21 November 2016

**Proposal:** Details submitted in compliance with condition 19 item 2 (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).

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

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

**Agent:** ERM

**Applicant:** Network Rail

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### Recommendation:

West Area Planning Committee is recommended to **approve** these applications and condition 19 be partially approved in relation to the respective Noise Schemes of Assessment for route sections H and I-1 for the following reasons:

- 1 The submitted Noise Scheme of Assessment is considered to be robust and has demonstrated that the required standards of noise mitigation set out in the Noise and Vibration Mitigation Policy (January 2011) will be achieved subject to the installation of the specified mitigation measures.
- 2 The Council considers that the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity and advice from Queens Counsel and external technical advisors. Any harm that the development would otherwise give rise to can be offset by the conditions imposed.

Subject, respectively, to the following condition, which has been imposed for the reason stated:-

1. Development in accordance with submitted details

## **Main Local Plan Policies:**

### **Oxford Local Plan 2001-2016**

**CP6** - Efficient Use of Land & Density

**CP10** - Siting Development to Meet Functional Needs

**CP19** - Nuisance

**CP21** - Noise

### **Core Strategy**

**CS13** - Supporting access to new development

**CS27** - Sustainable economy

### **Other Material Considerations:**

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

### **Relevant Site History:**

Over the last 4 years, the Council has dealt with 40 applications relating to East West Rail Phase 1 (EWRP1). The applications specifically relating to condition 19 are listed below.

| <b>Planning reference</b> | <b>TWAO/OCC Condition</b> | <b>Subject</b>  | <b>Date of decision</b><br>(approved unless stated) |
|---------------------------|---------------------------|---|---|
| 13/00907/CND              | 19(2)                     | Appointment of Independent Experts (IEs)                      | 02.05.13  |
| 13/03202/CND              | 19(2)                     | Operational vibration - plain line, section H                 | 30.06.15  |
| 14/00232/CND              | 19(2)                     | Operational vibration - switches + crossings, route section H | 30.06.15  |
| 14/02962/CND              | 19(2)                     | Appointment of replacement IE for Noise                       | 06.11.14  |
| 15/00956/CND              | 19(2)                     | Operational noise – route section H                           | 30.06.15  |
| 15/03110/CND              | 19(13)                    | Noise barrier details - route section H                       | 24.12.15  |
| 15/03503/CND              | 19(2)                     | Operational noise route section I1                            | 18.02.16  |
| 15/03587/CND              | 19(2)                     | Operational vibration route section I1                        | 16.02.16  |
| 16/00456/CND              | 19(13)                    | Noise barrier details – Quadrangle House and Bladon Close     | 14.03.16  |

|              |                          |  |   |
|--------------|--------------------------|--|---|
| 16/00818/CND | 19(13)                   | Noise barrier details- route section I/1                                       | 09.05.16  |
| 16/01406/VAR | 15/00956/CND Condition 4 | Noise monitoring route section H   | 10.10.2016  |
| 16/01409/VAR | 15/03503/CND Condition 4 | Noise monitoring route section I1  | 10.10.2016  |
| 16/01410/VAR | 13/03202/CND Condition 3 | Vibration monitoring on plain line, route section H                            | Awaiting execution and delivery of Unilateral Undertaking |
| 16/01411/VAR | 14/00232/CND Condition 3 | Vibration monitoring at switches and crossings, route section H                | 10.10.2016  |
| 16/01412/VAR | 15/03587/CND Condition 3 | Vibration monitoring on plain line, route section I1                           | 10.10.2016  |
| 16/01634/CND | 15/01978/CND Condition 1 | NSoA route section I2  | 18.10.2016  |
| 16/01635/CND | 15/01978/CND Condition 1 | VSoA route section I2  | 18.10.2016  |
| 16/01858/VAR | 15/00956/CND Condition 2 | Remove requirement for implementation of Tata SilentTrack in route section H   | Refused 23.09.2016  |
| 16/01861/VAR | 15/03503/CND Condition 2 | Remove requirement for implementation of Tata SilentTrack in route section I-1 | Refused 23.09.2016  |
| 16/02710/CND | 19(11)                   | List of properties with mitigation route section H                             | 05.12.2016  |
| 16/02732/CND | 19(11)                   | List of properties with mitigation route section I1                            | 05.12.2016  |

### Representations Received:

In respect of **route section H** (16/02507/CND), in excess of 100 comments have been received, all of which are available on the website, from addresses in Aldrich Road, Bainton Road, Banbury Road, Bladen Close, Blandford Avenue, Blenheim Drive, Burgess Mead, Canterbury Road, Carey Close, Cox's Ground, Fairlawn Flats, First Turn, Five Mile Drive, Foundry House, Frenchay Road, Furnace House, Godstow Road, Hayfield Road, Home Close, Kingston Road, Kirk Close, Lakeside, Merrivale Square, Navigation Way, Pixey Place, Plater Drive, Polstead Road, Quadrangle House, Stone Meadow, Summerhill Road, Upper Close, Wolvercote Green, Woodstock Road.

These are reported in **Appendix 2**. Network Rail's (NR) responses to these comments are in **Appendix 3**.

In respect of **route section I-1** (16/02509/CND), in excess of 160 comments have been received, all of which are available on the website, from addresses in Carey Close, Bainton Road, Banbury Road, Blenheim Drive, Bowood Court, Brindley Close, Burgess Mead, Butler Close, Canterbury Road, Chalfont Road, Complins Close, Cox's Ground, Ferry Pool Road, Fairlawn Flats, Frenchay Road, Hamilton Road, Hayfield Road, The Hayfield Residents Association, King's Cross Road, Kingston Road, Lakeside, Lark Hill, Leckford Road, Lonsdale Road, Mayfield Road, Merrivale

Square, Merton Court, Navigation Way, Oxford Road, Plater Drive, Polstead Road, Quadrangle House, St Margaret's Road, Southmoor Road, Stone Meadow, The Crescent, The Paddox, The Villas, Wolsey Road, Wolvercote Green, Woodstock Road.

These are reported in **Appendix 4**, NR's responses in **Appendix 5**.

In December 2016 a local resident (Professor Buckley) submitted a paper detailing what he regarded as serious errors and flaws in NR's application in respect of (i) the performance of rail dampers; and, (ii) the uncertainty surrounding the prediction of railway noise associated with: (a) the type of rail pad that will be installed as part of the EWR scheme; and (b) the version of noise modelling software used. These matters are covered in the report.

## **Background**

1. 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 17<sup>th</sup> October 2012. Construction of the scheme is nearing completion and passenger services commenced on 12<sup>th</sup> December 2016.

2. **Condition 19** of the deemed planning permission (**Appendix 6**) 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".*

3. **Condition 19(1)** states that the monitoring and mitigation of operational noise and vibration associated with the scheme, shall be undertaken in accordance with condition 19 and the Noise and Vibration Mitigation Policy (NVMP, dated January 2011, **Appendix 7**) which was approved by the Secretary of State as part of the deemed planning permission.
4. **Condition 19(2)** requires that development shall not commence within each route section until detailed schemes of assessment of predicted operational noise and vibration, and details of proposed monitoring and mitigation measures have been approved by the local planning authority.
5. *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 approved Noise and Vibration Schemes of Assessment (route sections H and I-1)**

6. The West Area Planning Committee (WAPC) approved the Noise and Vibration Schemes of Assessment for route sections H and I-1 under references 15/00956/CND (route section H, approved 30<sup>th</sup> June 2015) and 15/03503/CND (route section I-1, approved 18<sup>th</sup> February 2016). The approvals were the subject of several planning conditions.
7. Condition 2 to both of those approvals was recommended by officers and concerned the installation of rail damping:

*2 Within three months of this partial approval under condition 19 of the deemed planning permission, proposals shall be submitted for the written approval of the local planning authority showing how at-source noise attenuation by rail damping to at least the standard achievable by the use of Tata Silentrail can be incorporated into the scheme. The development to which this approval relates shall not be brought into operation EITHER without that written approval having been obtained and other than in accordance with such approved details OR without the Council having given written confirmation that it is satisfied that the provision of such rail dampening is not reasonably practicable.*

*Reason: The local planning authority is not satisfied that rail damping as an at source mitigation measure has been shown to not be reasonably practicable in the absence of any attempt on the part of the applicant to secure approval for the use of such a measure.*

8. Condition 3 to both approvals applies restrictions to the patterns of train services. It was imposed by the WAPC contrary to officer advice that there was no legal basis for the condition:

*3 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)*

9. Condition 4 to both approvals requires more extensive noise and vibration monitoring than is required by the NVMP. It was imposed by the WAPC contrary to officer advice and:

*4 Section H/I1 shall not be made available for use by trains until provision for continuous monitoring of noise has been effected for noise sensitive properties throughout section I1 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 I1 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)*

10. In summer 2016 NR made multiple applications for changes to the conditions imposed on the approvals of the Noise and Vibration Schemes of Assessment (NVSoA).
11. Two applications sought to remove the requirement for implementation of rail damping (condition 2). These were refused by WAPC at its meeting on 13<sup>th</sup> September 2016 on the grounds that it had not been demonstrated that rail damping is not reasonably practicable to install:

| Planning ref | Subject  | Date of decision notice |
|--------------|--|-------------------------|
| 16/01858/VAR | Remove requirement for implementation of Tata SilentTrack in route section H   | Refused<br>23.09.2016   |
| 16/01861/VAR | Remove requirement for implementation of Tata SilentTrack in route section I-1 | Refused<br>23.09.2016   |

12. Five applications requested the removal of the monitoring condition (condition 3). These were approved by the Planning Review Committee (PRC) on 5<sup>th</sup> October 2016:

| Planning ref | Subject   | Date of decision notice                                   |
|--------------|---|---|
| 16/01406/VAR | Noise monitoring route section H                                | 10.10.2016  |
| 16/01409/VAR | Noise monitoring route section I-1                              | 10.10.2016  |
| 16/01410/VAR | Vibration monitoring on plain line, route section H             | Awaiting execution and delivery of Unilateral Undertaking |
| 16/01411/VAR | Vibration monitoring at switches and crossings, route section H | 10.10.2016  |
| 16/01412/VAR | Vibration monitoring on plain line, route section I-1           | 10.10.2016  |

### **Format of the current applications**

13. The two current applications re-submit the approved NSoAs for route sections H and I-1 (approved under 15/00956/CND for route section H; and 15/03503/CND for route section I-1). All the previously approved documents for the NSoAs are re-submitted together with a Supplementary Statement setting

out additional information and analysis.

14. Through these applications, NR asks that the NSoAs be approved without the imposition of conditions applied when the NSoAs were previously approved (under 15/00956/CND and 15/03503/CND) namely: the rail damping condition, the condition setting out limitations on the pattern of rail services, and the monitoring condition. As noted in paragraph 12 above, the monitoring condition was removed from 15/00956/CND and 15/03503/CND by the PRC in October.

### **Purpose of the Current Applications**

15. NR has not yet lodged appeals against the Council's refusals in respect of rail damping (165/01858/VAR and 16/01861/VAR) but has stated that if the current applications are not approved it intends to appeal on the grounds that the rail damping condition (condition 2) was neither necessary nor reasonable so that its imposition did not meet the NPPF tests for conditions.
16. Similarly NR has stated that if these applications are not approved it will appeal against condition 3 relating to the pattern of train services on the grounds that condition 3 was neither necessary nor reasonable: its imposition did not meet the NPPF tests for conditions.
17. In respect of appeals the Government's Planning Practice Guidance (PPG) states that:

*"before making an appeal the party seeking permission should first consider re-engaging with the local planning authority to discuss whether any changes to the proposal would make it more acceptable and likely to gain planning permission. A revised application could then be submitted."*

18. The purpose of these applications (relating to route section H and route section I-1 respectively) is therefore, prior to the lodging of appeals:
  - to enable NR to re-engage with the Council on the issue of rail damping in route sections H and I-1: the applications contain additional information and analysis to that presented in summer 2016; and,
  - to request that the Council reconsiders the imposition of condition 3 regarding limitations on the patterns of train services.

### **Purpose of this Report**

19. The purpose of this report is:
  - i. to consider the rail damping issue again in the light of the further information submitted including: whether the imposition of the rail damping condition (condition 2) on the current applications is necessary and reasonable; and, whether the provision of rail damping is reasonably practicable; and,

- ii. to reconsider whether the imposition of the condition restricting the patterns of rail services (condition 3) is necessary and reasonable.
20. To assist with the determination of these applications external advice has been sought: technical advice from Arup on rail damping (**Appendix 8**); and advice from Queen's Counsel on rail damping and the patterns of rail services (**Appendix 9**). Queen's Counsel's Advice was formulated in the light of Arup's technical advice. 'members

## **Rail damping**

21. Rail damping is a form of rail noise mitigation which involves the installation of steel sections embedded in an elastomer coating which are clipped at intervals along each side of each rail. Rail damping can help to reduce noise that is radiated from the rails themselves, but it does not mitigate any of the engine, traction, wheel or other noise from locomotives and rolling stock. SilentTrack is the trade mark of a rail damping product made by TATA Steel.

### *NR submission*

22. As noted, these applications consist of all the previously approved documents together with additional information in the form of a Supplementary Statement on rail damping (2<sup>nd</sup> November 2016). The Supplementary Statement responds to the points raised in the refusal of the condition discharge by this Committee in September 2016. It notes that NR has invested £3.5 million in environmental mitigation associated with East West Rail Phase 1 in Oxford.
23. In summary the key points in NR's Supplementary Statement are:
- a. it is fundamentally inappropriate to assert that removal of the need for property insulation is a benefit since insulation reduces noise within properties by substantially more than can be achieved by rail damping (10dB and 2.5dB to 3dB respectively);
  - b. there is no evidence in the UK or other countries, of the reduction of maximum noise levels (i.e. the pass-by noise from individual trains) achievable from rail damping;
  - c. rail damping alone cannot achieve the noise standards of the NVMP without being installed in combination with extensive noise barriers and property insulation. NR asserts that the provision of mitigation should be viewed holistically;
  - d. where properties would benefit from an improvement as a result of rail damping this is only marginal (up to 2.5dB to 3dB), is not likely to be noticeable, and would involve significant cost;
  - e. on financial considerations the test is not whether NR can afford rail damping but whether, as a publicly funded body, the costs are disproportionately large relative to the benefits;



- f. WebTAG is the only way of comparing directly the costs and benefits of rail damping. The assumptions used in NR's analysis properly reflect local conditions. The Council has not suggested other analytical tools for this benefit/cost exercise;
  - g. None of the scenarios for installing rail damping presents value for money because the benefit to cost ratios are too low:
    - on the whole of section H = 0.20
    - on parts of section H where there is a residual impact after the installation of barriers = 0.24
    - where the trigger levels for statutory noise insulation are exceeded in section H = 0.28
    - on parts of section I-1 where there is a residual impact after the installation of barriers = 0.57. The submission notes that the WebTAG assessment showed that 110 properties in this section could marginally benefit but that this does not provide adequate value for money based on Department for Transport criteria.
24. NR concludes that on the evidence submitted rail damping does not represent value for money given that the costs are grossly disproportionate to the benefits. The test of reasonable practicality is not met and the NSoAs should be approved without the rail damping condition that was imposed on the previous consents.

*Arup advice*

25. Arup was asked to comment on particular aspects of NR's Supplementary Statement, some of which referred to previous advice from them used in the officer report to the WAPC meeting on 13<sup>th</sup> September 2016. Arup has reasserted why 'at source' mitigation is preferred to sound insulation:
- the benefits of 'at source' mitigation are universal;
  - noise insulation is intrusive and take-up cannot be relied upon (typically 50%); and,
  - noise insulation benefits diminish over time and are not permanent.
26. Arup agrees that rail dampers would provide reduced benefit if maximum noise levels are being generated by sources other than wheel/rail rolling noise and suggests that greater certainty on this point could be established by clarification of exactly what is contributing to maximum noise levels at given locations on this route. However, they point out that an underlying assumption in the NSoA is that maximum noise levels from freight off-power are a result of rolling noise not traction (engine) noise.
27. Arup agrees that the lengths of rail damper installation proposed by NR in their Supplementary Statement are reasonable for use in the analysis of benefit/cost ratio.
28. Arup agrees that in general the use of WebTAG to inform mitigation decisions is appropriate, though they do not agree with the way that it has been used in

the NR submission. They say that if the benefit/cost ratio of noise barriers together with rail damping were to be carried out (rather than rail damping in isolation) it would be likely to produce a ratio nearer to 1. Arup suggests that it is for all parties to consider and agree what mitigation is reasonable and sustainable within the context of the NVMP.

29. Arup has also advised on both Professor Buckley's paper of December 2016 and ERM's response to it. Arup has concluded that:

(i) 2.5dB is a reasonable estimate of the noise reduction that rail dampers would achieve on EWR - the additional studies cited by Professor Buckley do not alter that conclusion;

(ii) there is evidence to support the noise predictions used by NR with the type of rail pads implemented; and,

(iii) there is no uncertainty in the noise modelling.

#### *Queen's Counsel's advice*

30. Queen's Counsel advises that NR's approach is permissible (paragraphs 77 to 79 of the Advice):

*"77. C19 and the NVMP has to be applied with judgment and in a commonsense way. I cannot read the NVMP as always requiring At Source first irrespective as to the facts, the context and the efficacy of the various options. Where At Source will not be sufficient to avoid significant impacts or where other measures are already being provided, then the NVMP does not require At Source if other measures will achieve the objectives.*

*78. On that approach, and given the current circumstances, NR's approach to the application of the NVMP is permissible (and I think correct). On that approach, the potential role of RD for section H is very limited. This is before one gets to the RP/BCR question.*

*79. At the BCR stage, the issue is one for the judgment of OCC informed by, but not dictated to, by Webtag. The context, the severity of the impacts and the scale of the benefits and to how many people are the crucial elements. If, as I think is the correct approach, the BCR of RD is to be assessed from the starting point of the implemented Partial Approval, the RD serves to mitigate open window noise from those who have noise insulation and reduces one house from 5db to less than 3db; whilst removing entitlement to noise insulation from any who have not yet had it installed."*

#### *Officer assessment*

31. In coming to their conclusions on these applications, officers have taken into account all representations and advice received.
32. Following Queen's Counsel's Advice as stated above, the officers' assessment is summarised in the table below:

| Queen's Counsel's Advice   | Officer assessment  |
|--|---|
| <b>The context</b> <ul style="list-style-type: none"> <li>The NVMP does not require 'at source' if the other measures already provided will achieve the objectives (para 77)</li> </ul>  | <p>The potential role for rail damping is in relation to residual noise after barriers and noise insulation have been installed.</p>  |
| <b>The severity of the impacts</b> <ul style="list-style-type: none"> <li>Significant residual noise impacts are 5dB or above (para 73)</li> </ul>   | <p>The barriers and insulation together meet the requirements of the NVMP (in both route sections H and I-1) apart from in relation to one Noise Sensitive Receptor (NSR) where the residual noise impact is 5dB.</p>   |
| <b>The scale of benefits</b> <ul style="list-style-type: none"> <li>Rail damping may mitigate noise impacts by 2.5dB (para 4)</li> <li>3dB difference is at the margin of perceptibility (para 73)</li> <li>The NVMP standards concern internal, not external noise levels (para 14c)</li> </ul> | <p>A 2.5dB difference is less than the level considered to be "significant" for residual noise impact purposes by the approved NVMP.</p> <p>Rail damping could only be relevant at the <u>one</u> NSR referred to above where the residual noise impact is 5dB.</p> <p>The approved NVMP does not require mitigation of noise to open areas or gardens.</p> |
| <b>How many people will benefit</b> <ul style="list-style-type: none"> <li>For those who already have noise insulation, open window noise will be reduced</li> <li>At one house there will be noise reduction from 5db to less than 3db</li> </ul>   | <p>Not relevant to this decision - the approved NVMP does not require mitigation of noise where windows are opened.</p> <p>The one NSR benefit will involve mitigation of a noise impact which is of itself at the limits of perceptibility.</p>  |

33. Local residents are of the view that there is an inescapable obligation on NR to provide rail damping. This arises from their interpretation of public inquiry documents, the NVMP and condition 19. It is a view underscored by verbal and written commitments about rail damping made by NR in the run-up to determination of the NSoAs in 2015 and 2016. Local people do not believe that the noise impacts of EWRP1 on their lives will have been adequately mitigated without the installation of rail damping. They believe that NR are reneging on their responsibilities to mitigate; and are putting profit before the lives of local people. Detailed technical arguments about the methodologies and assumptions used in the assessment of reasonable practicability and benefits to costs have also been advanced by some. Overall, local residents are calling for the Council to take a strong stance against these applications, and for enforcement action to be taken against NR in view of the commencement of rail services prior to full discharge of the relevant planning conditions.

34. There can be no doubting residents' concerns about the adverse impacts of

operational noise and vibration; or their interpretation of condition 19 and the NVMP. The Council's approach to this has been to seek compliance with condition 2 – specifically for NR to demonstrate whether the provision of rail damping is reasonably practicable. The data and methodologies employed by NR in the NSoAs have been assessed by the original Independent Expert and by Arup; and Queen's Counsel's Advice has been received in respect of interpretation. Queen's Counsel has advised on the factors that the decision maker should take into account.

#### *Officer conclusion on rail damping*

35. Since summer 2015 when the NSoA for route section H was first approved, Councillors have pushed for exhaustive investigations on the reasonably practicable provision of rail damping. The position reached is that with the review of all the submitted material by external legal and technical experts, officers are able to accept, and to recommend, that the reasonably practicable test set by Councillors has now been met – that NR have demonstrated that it is not reasonably practicable to require rail damping.
36. Officers conclude that a reduction in residual noise which is of itself at the margins of perceptibility, occurring at one NSR, is of such limited benefit that, given the costs involved, it is not reasonably practicable to install rail damping in route sections H and I-1.
37. The recommendation is therefore that the NSoAs relating respectively to route sections H and I-1 be approved subject only to a condition specifying the documents that form part of the permission, excluding the previously imposed condition regarding rail damping.

#### **Restrictions on the patterns of train services**

38. Condition 3 (reproduced in paragraph 8 above) limits train movements to the number and pattern of movements used to predict operational noise and vibration as set out in the NVMP (paragraphs 1.8 to 1.10). This is known as the reasonable planning scenario. The reason for this condition was to limit the actual operation of services on the line to the pattern used in the prediction of operational noise and vibration and the design of any associated mitigation given that any changes could have different and possibly unacceptable operational outcomes which might require further mitigation.
39. At the time the condition was imposed by WAPC, officers advised that there was no legal basis for this condition because the deemed permission did not include any control over the number and pattern of services. This situation was unaffected by representations that the modelled pattern of services was unlikely to be adhered to.
40. Queen's Counsel has also advised that the NVMP does not require any assessments to address any future increases in service and that these potential changes do not need to be modelled (paragraph 84 of his Advice). Through the granting of the original permission, NR was given the right to increase services

without being in breach of condition 19 of the deemed planning permission, and NR does not need to seek further consent (paragraph 85).

41. In the view of officers therefore, since there is no legal basis for the imposition of this condition, it is not recommended.

**Conclusion:** the respective Noise Schemes of Assessment are considered to be robust and to have demonstrated that the required standards of noise mitigation set out in the Noise and Vibration Mitigation Policy will be achieved subject to the installation of the specified mitigation measures. The applications are recommended for approval subject to a condition that the development shall take place in accordance with the submitted details. The previous conditions relating to rail damping and limitations on the patterns of train services are not recommended.

#### 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:** 15/00956/CND; 15/03503/CND; 16/01858/CND; 16/01861/CND; 16/02507/CND; 16/02509/CND.

[Agenda for Planning Review Committee on Wednesday 5 October 2016, 6.00 pm | Oxford City Council](#)

[Agenda for West Area Planning Committee on Tuesday 13 September 2016, 6.00 pm | Oxford City Council](#)

[Agenda for West Area Planning Committee on Tuesday 15 December 2015, 4.00 pm | Oxford City Council](#)

[Agenda for West Area Planning Committee on Tuesday 16 June 2015, 6.30 pm | Oxford City Council](#)

**Contact Officer:** Fiona Bartholomew  
**Extension:** 2774  
**Date:** 13<sup>th</sup> February 2016