C H Johnson

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Your Ref.:
Our Ref.: APP/X/98/X5210/003059

17 JAN 2000

Dear Sirs,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 195
LOCAL GOVERNMENT ACT 1972 – SECTION 250(5): APPLICATION FOR COSTS
APPEAL BY MR C R BYNG-MADDICK AND MR R L LOW
LAND COMPRISING RAILWAY LINES BETWEEN EUSTON STATION AND PRIMROSE HILL, CAMDEN

1. I refer to the report of the Inspector, Mr CH Johnson FRICS, who held a local inquiry into your clients' appeal against the failure of Camden London Borough Council to determine within the prescribed period an application for a Certificate of Lawfulness of Proposed Use or Development (LDC) for engineering works by Railtrack plc comprising the remodelling of existing railway lines between Euston Station and Primrose Hill tunnels.

2. The application was dated 13 July 1998, and was made under section 192 of the 1990 Act.

The Inspector's Report

3. A copy of the Inspector's Report of the inquiry is attached to this letter. The Secretary of State notes and accepts the procedures which were adopted at the inquiry, and referred to in paragraph 4 of the Report.

4. The Inspector's findings of fact are in paragraph 417 of his Report. The Secretary of State accepts these findings.

5. The Inspector's conclusions are in paragraphs 418 to 453 and his recommendation in paragraph 454. The Inspector recommended that the appeal be allowed and that a LDC be issued in accordance with the application.

The Secretary of State's Decision and Reasons

6. Subject to paragraphs 7 to 16 below, the Secretary of State adopts the Inspector's conclusions. Notwithstanding the matters set out in paragraphs 7 to 16 below, the Secretary of State accepts the Inspector's recommendation, and a LDC is annexed to this letter.

Part 11 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) and Council Directive 85/337/EEC ("the Directive")

7. The Secretary of State does not adopt paragraphs 429 and 430 of the Inspector's Report.

8. The Secretary of State accepts that national legislation must, as far as possible, be interpreted in the light of the wording and purpose of any relevant European Community Directive in order to achieve the objectives of that Directive (Marleasing SA v La Comercial Internacionale [1990] ECR I-4135 and Webb v Emo [1993] 1 W.L.R. 49). The Secretary of State also accepts that, in so far as provisions of a Directive have direct effect, these provisions prevail over conflicting provisions of national law (Pubblico Ministero v Tullio Ratti [1979] ECR 1629).

9. Having accepted the Inspector's reasoning and conclusion in paragraphs 431 to 434 of his Report, the Secretary of State has therefore considered whether European Community law requires him to reach a different conclusion.

10. The Inspector and the parties appear to have proceeded on the basis that, in order for Part 11 of the GPDO to be compatible with the Directive, it must be demonstrated that the relevant Act of Parliament constitutes a "specific act of national legislation" which sets out the "details" of the project, and so falls within Article 1(5) of the Directive. The Secretary of State does not accept this.

11. It is true (and reflected in paragraph 11 of Circular 3/95) that the reference in Article 3(12)(d) of the GPDO to "Part 11" implements Article 1(5) of the Directive in relation to local or private Acts of Parliament which received Royal Assent *after* the entry into force of the Directive. However the Secretary of State considers that that reference also reflects the fact that the Directive does not apply to projects which received development consent before the entry into force of the Directive. The Secretary of State therefore considers that in relation to Acts, such as those at issue in the present appeal, which received Royal Assent *before* that date, the correct question to be asked is not whether they meet the requirements of Article 1(5) of the Directive, but whether they constitute a "development consent" for the purposes of the Directive. The Secretary of State considers that the present Acts define the project which they authorise in sufficient detail to constitute a development consent granted before the entry into force of the Directive, and to which the Directive therefore does not apply. For this reason the Secretary of State considers that European Community law does not require him to reach a different conclusion.

12. If he is wrong in that, the Secretary of State has considered whether the relevant Acts of Parliament meet the requirements of Article 1(5) of the Directive. The Secretary of State considers that they do constitute specific legislative acts which include all the elements which may be relevant to the assessment of the impact of the project on the environment, and so fall within Article 1(5). In reaching this conclusion the Secretary of State has taken into account,

in particular, paragraphs 129-141 and 431-434 of the Report, and the reply of the European Court of Justice to the third question raised by the national court in World Wide Fund (WWF) and Others v Autonome Provinz Bozen and Others (Case C-435/97, Judgement of 16 September 1999, not yet reported). For this reason also, if relevant, the Secretary of State considers that European Community law does not require him to reach a different conclusion.

13. The Secretary of State has considered whether it is the GPDO, rather than the relevant Acts of Parliament, which must, if he is wrong in paragraph 11 above, be scrutinised to consider whether it meets the requirements of Article 1(5) of the Directive. The Order does not itself set out any details of the present works. However, the Secretary of State considers that, in granting planning permission by reference to the particular Acts of Parliament referred to in the Inspector's Report and in the previous paragraph, the GPDO does constitute a specific legislative act which includes all the elements which may be relevant to the assessment of the impact of the project on the environment, and so falls within Article 1(5).

Whether the development is a "modification" of a line for long-distance railway traffic

14. The Secretary of State does not adopt the reasoning in paragraphs 439 and 440 of the Inspector's Report, because he considers that the Inspector takes there too narrow a view of the concept of "modification", given the decision of the European Court of Justice in Kraaijeveld [1996] E.C.R. I-5403 (referred to in paragraph 159 of the Report).

15, The Secretary of State does, however, reach the same conclusion as that reached by the Inspector in paragraph 441 of his Report, but for the reasons advanced by Railtrack and summarised by the Inspector at paragraphs 158 to 161 of the Report.

The relevance of procedures under section 61 of the Control of Pollution Act 1974

16. The Secretary of State adopts paragraphs 446 and 447 of the Inspector's Report, but wishes to explain how he interprets the Inspector's reference to controls under section 61 of the Control of Pollution Act 1974. The Secretary of State does not understand the availability of those controls to be a factor relied on by the Inspector in reaching his conclusion that the development would not be likely to have significant effects in relation to noise or vibration. The Secretary of State has not relied on the availability of those controls in his decision to agree with the Inspector's conclusion at paragraph 453.

Right of Appeal against the Secretary of State's Decision

17. Section 1 of the attached leaflet, enclosed for those concerned, sets out the right of appeal to the High Court against the decision of the Secretary of State contained in this letter.

Application for Costs

18. At the inquiry your clients made an application for an award of costs against Camden London Borough Council. The Inspector's Report on that application for costs is attached to this letter.

19. The Secretary of State accepts the Inspector's Conclusions in paragraphs 11 to 16 of that Report. The Secretary of State also accepts the Inspector's recommendation in paragraph 17, and refuses the application for an award of costs.

20. There is no statutory provision for a challenge to a decision on an application for an award of costs; the procedure is to make an application for judicial review. This must be done promptly.

Yours faithfully,

A J WRIGHT
Authorised by the Secretary of State for the Environment, Transport and the Regions
to sign in that behalf

GOVERNMENT OFFICE
FOR THE SOUTH WEST

DEPARTMENT OF THE ENVIRONMENT, TRANSPORT AND THE REGIONS

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

IT IS HEREBY CERTIFIED that on 13 July 1998 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged black on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:-

the proposed works would constitute development permitted under the provisions of Article 3(1) of, Class A of Part 11 and Class A of Part 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995.

Signed ....
A J WRIGHT
Authorised by the Secretary of State
to sign in that behalf

Date ..... 17 JAN 2000

Reference: APP/X/98/X5210/003059

First Schedule

The remodelling of existing railway lines and associated operations comprising a single project and subject to a single contract of works which commenced on 28 August 1998, (as also described in paragraphs 417(xi) to (xxxv) of the Inspector's report dated 10 August 1999 and attached to this certificate as an annex) consisting of :-

a) track layout renewed without materially altering the vertical and horizontal alignment,

b) new track layout including material alterations to the design and layout of existing track work,

c) alterations to retaining walls,

d) new and replacement gantries or portal structures supporting signalling equipment and

overhead line electrification,

e) new and replacement signalling equipment and structures with computer controls,

f) extension of Platform 15 and minor works to other platforms and buffer stops, subject to the prior approval by the local planning authority of the detailed plans and specifications being first obtained, in accordance with condition A.1 of Class A of Part II of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.

g) partial reconstruction of Bridge No11 (Regents Park Road) to accommodate realigned track work

h) small alterations, including the provision of equipment cabins and redevelopment of an amenity block outside Euston Station near the English Welsh and Scottish Railways Ltd depot.

Second Schedule

Land comprising railway lines between Euston Station and Primrose Hill tunnels, Camden.

IMPORTANT NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which are materially different from those described, or which relate to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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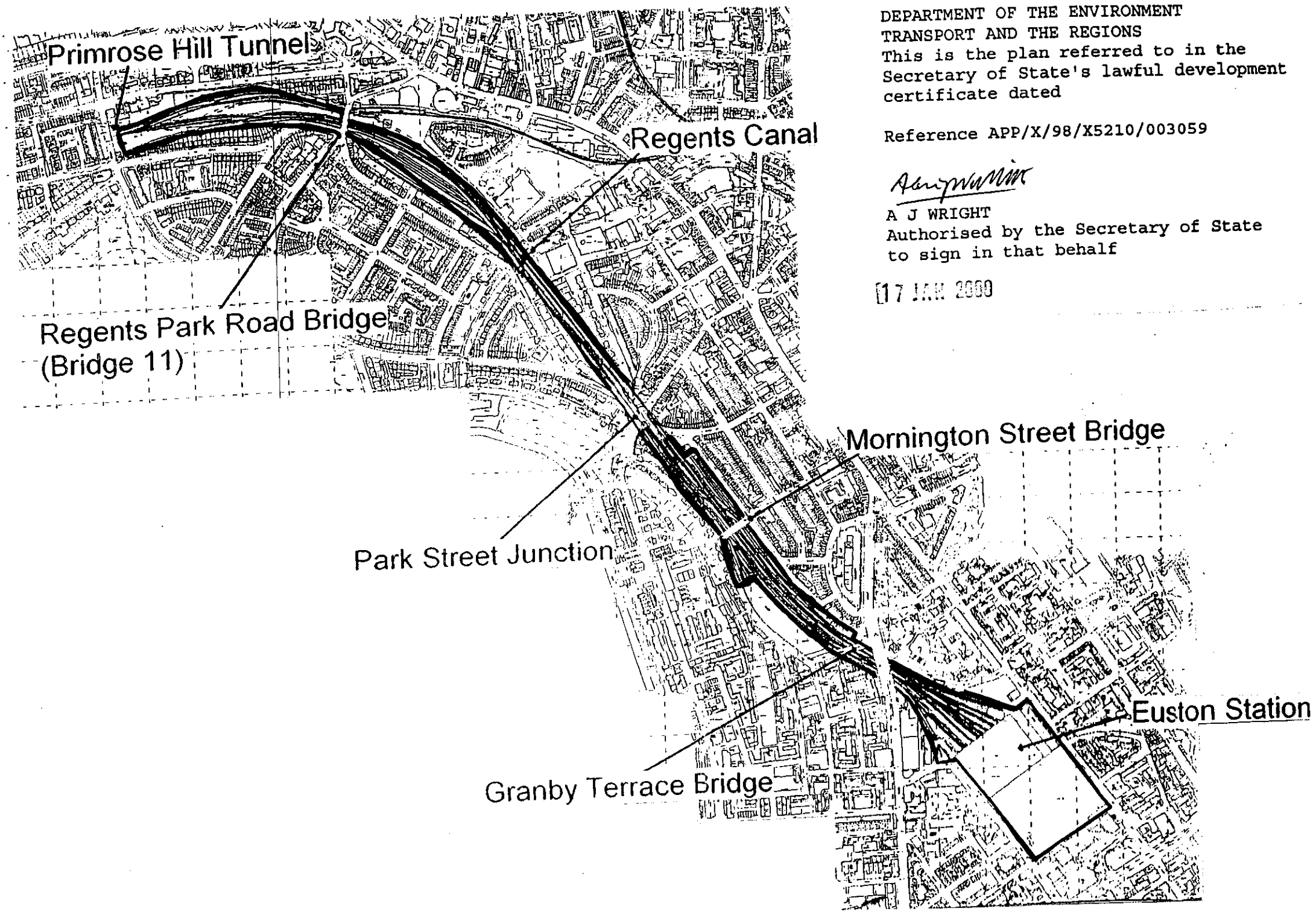

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS
This is the plan referred to in the Secretary of State's lawful development certificate dated

Reference APP/X/98/X5210/003059

A J WRIGHT
Authorised by the Secretary of State to sign in that behalf

17 JAN 2000

The Planning Inspectorate

An Executive Agency in the Department of the Environment, Transport and the Regions, and in the Welsh Office

Report on

Appeals by Mr C R Byng-Maddick and Mr R L Low and Others

Against the failure of

Camden London Borough Council

To determine an application for a Certificate of Lawful Development relating to land at

RAILWAY LINES BETWEEN EUSTON STATION AND PRIMROSE HILL LONDON.

Inspector : C H Johnson FRICS

Inquiry dates : 8 to 11 June, 23 June and 2 July 1999

Reference : APP/X/98/X5210/003059

Tollgate House
Houlton Street
BRISTOL BS2 9DJ

Reference: APP/X/98/X5210/003059

Date: 10 AUG 1999

To the Right Honourable John Prescott MP
Secretary of State for the Environment, Transport and the Regions

Sir

1. I have the honour to report that between 8 June and 2 July 1999, I held an inquiry at the Town Hall, Camden into appeals under Section 195 of the Town and Country Planning Act 1990, as amended. The appeals were made by Mr C R Byng-Maddick and Mr R L Low in conjunction with various residents' associations and organisations (as listed in the application) and are against the failure of the Camden London Borough Council to determine the application within the prescribed period. The site is land comprising railway lines between Euston Station and Primrose Hill, Camden.

2. The application was made under Section 192 of the amended Act and is dated 13 July 1998. It sought a Certificate of Lawfulness of Proposed Use or Development (LDC) for engineering works by Railtrack PLC comprising the remodelling of existing railway lines between Euston Station and the Primrose Hill tunnels. A detailed description of the proposed works was annexed to the application (Document CD1/1). At the inquiry an application for an award of costs was made by Mr C R Byng-Maddick and Mr R L Low and the other appellants against the Camden London Borough Council. This is the subject of a separate report.

3. In his letter of 1 February 1999, and in exercise of his powers under Paragraph 3(1) of Schedule 6 to the Town and Country Planning Act 1990, the Secretary of State directed that the appeal should be determined by him because the case raises development control policy and complex legal issues. On 11 March 1999 the Secretary of State wrote to the parties indicating that the powers in Rule 7 of the Town and Country Planning (Enforcement)(Inquiries Procedure) Rules 1992 would be exercised because of the complex nature of the core issue raised by the appeals. The core issue appeared to be whether the works by Railtrack PLC require a specific grant of permission, or whether no such grant is required because the works benefit from planning permission granted by virtue of Article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 [the GPDO]. To benefit from Article 3(1), the works would have to fall within the scope of the development described in Class A of Part 11 *(development under local or private acts or orders)* or Class A of Part 17 *(development by railway undertakers)* of Schedule 2 to the 1995 Order. In exercise of his powers under Rule 7 the Secretary of State listed the matters about which he particularly wished to be informed and these are set out in Document 4.

4. On 28 April 1999 I held a pre-inquiry meeting to deal with the procedural arrangements for the inquiry. At that meeting, and because of the unusual nature of the case, it was agreed

that Railtrack PLC should adopt the role of the appellants with the appellants acting as a major interested party. As a consequence, Railtrack would present their case first, followed by Camden Council, followed by the appellants, with closing speeches in the reverse order. I have reported the main parties' cases in that order.

5. This report includes a description of the appeal site and surroundings, the gist of the representations made at the inquiry, and my conclusions and recommendation. Lists of appearances, documents, plans and photographs are attached.

THE APPEAL SITE AND SURROUNDINGS

6. The site comprises the railway tracks and adjoining land which run from Euston Station, London, up to the tunnels at Primrose Hill. The railway is, for the most part, set within a cutting with steep sides faced with brick work. This section of the track is approximately 2.8km long. The track forms part of a larger route, serving the West Midlands, North Wales, the North West of England and the Western side of Scotland. The main route from Euston to Scotland is known as the West Coast Main Line (WCML).

7. The tracks leave Euston Station and progress in a north-westerly direction. They come together after leaving the station, and pass under bridges in Hampstead Road and Granby Terrace before continuing north-westwards. At this point, there are residential properties to the north of the railway lands, along Mornington Crescent and Mornington Terrace. Just before the bridge in Mornington Street, tracks emerge from a Carriage Shed, to the south of which are residential properties of Park Village East. The tracks continue north-west, under a large traffic junction at the intersection of Parkway, Gloucester Avenue, Gloucester Crescent, and Gloucester Gate.

8. The tracks then pass between some residential accommodation in Oval Road and some blocks of flats in Gloucester Avenue. There then follows some commercial accommodation in Gloucester Avenue to the south of the track (with residential beyond that), and residential plus supermarket to the north. As the track veers slightly to the west, there are some railway lands to the north of the track just before Primrose Hill Bridge, and a spur from the North London Line joins the WCML. As the track approaches the Primrose Hill tunnels, there are railway lands to the north, and residential houses and flats in King Henry's Road to the south. The site is well contained by the retaining walls flanking the tracks on either side, the terminus of Euston Station at one end and the ornate portals of the Primrose Hill tunnels at the other end.

THE CASE FOR RAILTRACK PLC

Introduction

9. The three parties had clarified their positions in their Statements of Case. All agreed that Railtrack was a statutory undertaker within the meaning of s262 of the 1990 Act and that the appeal site comprised Railtrack's operational land as defined in s263 of the 1990 Act. The appellants accepted that the site was a single planning unit and that the works being undertaken "must be treated as a single development proposal" (Document AP/1 para. 4.7). The Euston remodelling works comprised a single project, subject to a single contract. They were reviewed by Kennedy & Donkin in their environmental appraisal report on that basis (CD6) and are being programmed and implemented on that basis. The works commenced on 28 August 1998.

10. Objectives sought through the remodelling works were set out in para. 8 of Railtrack's Statement of Case (RT5) and certain operational consequences were described at para. 9. The works would increase the potential for passengers by rail.

11. The central issue raised by the appeals was whether a statutory environmental impact assessment should have been made for these works. If environmental assessment regulations were relevant to the project the T&CP (Assessment of Environmental Effects) Regulations 1988, as amended, would have applied. The subsequent T&CP (Environmental Impact Assessment) Regulations 1999 applied to works carried out as permitted development which had not begun by 14 March 1999. The 1999 Regulations were therefore not relevant to this case.

12. The 1988 Regulations did not apply to the Euston remodelling works because:

    (a) the works were authorised under primary legislation establishing the railway and providing for its maintenance and alteration, the subsequent impact of the planning regime introduced in 1947 being met through the general grant of planning permission in the GPDO at Article 3(12)(d) which expressly excluded the requirement for an environmental assessment (EA);

    (b) the works did not constitute " the carrying out of operations to provide.. a line for long-distance railway traffic" the line having been there for many years. This was not Schedule 1 development for the purposes of the Regulations;

    (c) they did not constitute "modification" of a line for long distance railway traffic as referred to in para.12 of Schedule 2 to the Regulations. The line remained the same "line" after the remodelling as it was before – the route had not been changed;

    (d) the LPA took the view that the works did not fall within Schedule 2 to the regulations because they would not be likely to have significant effects on the environment by virtue of their nature, size or location (Regulation 2(1) and 2(2)). Railtrack did not challenge this reasoning but considered it unnecessary for the resolution of the issue for the reasons given above.

13. The LPA would have granted a LDC to Railtrack for the proposed operations under s192(2) of the 1990 Act had it been appropriate for Railtrack to seek one (CC1/3 para. 1.6 et seq).

14. The maintenance and upgrading of railways was a continuous process, constrained by the availability of resources. Railtrack were regularly urged to devote greater resources to this purpose. Where the track layout and signalling were complex, as in the approach to Euston, periodic maintenance should ideally be accompanied by technical changes and improvements as they evolved. Conditions in this section of the railway had fallen behind as indicated in Document RT5 paras. 5 and 6.

15. In the historical context, the track layout and equipment had had to cater for changes in the nature of motive power, signalling systems and mechanisms, weights and braking capacities of trains and so on. It was necessary to upgrade the infrastructure periodically as well as maintain it. The works formed part of a continuing process across the national railway system.

16. The relationship between the appeal project and the upgrading of the WCML derived from Railtrack's publicised intention to secure improvements to that line to enable shorter journey times and increased services. The improvements could only be made piece by piece and would necessarily be carried out at locations which presently constrained either or both the speed and frequency of services. The entire upgrading would only result from the completion of many stages. Thus the Euston remodelling works, although part of the

upgrading concept, were in both practical and legal terms self-contained and should be so regarded for the purposes of these appeals.

17. Many of the powers granted to railway companies by private Acts of Parliament to build maintain and operate railways long preceded planning legislation and in particular the 1947 Act. Sections 13(1) and 13(2) of that Act were now reflected in s59 of the 1990 Act and Parts 11 and 17A in Schedule 2 to the GPDO 1995 reflected the provisions in Classes X11 and XVIII of the First Schedule to the GDO 1948. In relation to these works the relevant provisions had changed little. Class XII of the 1948 GDO referred to "development authorised by any local or private Act of Parliament...which designated specifically both the nature of the development thereby authorised and the land upon which it may be carried out". No restriction was placed on a private Act by reason of the year it became law. This concept and the accompanying framework of words had been carried through all successive GDOs to the present GPDO. Parliament had had numerous occasions to reconsider both the amendments to the 1947 Act, in 1962, 1971 and 1990 and to reconsider the GDO over the years. It was important to understand that when re-enactments were carried out they were not left to chance and called for careful consideration.

18. The enactment of permitted development provisions by a development order approved by Parliament recognised the need for a range of works to be freed from specific control, perhaps because their nature did not justify any formal procedure for permitting them or because it would be unduly burdensome on applicants and LPAs to require such a formal procedure. Practical reasons might indicate that statutory undertakers should be enabled to get on with projects which had already been scrutinised in the public interest. Consistent with this approach, Part 11 of the 1995 GPDO and article 3(12) excluded development permitted by that Part, which would otherwise fall within Schedules 1 or 2 of the 1988 EA Regulations, from the requirement for planning permission. Thus if the remodelling works were, contrary to Railtrack's case, held to come within either Schedule they would remain exempt from the operation of the 1988 Regulations in so far as authorised by private Act of Parliament (subject to the qualifications of Part 11).

19. The initial requirement for parliamentary powers to construct railways arose because it was usually necessary to acquire land compulsorily; some interference with public rights of way or navigation would occur. Both the construction and operation of railways might give rise to actions in nuisance at common law, to which the statutory authority provided a defence so long as the activities were carried out reasonably. The provisions of the relevant private Acts were detailed later. However of great importance was the Railway Clauses Consolidation Act 1845, an importance which had not diminished with the passage of time. The second part of the Act, sections 6 to 29 inclusive, was introduced by the heading "Construction of railway" and continued "and with respect to the construction of the railway and the works connected therewith, be it enacted as follows". The ensuing sections concerned both procedural and substantive matters which, with the exception of section 16, related to the circumstances in which the railway was, or is, initially constructed.

20. The purpose of the 1845 Act was to provide a set of enactments in a common form which could be incorporated into a private railway Act. In this instance its provisions were incorporated into the London and Birmingham Grand Junction and Manchester and Birmingham Railways Act 1846 and by that Act the provisions of the 1845 Act were applied retrospectively to the works carried out under the earlier Acts, which the 1846 Act repealed, as well as the 1846 Act itself (section 11).

21. Section 16 of the Clauses Act contained powers which may be applied on a continuing basis after initial construction of the railway. It provided among others for the company to lawfully:

"...from time to time alter, repair, or discontinue the before-mentioned works or any of them and substitute others in their stead; and...do all other acts necessary for making, maintaining, altering or repairing and using the railway..."

22. These powers had been regularly invoked by successive railway undertakers eg Railway Executive v West Riding of Yorkshire CC [1949] Ch 423 CA at 429. Judgements in Elmsley v North Eastern Railway Co 1896] Ch 418 CA expressly determined that these powers to alter the railway "from time to time" were of an enduring nature. The powers had been applied and relied on now for some 150 years, and through a substantial body of litigation.

23. Further provisions permitting development by various classes of statutory undertakers were included at the outset of the new planning regime in 1947, including Class XVIII of the 1948 GDO. The similarity between the 1948 provision and that of Part 17 Class A of Schedule 2 to the GPDO 1995 was striking, apart from the reordering of some words and other small variations. In this context the "construction of railways" (now "the construction of a railway") clearly referred to the construction of a railway where there was no railway before. Alteration of the alignment of an existing railway within Railtrack's operational land did not fall within that phrase. Were that not so, even the most minor alteration would fall outside the scope of the permitted development, which would be nonsensical.

24. Railtrack were entitled to the benefit of both Part 11 and Part 17A which granted permission for all purposes for the remodelling works, with the exception of the works to the Regents Park Road Bridge (Bridge 11). That work was not covered by Part 17 and the prior approval of the LPA was accordingly sought under para. A1 of Part 11. Approval was subsequently given and the bridge works were now nearing completion. Similarly, the proposed extension of Platform 15 at Euston Station should be submitted for approval in accordance with para. A1 of Part 11. The platform extension was needed to accommodate the whole length of sleeper trains operated by Scotrail including the leading engine, following the revision to the buffer stop positions in accordance with HMRI (HSE) safety requirements. It was accepted that the extension of Platform 15 by 49 metres could comprise an alteration which materially affected the design of the station.

25. The general categories of work involved were specified in para. 7 of RT/5 and more detailed descriptions of the work and plant involved were set out below. The very nature of the scheme and its contractual basis meant that minor modifications would occur as the scheme proceeded (see para. 15 of RT/5). The relationship of the final design to the reference design was expressed at para. 1.2.4 of the Kennedy & Donkin Environmental Appraisal (CD 6). The proposed ramp at Mornington Terrace was subsequently omitted and the works to Bridge 11 had been modified so as to be less intrusive.

26. The Kennedy & Donkin EA did not take the form of an environmental statement as defined at regulation 2(1) of the 1988 regulations because it did not follow the precise format of Schedule 3 to those regulations in relation to what was described there as "specific information". Its function was described in paras 1.2.2, 1.2.4 and 1.2.6 to 1.2.9 of the appraisal (CD 6). The appraisal provided the environmental requirements upon which the contractor was expected to base the programme of works and which it was obliged to follow in carrying out the contract.

27. Aside from this appraisal, applications had been made by Ashdown Environmental on Railtrack's behalf to the Council as environmental health authority for prior consents relating to noise and vibration, for the proposed engineering works. In accordance with section 61(3) of the Control of Pollution Act 1974 (CoPA) extensive particulars of the working methods and steps proposed for minimising noise from the works were supplied to the Council. To date two conditional consents under s.61(4) had been issued. These consents indicated that the Council would not serve a notice under s.60 of the 1974 Act imposing noise requirements in relation to those works, so long as they were carried out in accordance with the relevant application and conditions. They had been, and noise monitoring during the works had shown that the majority of the works had not made a significant contribution to the existing noise environment. There was no process in the works programme which would be likely to cause vibration of a nature that would affect buildings close to the railway.

28. It was stressed that the remodelling works were necessary for the improved operation of the station and for the safe working of the railway. Maintenance and upgrading of this nature had occurred periodically, though with long intervals between operations, and may be expected to occur again at some distant time. The scale of future maintenance would be reduced to the advantage of neighbouring occupiers and the travelling public. This would consequently reduce the frequency of night "possessions" required for that purpose.

29. It was also necessary that the remodelling works should be carried out within a reasonable timescale, from considerations of both railway operation and their environmental effects. The adoption of a scheme of blockades to enable the works nearest the station to be carried out on a continuous basis had the advantage that the noisier elements could be programmed to take place in daytime. The use of blockades provided a greater degree of safety in terms of railway operations although likely to cause more inconvenience for travellers and some disruption to services. For these reasons Railtrack required the whole remodelling to be completed by the end of the summer timetable period in 2000 so that the following winter timetable of services to and from Euston could return to an uninterrupted pattern. Railtrack's relationship with the train operating companies was important in that context.

30. The question of safety of railway operations should be emphasised as a paramount consideration. In 1995 HMRI considered parts of the Euston approach network to be below the requisite standards of safety. Whilst that had been made good, the general state of the railway in the area of the appeal site necessitated a thorough renewal programme, relating to signalling and electrification systems as well as the track layout.

Background

31. Euston was the London terminus for the West Coast Main Line (WCML) and was one of the most important stations on the line. It accommodated in excess of 600 train movements per day which in turn served approximately 115,000 passengers per day. Virgin Trains and Silverlink services used Euston as their London terminus. These operating companies served many large cities and urban areas including Birmingham, Manchester, Liverpool and Glasgow. The station was also used by Scotrail, running sleeper trains to and from Scotland, and by North West Trains, running services to Manchester Airport. English, Welsh and Scottish Railways Limited (EWS) use a depot just outside Euston Station for the freight services which they operated.

32. Euston Station operated with 18 platforms served by 6 railway lines: 3 lines for trains entering the station (the Up Lines) and 3 lines for trains leaving the station (the Down Lines). The lines were identified on schematic layout drawings at Document RT1/4.

Railtrack's Statutory Obligations

33. Railtrack owned and operated the rail infrastructure of Great Britain and was responsible for its maintenance and repair. Railtrack operated the railway network under the authority of a network licence granted under section 8 of the Railway Act 1993. Condition 7 of that licence (Stewardship of the Licence Holder's Network) set out Railtrack's responsibilities for maintaining, renewing and developing the rail network.

34. In addition, Railtrack had agreed with the Rail Regulator a series of Regulatory Obligations. These obligations included four regulatory principles which were as follows:

    a) Railtrack should, in a timely fashion, renew the railway infrastructure in the appropriate modern equivalent form;

    b) Railtrack should take a proactive and positive approach to the enhancement of the railway network in a way which reflected the needs of its customers and of rail users;

    c) Railtrack should make good the current shortfall in expenditure in an efficient and effective way; and

    d) Railtrack's plans and investment approval processes should ensure delivery of these objectives.

    It was against the background of these obligations that Railtrack had considered the condition and operation of the rail infrastructure in the appeal site.

The Existing Rail Infrastructure and the Need for the Scheme

35. The majority of the Permanent Way within the appeal site was installed in the 1960s on layout which had changed little since the 1940s. A Signalling Infrastructure Condition Assessment (SICA) model run carried out to assess the infrastructure of the Euston approaches during January 1996 indicated that the majority of the Permanent Way was already life expired and in need of replacement at that stage.

36. The poor condition of the Permanent Way was highlighted by the fact that in February 1996 Her Majesty's Railway Inspectorate (part of the HSE) served an improvement notice on Railtrack in respect of the Permanent Way in the Euston area following the derailment of an empty excursion train. HMRI concluded that this incident was caused by the condition of the Permanent Way. The improvement notice was complied with in June 1996.

37. Railtrack considered that the nature and age of the Permanent Way was unsuitable for the operational needs of a modern railway and for the level of service which it was required to support. Furthermore, the track layout in the Euston area incorporated a number of conflicting movements which led to delay and compromised Railtrack's ability to provide an efficient service on this section of line.

38. The current signalling in the Euston area was based on a Relay Interlocking System. The components which comprised this system were tested by the SICA model in January 1996 and were found to be approaching the end of their life expectancy at that time. The result of the model indicated that resignalling of the Euston area was required. The current signalling system included an array of filament lamps which were predominantly suspended above the

railway lines on portals or cantilevered portals. The SICA model assessed the gantries in January 1996 and considered them to be in need of replacement.

39. The existing Overhead Electrification System was now over thirty years old and was suffering from wear and fatigue. It no longer properly served the needs of a modern railway and required replacement by up-to-date equipment.

40. The telecommunication system within the Euston area was up to 30 years old and following testing by the SICA model a significant element of the system was found to be in need of replacement.

41. Railtrack had been required by HMRI to provide a 20 metre retardation zone behind each buffer at Euston Station. Provision of this increased distance reduced the platform length available to accommodate terminating trains. Platform 15 at Euston Station was used by Scotrail sleeper trains which required greater length of platform than normal services. Therefore, in order to provide the necessary retardation length as well as continuing to accommodate sleeper trains, it was necessary to extend platform 15 by approximately 49 metres. Railtrack was currently considering whether any works were required to other platforms to meet HMRI's requirements. It was presently anticipated that any such works would be minor.

Development of the Scheme

42. During development of the scheme, three options were considered:

Option 1 - Do Nothing

By reason of the condition of the infrastructure, the consequence of doing nothing would be the eventual closure of the railway. This was not considered to be a realistic option.

Option 2 - Like for Like Renewal

Like for like renewal would involve retention of non-standard equipment. Retention of such equipment would not overcome the existing constraints on the flexibility and performance of the railway and would involve more works than option 3.

Option 3 - Remodelling of the railway infrastructure

The remodelled option would allow the replacement of the existing railway infrastructure with modern equipment of high quality with fewer infrastructure components. These factors reduced the possibility of failure of the system. The proposed configuration of the layout would also greatly improve operational flexibility and facilitate future maintenance and renewal activities. In light of the advantages of the remodelling of the railway infrastructure, it was resolved to pursue option 3 as the preferred scheme.

43. In April 1997, Kennedy and Donkin (KD) were awarded the contract to prepare a feasibility study for the Euston area remodelling. This study included an assessment of the construction strategy and programme and, in particular, what possessions of the operational railway would be required to carry out the works. During the feasibility study it became apparent that it would not be possible to carry out some of the works during normal weekend possessions of the railway. It was therefore concluded, after examining several options, that partial blockades of the station would be required of approximately half at a time.

44. Following completion of the feasibility study by KD, an invitation to tender document was released. Following completion of the tendering process Balfour Beatty Rail Projects

Limited (BBRPL) with principal contractor Westinghouse Signals Limited were awarded the design and construction contract in June 1998.

Description of the Scheme

45. It was intended to replace all the Permanent Way in the Euston approaches with continuously welded rail. Railtrack would also replace, and in many cases eliminate, the existing complex and non-standard switches and crossings with modern components. This would allow for greater operational flexibility. It was also intended to modify the alignment of some of the tracks approaching the station. This modification principally involved a change in the horizontal alignment of the Up Fast and Down Fast lines in the vicinity of Regents Park Road Bridge. It was also proposed to replace the top layer of ballast along the entire length of the appeal site and to replace the current track drainage formation in locations where it was inadequate.

46. Some changes in levels would arise from the works. These had recently been revised as described in Document CD13/3A. Whilst there were locations where there would be changes to vertical or horizontal alignment, none was considered to be significant.

47. The effect of the works to the Permanent Way would be to remove a significant number of points of operational conflict which currently inhibited smooth operation of the railway. The minimisation of points of conflict served to reduce the potential for incidents and the introduction of modern track equipment would reduce the need for disruption for maintenance and renewal. The works and the consequential removal of constraints in the rail network in the Euston area would provide an opportunity for additional rail services. At present there was a total of 44 movements per hour through the Euston area during the peak period and an average of 30 movements per hour during the off peak period. In 2002, after completion of the works. the maximum number of movements per hour during the peak hour would not increase. In 2002 the average number of movements per hour during the off-peak period were expected to increase to 32 - an increase of 6% on 1999 levels.

48. By 2005, during the peak period the maximum train movements per hour were expected to increase to 48 - an increase of 9% on 1999 levels. The average off peak train movements were expected to have increased to 40 movements per hour - an increase of 25% on 2002 levels. The greater increase in off-peak movements would arise from the expected increase in use of the train as a mode of travel. The requirement to provide flexibility in the operational timetable and constraints further up the WCML prevented any additional movement beyond the levels referred to. In particular there would be no increase in night time movements.

49. It was intended to replace the existing Relay Interlocking signalling system with a modern Solid State Interlocking (SSI) signalling system. This modern system provided a high level of performance and had been found to be very reliable. It could be maintained without the requirement for significant interference with the railway. The proposed replacement signalling gantries would be of similar design and made of similar materials to the existing. The position of the signalling gantries was also likely to change to meet the requirements of the new signalling system and current standards.

50. It was proposed to replace the current overhead line electrification with a modern system. The new system would be suspended from supporting portals which were similar in appearance to signalling gantries. Some of the existing overhead electrification portals were in poor condition and required replacement. However, where possible, existing portals would be retained and reconditioned where appropriate.

51. Railtrack were required to provide telephone connections at signals, switches and crossings to enable train drivers, guards and trackside workers to communicate with the control rooms. It was proposed to replace all telecommunication cabling as well as the signal post telephones and telephones located at the switches and crossings. The location of some of the telephones would change and there would be a reduction in the number of telephones to reflect the removal of some of the existing switches and crossings.

52. As a result of the works previously mentioned, Railtrack were required to undertake certain additional operations. Because of the alteration of the alignment of the Up Fast and Down Fast lines in the vicinity of the Regents Park Road Bridge, it had been necessary to carry out certain structural alterations to the bridge. These encompassed the removal of an existing pier and extension of the existing parapet walls. These operations were now complete. The realignment of the track had also led to the need to reconstruct and strengthen certain sections of the retaining walls which supported the high and low level railway lines.

53. It was intended to remove an existing three storey building located adjacent to the Down Side Carriage Sidings. This building was used for amenity purposes by EWS employees and a replacement structure was presently proposed at a location identified in Document RT1/7. Twelve re-locatable equipment buildings (REBs) were also proposed to be located on the appeal site. These structures were required to provide a safe working environment for operatives engaged in maintenance and servicing of trackside equipment.

54. By reason of track remodelling, modest alteration was required to the existing direct current third rail traction system which was used by Silverlink Metro services.

Implementation of the Scheme

55. When implementing any scheme of works, Railtrack were under an obligation to ensure that those carrying out the works could do so safely within an area segregated from the operation of timetabled trains. The means of providing this safe working environment was termed a "possession". A possession involved a contractor taking physical possession of part of an otherwise operational railway, within defined geographical limits, in order that identified works could be carried out over a pre-defined period.

56. In order to provide due notice to train operating companies, possessions of the operational railway needed to be planned approximately 30 weeks before the commencement of the works. It was therefore necessary to develop a possession strategy taking into account such considerations as safety, the scope of the works, environmental considerations, minimising disruption and maximising the work carried out during each possession. The possession strategy ultimately formulated had sought, as far as practicable, to confine noisy work to daylight hours with less intrusive work taking place at night.

57. The works had been let as a single contract to BBRPL and works commenced on 28 August 1998. Between August 1998 and Easter 2000 the works carried out and to be carried out did not involve blockades of the station and comprised track renewal operations, works to retaining walls and the Regents Park Road Bridge, and installation and commissioning of overhead line electrification portals. Blockades were due to commence at Easter 2000 and continue until September 2000. Document RT1/10 contained a detailed programme of the scheme.

58. The total cost of the scheme of works on the appeal site was commercially confidential, but ranged between £100M and £150M. The lifespan of the works varied but was predominantly 30 years.

The Purpose of the Works in relation to the West Coast Main Line

59. The WCML between London and Glasgow was substantially constructed in the 19th Century and continued operation of the railway over these years had been secured by the carrying out of appropriate maintenance and renewal of the Permanent Way and associated railway infrastructure from time to time along its length.

60. When Railtrack took over responsibility for the WCML a review of the current operational state of the line was carried out. This exercise revealed the line to be in need of a general overhaul along most of its length including, at a number of sites along the line, a rationalisation of the Permanent Way to provide for its safe and efficient operation. Accordingly, Railtrack had determined to carry out the works necessary to upgrade the WCML to modern standards. These works were being funded through Railtrack's Core Investment Programme (CIP) which provided for the renewal and upgrading of existing railway infrastructure. The works being carried out at Euston were predominantly part of the CIP.

61. After completion of the necessary works in the Euston approaches this section of the railway would continue to form an integral part of the WCML as it had done for over 100 years. However, this should not obscure the fact that the works being carried out in the Euston approaches were primarily motivated by the need to overhaul and upgrade this section of the WCML, where the layout of the Permanent Way had remained substantially unaltered since the 1940's and was now more or less life expired and where both the power supply equipment and signalling equipment were close to the end of their working lives. All these items of infrastructure required renewal.

62. As in the past, the renewal process inevitably and properly took account of modern developments including, in this case, the expected traffic requirements as they related to (a) the improved accessibility of the station, (b) a greater capacity for the provision of services and (c) improved service speeds. These requirements were achieved through a combination of all the contract works but, most visibly, by track realignment and a substantial reduction in the number of switches and crossings. The works all contributed to the greater safety of the railway as well.

63. Document RT10 showed the existing track layout (Appendix H) and the final layout (Appendix F) with the respective speed limits. Figures in boxes were the permissible line speeds and dotted lines with arrows were the intersections for speed limit changes. The attached memorandum showed an average speed increase of 24% for existing rolling stock between the buffer stops and the Primrose Hill tunnels. Improvements to rolling stock might further increase average speed over a period of years, however this would not be a significant change within the confines of the appeal site.

64. Other maintenance and renewal works on the WCML were to be carried out at separate (and separated) locations and would generate a number of discrete contracts. Each represented an identified section of the railway where the current infrastructure was life expired or was deficient as regards modern railway standards; many would be CIP works. There would be sections of the whole WCML which would not need to be modernised. It was currently anticipated that the whole programme would be completed by 2005. Of the total works on the WCML, about 95% were required to meet the needs of the railway as it was now operated.

65. Whilst in PR terms (Document RT3/2) the project at Euston could be linked to expectations for long distance rail traffic on the WCML (though it related as much to other services), the works themselves amounted to a replacement and renewal of a life expired section of the

existing railway of types which inevitably had to be carried out from time to time and from place to place to secure its efficient operation. The expectations for the WCML would be fulfilled over a period of several years but there would not, in planning terms, be a new railway. The line of the WCML remained the same.

66. Document RT14 was a rebuttal of the appellants' evidence about the effects of the remodelling works on normal track maintenance. Remodelling and maintenance works could occur at the same time. Some strategic maintenance had been programmed within and around possessions. The Christmas Day 1998 maintenance was programmed before the remodelling works were planned. The remodelling works were closed down for two weeks over that Christmas period. A minimum of 32 weeks notice was normally required for strategic maintenance, although emergencies were dealt with as they arose. No strategic maintenance of any significance had been displaced by the remodelling works.

Environmental Management

67. The following evidence was in response to the request for information made by the Secretary of State in paragraphs 3(1) and 3(4)(b) of his Rule 7 Statement (Document RT2/1).

68. Railtrack ensured that environmental benefits were strengthened across the spectrum of their operation by integrating good environmental management with the safe and efficient operation of the railway system, and by providing resources and expertise to make this a practical reality. Railtrack ensured that all its projects were managed professionally in a way which incorporated assessment of environmental impact and taking appropriate action to keep any adverse impact to a minimum.

69. Railtrack required tenderers for the Euston remodelling project to submit with their tender, a Tender Environmental Management Plan ("TEMP") (Document RT9) based on the environmental information provided by Kennedy & Donkin. The TEMP set out the tenderers' Proposed Environmental Management System for the project.

70. Questions raised by the Council about the K&D report in their letter of 20 May 1998 (Document AP4/1 Appendix 3) were typical of those anyone would ask for clarification. Railtrack had replied on 28 October 1998 (Document RT 7).

71. Railtrack's Code of Environmental Management (CoEM) formed part of the remodelling contract. It required the contractor to apply the best environmental practice when undertaking the works. It also provided for Railtrack to monitor, review and audit the project's environmental performance. Construction noise was controlled by procedures employing best practicable means (BPM) including Section 61, CoPA consents. Section 61 applications were not mandatory.

72. The current relevance of the K&D appraisal (CD6) was as set out in paragraphs 2.7 to 2.22 of Document RT2/1. The appraisal still represented a fair overall balanced description of the remodelling project except that the Bridge 11 works were changed and the section on noise had been overtaken by work carried out for the purposes of making applications under Section 61, CoPA. Neither the first nor the second Section 61 applications (CD10/1 and CD10/2) indicated how many properties would be affected by changes in noise levels as a result of the works. However baseline data was contained in the K&D report (CD6) at 3.4; at para. 3.5.7 and Table 3.7 a small number of properties were identified which were predicted to experience a significant noise impact. Table 3.6 set out the results of the baseline surveys.

73. Construction noise and vibration levels were controlled by the adoption of best practicable means (Section 72, CoPA). This was to ensure that residential properties and sensitive receptors (hospitals etc.,) were protected from excessive noise and vibration arising during the remodelling works and associated activities. Prior consents for work on construction sites under Section 61 CoPA had been granted by the London Borough of Camden. The current consent was shown in Document RT 2/4 and was subject to a number of conditions, including a requirement to use BPM at all times and to monitor noise and vibration. This provided protection from stop notice powers under s60, provided the conditions were complied with. So far, 36 weekly environmental method statements had been submitted listing the tasks being undertaken and machinery being used with lists of typical mitigation measures (Documents RT11/1 to RT11/7).

74. Details of methods to control noise and vibration had been and would be discussed in advance with the Council and throughout construction, as necessary. Environmental controls to minimise noise and vibration effects and ensure compliance with the conditions of the Section 61 consent were given in Document RT 2/5. They included: use of low noise plant and mobile noise screens; programming, including maximisation of day time working where possible within the regime of railway possessions; fixed noise barriers used to provide an acoustic screen to receptors from the noise source (three locations had been identified as suitable, Juniper Crescent, Gilbeys Yard and Mornington Terrace) and noise and vibration monitoring and reporting.

75. The environmental controls that were applied during the works to safeguard the water environment and eliminate the risks to the project were shown in Document RT 2/7. Copies of discharge consents granted by Thames Water Utilities were contained in Document RT 2/8. The environmental controls that were applied during the works to safeguard air quality, were shown in Document RT 2/9. The project waste management strategy was based on the three key objectives for waste management defined in the Government's strategy for sustainable waste management in England and Wales, "Making Waste Work". These were reduction, reuse and recovery, and disposal.

76. Concerning traffic management, environmental controls were being applied, during the works, to safeguard the environment and minimise nuisance and traffic movements (Document RT 2/10). The project required temporary closure of certain highways/footpaths. To reduce road traffic generated by the project, a site minibus was provided to transport workers between parts of the work site, and the utilisation of a dedicated under track walking route. Local residents were informed at least 14 days prior to the commencement of any works affecting the carriageways and footways in their neighbourhood.

77. A variety of training tools had been utilised to implement the environmental protection measures. These included: workshops, designed to facilitate the development and implementation of the Environmental Management System ("EMS"), briefings; environmental awareness raising; specific mitigation training - practical guidance to site operatives on how to use the physical mitigation measures, such as noise screens and spill kits and environmental toolbox talks; briefings by the site supervisor prior to undertaking the work.

78. Prior to the commencement of works on site, method statements were produced detailing the methodologies to be adopted to undertake the proposed works. The two types of method statement produced were task specific method statements and environmental method statements. The contents of an environmental method statement included those matters listed at paragraph 4.3 of Document RT2/1.

79. The remodelling works comprised the renewal and remodelling of all lines, drainage and ballast along 2.8km of track between Euston Station and the southern portals of the Primrose Hill Tunnels and include renewal of signalling equipment and cabling and overhead line electrification equipment. Some civil engineering works would be carried out including platform alterations at Euston Station, the Bridge 11 works and the demolition and construction of various track retaining walls.

80. Most of the activities involved were of a generic nature. Track relaying was to be carried out at numerous locations within the application site and was generally undertaken during weekend possession. The types and numbers of plant used in track relaying were set out in Table 5.1 in Document RT 2/11. Photographs of the plant used were shown in Document RT 2/12. There was nothing unusual about the plant, which was commonly in use throughout the UK.

81. For the removal and dismantling of redundant track, the tracks were cut into 60ft sections and lifted with the sleepers still attached onto a works train. Cutting was by a petrol railsaw or by oxy-acetylene burning equipment. This activity was usually carried out at night. BPM required, therefore, that the cutting was carried out using oxy-acetylene cutting equipment. Alternatively, the track was broken into its component pieces; these were then lifted separately onto a works train. The main noise source associated with track removal and dismantling was associated with the lifting of the rails onto a works train and noise generated by the train itself. Used ballast was excavated and removed from the track bed using 3 tracked or road/rail excavators and a D4 doser. The ballast was loaded into a works train on an adjacent line.

82. The works require the installation of a new drainage system. Underground drainage beneath the track formation was laid using a Road/Rail excavator and a single wacker plate. The wacker plate (named after its inventor) was not a source of significant vibration. Portable noise barriers were used as close as possible to the wacker plate during operations in order to minimise as far as possible the noise generated by the operation. After drainage had been installed, sand and the bottom ballast was placed using three tracked or road/rail excavators and a D4 doser. The material was compacted using a triple wacker plate. Local acoustic screening for this operation was not considered to be a practicable option.

83. Once the bottom ballast was in place the sleepers were placed onto the ballast from either a works train or, if space allowed, from a stock pile. Long welded rail was then threaded into the sleepers and fastened into place. A TRM and road/rail excavator was used for this activity. The joints in the track work must be welded in order to create a continuous welded rail. The Thermit welding process was employed which generated minimal noise. Prior to welding the track must be cut using a railsaw. This item of equipment was relatively noisy and was mitigated by the use of portable noise screens. The welded joint was ground using a petrol rail grinder. With the welded rail in place the top layer of ballast was placed utilising three different methods, dependent on the individual location and the length of the track being re-laid. The ballast could be put in place by self discharging hoppers or with a Skako ballast laying train, or by unloading the ballast from open top wagons using excavators. When the ballast was in place a tamper was used to compact it and to slew/lift the tracks into the correct alignment. Tamping was a common feature of normal maintenance. The ballast was then regulated, which involved sweeping excessive ballast from the sleepers and creating the ballast profile and shoulders. A road/rail excavator fitted with a brush unit was used.

84. Works trains were present on site during most works operations. When stationed on site the works train engines remained idling. In some instances it may be possible to park the works

train in platforms or cuttings to minimise noise. The use of works trains was optimised to ensure that they were used both for delivery and removal of items. EWS, the operators of the works trains, were now enforcing a no idling policy nation-wide which would enable the project engineers to shut down trains when they were not going to move for a long period of time.

85. Stressing of the rails, which was a process which ensured the correct stresses existed in the rail to allow for expansion and contraction during different ambient temperatures, was carried out during weekday night possession. The process involved making a cut in the rail and then using an hydraulic stressing kit to stretch the rails until the correct stress was reached. The joint was then welded to maintain the stress. The cut must be made with a petrol saw. This was a relatively noisy item of equipment which could be mitigated by the use of portable noise screens. The stressing kit contained a small generator, the noise from which was mitigated by the use of portable noise barriers. Welding was carried out using the Thermit welding process which did not generate significant noise levels. The weld was ground using a petrol track grinder. Noise generated by grinding was mitigated using portable noise screens.

86. Long welded rail was delivered by rail to work sites prior to a track relaying weekend. A road/rail excavator was used to unload and remove the rail. Alternatively, long welded rail could be delivered by self discharging trains.

87. Some sections of track were to be removed and not replaced. The activities involved would be the same as those described for removal and dismantling of redundant track and excavation and spoil removal from the site (Table 5.2, Document RT 2/11).

88. The works to be carried out to the Overhead Line Equipment (OLE) and supporting portals and gantries involved a variety of activities. The types and numbers of plant used were presented in Table 5.3 in Document RT 2/11. Single and OLE catenary portals were erected on concrete foundations. A road/rail concrete mixer and concrete pump were used. Existing steel gantries would be removed using a road/rail excavator where required. The new gantry legs were lifted into place on the concrete foundations using a road/rail excavator. OLE wiring was removed at the start of the track relaying weekend and reinstalled at the end. A diesel powered scissor lift was used to elevate personnel to the height of the wiring by hand. A Wicon road/rail machine carried the cable drum and transferred the wiring onto the drum as it moved along the track. The same plant was used for the installation of OLE wiring. Portals were removed/installed by a rail mounted crane. Craning had to be undertaken during night-time possessions as an all-lines isolation was required.

89. The types and numbers of plant to be used for signal and telecom/power supply activities were presented in Table 5.4 in Document RT 2/11. These involved delivery and installation of signal/power troughing; delivery and installation of signals/telecom cable; installation of UTXs (under track crossovers); delivery and installation of HV power cable and DC power cable.

90. The Bridge 11 reconstruction works comprised the construction of a new pier at the south side of Bridge 11 extending the steelwork decking to span to the near pier and the demolition of the old pier (Table 5.5, Document RT 2/11). These works were now virtually complete.

91. The project's hours of working were determined by the availability of the possessions required to gain access to the work site. The availability of these possessions was governed by a number of factors. A possession had geographical limits and an intended scope of work and duration. These were planned approximately 30 weeks before the start of the timetable

period covering the intended date of work. The criteria relevant to the formulation of a possession strategy was set out at paragraph 5.41 of Document RT2/1.

92. The works which had been completed to date were shown in the "as-built" programme in Document RT 2/13. Items to the left of the vertical solid line in the table had been carried out by the end of May 1999 and works to the right were to be undertaken after the beginning of June 1999. This data comprised the response to the Secretary of State's "Rule 7" question in this respect.

93. With regard to the Rule 7 statement, question 4(b), as stated above, the Kennedy & Donkin report (CD6) remained a relatively accurate statement of the environmental effects of the remodelling works. As regards community, ecology, atmosphere, contamination, landscape, archaeology and heritage, water resources and traffic, the effects of the works had not been and would not be significant. With regard to asbestos, ballast analysis showed traces of asbestos in only one sample out of 650. This had been removed by specialist contractors. It was found near the site of a shed in the vicinity of the Edinburgh Castle public house, which had been demolished some 8 to 10 years before. That shed had been clad in material containing asbestos.

94. Construction noise was the main environmental issue to be managed and this had been and continued to be subject to control through the Section 61 consent procedure and the project environmental management procedures. Had the works been the subject of planning control the only relevant condition which could have been imposed on a grant of planning permission would have been to require that applications be made under Section 61 procedures, which had happened in any event. The noise created was temporary and intermittent. The environmental management of the potentially noisy works had been effective. Few complaints had been made. Since 28 August 1998, 26 calls to the project help line had been received; not all of these were complaints. Out of many thousands of people living near the site about half of the calls had been concerned with noisy working. The appellants' claim that there was widespread concern about the works among local residents was not accepted. Noise monitoring undertaken during the works so far had shown that the majority of the works had not made a significant contribution to the existing noise environment. The overall environmental management of the works had so far proved to be very effective. The potential environmental risks from the project were identified prior to the commencement of the works and the most appropriate environmental controls had been or would be put in place.

Public Consultation

95. Railtrack had set in place a communication strategy for the Euston Project, for two main reasons. First, Railtrack was an extensive land owner, and, given the linear nature of its landholding, had a large number of neighbours. This was particularly relevant at Euston given the urban location of the land adjoining the Euston approaches. Railtrack acknowledged its obligations to its neighbours and had determined, given the duration of the Euston Project, that it would be appropriate to communicate with local residents with regard to the work programme. Second, Railtrack was obliged to discuss its operations with certain organisations as part of the process of obtaining various consents. For example, they had discussed various elements of the project with the Council due to the need to obtain consents under Section 61, CoPA.

96. Railtrack's communication with the local residents and others at Euston had taken a number of forms, which between them ensured that as broad as possible a range of people and

organisations were kept advised of Euston Project. Railtrack had discussed the Euston project with the Council on numerous occasions. The first meetings were held in Autumn 1997 including one on 8 December 1997 to discuss the consents strategy, the contracting arrangements and the works proposed. Since that time numerous meetings had been held with officers to discuss town planning, highways, environmental and general project matters. Railtrack and Balfour Beatty had set up a series of regular project update meetings with the Council to discuss progress, exchange information and provide a forum for discussion. These meetings commenced on 6 November 1998, and continued on a monthly basis.

97. To start the communication and information process off with the residents, Railtrack had prepared and distributed a general newsletter which was delivered to immediate trackside dwellings, resident and tenant associations as well as other local interest groups, local libraries and the Council. Given the diverse nature of the population adjoining the track bed, Railtrack also prepared a notice which was inserted within the newsletter in Greek, Chinese, Somali and Bengali advising the ethnic minorities to contact their community leaders for a full translation of the newsletter (Document RT3/2). Approximately 4,000 leaflets were distributed between 13 and 15 February 1998. The delivery included Mornington Terrace, Park Village East, King Henry's Road, Gloucester Avenue and Regents Park Road, Ampthill Square and others.

98. Railtrack were invited to attend two public meetings to discuss the proposals with the local residents and to answer any questions that they may have. The first meeting was held on 3 March 1998 at a meeting arranged by the Chalk Farm Ward Labour Party and was attended by over 130 people. A subsequent meeting was arranged by Councillor Richard Olszewski of the London Borough of Camden on 15 April at the Dick Collins Hall, Redhill Street when over 80 residents signed the attendance register, although the attendance figure was considerably higher. These meetings led to the creation of a number of initiatives by Railtrack with regard to the overall communication process.

99. One of the results of the public meetings was that it became apparent that local residents, their representatives and the Council were interested in setting up a series of regular meetings to discuss the project in detail. Railtrack therefore set up a Working Group of these interested parties to permit the detailed discussion of issues and to facilitate the exchange of information relating to the Project. The Working Group met every 4 - 6 weeks with a decreasing trend in the number of attendees. The overall average number of attendances by residents to the total number of meetings held so far was 20 (Document RT3/3). The minutes were posted to every resident who originally expressed an interest in joining the group - approximately 100.

100. The two section 61 applications were approved subject to various conditions, one of which required the developer to advise local residents who were likely to be affected by the works at least 14 days and no more than 28 days before the works occurred. Railtrack had now sent 18 letters to residents likely to be affected by the works. The numbers of dwellings receiving notification varied due to the location of the works. Between 200 and 500 letters had been distributed on each notification as well as to the Working Group (Document RT3/4)

101. Two information days were held; the first was held on 3 November 1998 at St Mary the Virgin Church, Eversholt Street and the second at the Chalk Farm Baptist Church, Berkley Road on 5 November 1998. Representatives from Railtrack, Balfour Beatty, Westinghouse and the Council attended. The total number of residents who attended the meetings was 28 during the opening times of mid-day to 9.00pm. The meetings were advertised in the local

press, (Camden New Journal and Ham & High) notified to the Working Group and information was displayed at local libraries.

102. Railtrack had widely advertised two telephone contact numbers that could be used by local residents during the project. The Council also sent a letter to residents enclosing contact names/numbers. The first was the contractor's number, 0171 482 8400, which was staffed by project personnel on a 24 hour basis whenever works were in progress. The second number was Railtrack's national helpline number, 0345 11 41 41, which was also staffed 24 hours a day. Both numbers could be used for general enquiries or complaints and were monitored by Railtrack. Twenty five calls had been received by the project helpline since the project commenced in August 1998, about two thirds of those being enquiries regarding timescales and works, as opposed to complaints. Telephone numbers of Railtrack PR and the project's PR had been widely distributed. Railtrack operated a database and reporting system to keep track of enquiries and complaints. Local people could also contact Railtrack staff individually by phone, letter or meeting to discuss any aspect of the project. The public relations team would make arrangements to meet either at the Site Office or at the resident's home.

103. It was considered that the various communication methods that had been put in place were effective and kept local people advised as to what was occurring. The proof of this was that there had been positive feedback and very few objections or complaints about the work.

Legislative Framework

104. Track renewals, alterations and remodelling undertaken in reliance on permitted development rights had been a feature of continuing railway development since the introduction of modern planning control under the Town and Country Planning Act 1947. Parts 11 and 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 were currently the classes of permitted development upon which Railtrack relied. Major remodelling at York and on the Paddington rail approaches were more recent examples of work done. Neither here nor, to Railtrack's inherited knowledge spanning the last 30 years, elsewhere had the sufficiency of permitted development rights ever been challenged. Plans of the Paddington remodelling works were at Document RT12/1 to 12/4 and a note about the works, which took place over a period of about 18 months in the early 1990s, was at Document RT13. In this case the works passed through three London Boroughs and none of the LPAs concerned questioned the need for planning permission.

105. If all development was brought within normal planning control, Railtrack and others with statutory obligations would be compelled to submit themselves to normal planning processes every time. That would be in nobody's interests; a local planning authority because of a plethora of planning applications (the outcome of which would be uncertain) and the recipient of the services, because the statutory undertaker's operations would be needlessly compromised, so threatening higher charges. This was the thrust of the statement to the House of Commons on 16 December 1998, by the Parliamentary Under-Secretary of State for the Environment, Transport and the Regions (Mr Nick Raynsford) (CD14.1).

106. During July 1998, following sight of an opinion given by Counsel to the Park Village and Environs Residents' association, Railtrack had written to the Council withdrawing from discussions and withholding further information pending receipt of advice from their own leading Counsel (Document RT8).

107.The West Coast Main Line into Euston, like most other railways in Britain, owed its origins to private Acts of Parliament. From the beginning, Parliamentary Standing Orders had required the deposit of a plan showing the centre line of the intended railway and the lands liable to compulsory acquisition for its construction.

108.Document RT4/2 contained a list showing in column (1) the Acts of Parliament under whose authority the core route to Euston was established, and the part of the station now containing platform 15 was built. Extracts from the plans and sections (plan only in the case of the 1835 Act) deposited in connection with the Acts of 1833, 1835, 1873, 1884 and 1912 were contained in CD4. Set out in column (2) were the relevant provisions of those Acts. A copy of the provisions was contained in CD3. Document RT4/3 contained a further list showing in column (1) other Acts bearing on the Euston approaches and the station; their general purport on column (2) and the relevant provisions of those Acts in column (3). A copy of those relevant provisions was contained in Document RT4/4. In document RT4/5 were extracts from the plans and, where applicable, sections deposited in connection with the Acts described in Document RT4/3 (other than the plan for the London and Birmingham Railway (London Stations) Act 1846 of which Railtrack lacked a copy). At CD4/1 was a composite plan showing the centre line of the railway as authorised by the Acts.

109.The number of tracks permissible was constrained only to the extent of the limits of lateral deviation permitted by the Act and the territorial application of the railway company's compulsory purchase powers. Such limits were originally prescribed by the Act itself but, following the passing of the Railways Clauses Consolidation Act 1845 (which was thereafter incorporated with all special railway Acts), promoters took to drawing these on the deposited plan, so escaping the constraints on lateral deviation in construction imposed by section 15. Longitudinal sections of intended railways did not become a Standing Order requirement until after 1837. Nevertheless, sections did accompany the London and Birmingham Railway Acts of 1833 and 1835, although seemingly only as an indicative measure and not to set precise levels.

110.The railway corridor between Primrose Hill tunnel and Euston Station was established under the London and Birmingham Acts of 1833 and 1835. The latter - the "Extension to Euston" Act - continued the railway through from Chalk Farm to the original Euston Grove terminus, which was on the site of the present station. The London and North Western Railway (New Lines, &c.) Act 1873 and the London and North-western Railway Act 1912 were responsible for the western and eastern bores of the tunnel and the grade separated railway complex outside.

111.Upwards of 22 other Acts promoted by the LNWR and successor railway undertakers bore on the appeal site. Primarily, these included Acts concerned with the continuing development of the railway corridor. Typically, they authorised additional openings through road over-bridges to take extra tracks and property acquisition for providing increased accommodation for the undertaker's traffic.

112.Demolition of properties in Park Village East was a result of the provision of the Downside Carriage Shed under the London and North Western Railway Act 1898.

113.The present configuration of the Euston approaches was largely complete by 1914. However, minor development continued sporadically until the early 1960s when track and other works associated with railway electrification were undertaken by the British Railways Board.

114. Within the appeal site, the centre lines of the four core railway authorisations, i.e. the Acts of 1833, 1835, 1873 and 1912, faithfully described the present corridor. Also, the authorised limits of lateral deviation were as wide as, if not wider than, the current Railtrack boundary. All limits abutted or interlaced; there were no gaps.

115. The Acts of 1873 and 1912 incorporate, inter alia, section 16 of the Railways Clauses Consolidation Act 1845. That Act was applied retrospectively to the 1833 and 1835 railway works by the London and North-western Railway Amalgamation Act 1846. The sixth paragraph of section 16 was a general power for the railway company to "do all other acts necessary for making, altering, or repairing, and using the railway". Such acts were exercisable within the limits of the railway created by the special Acts for the exercise by the railway company of its powers under those Acts. The appeal site was within those limits, so the powers of section 16 were exercisable throughout Railtrack's land ownership, which, in turn, was operational land within the meaning of section 263 of the Town and Country Planning Act 1990. These facts were to be read in context with Parts 11 and 17A of the 1995 General Permitted Development Order.

Conclusions

116. These submissions followed the structure of the Secretary of State's letter of 11 March 1999 sent under Rule 7, TCP (Enforcement) (Inquiries Procedure) Rules 1992. As to the facts, the Council's description of the appeal site (Document CC1/1, paras 1.1 to 1.3) was agreed and could be relied on for the purposes of reporting. A description of the existing rail infrastructure in the Euston approaches was provided in Document RT1/1 section 6 explaining why the remodelling works were necessary. In Document RT1/1 and the appendices referred to therein, there was a detailed description of the works proposed. The substance of this evidence had not been challenged by the appellants and neither they nor the Council had adduced evidence which called into question or rebutted this evidence. In respect of the Secretary of State's request that he be informed as to "the precise nature of the works to be carried out between Euston and Primrose Hill which are the subject of the application" he was invited to rely upon the information contained in those sections of the evidence.

117. The Secretary of State also requested information about "the methods and techniques of working (including the types and quantity of plant and machinery to be utilised, the hours of working and the measures to suppress noise, dust, fumes and similar consequences of the work". Railtrack's evidence at Document RT2/1 explained about the environmental consequences of the work and proposed mitigation measures, as well as giving evidence of the plant and machinery to be used. Once again, the substance of this evidence, which was largely of a factual nature, had not been challenged by the appellants and it comprised the only evidence which comprehensively dealt with those aspects of the Secretary of State's direction referred to.

118. The programming of the works was set out in Document RT1/10. The strategy for taking possessions was described at paras. 9.1.1 to 9.1.8 of Document RT1/1. The overall works programme was discussed at paras. 9.2.2 to 9.2.10 of Document RT1/1. Work was intended to be completed so that the winter timetable of services for Euston from 2000/2001 would be fully operational from the end of September 2000.

119. As to the law, the application for a certificate of lawful use was made on 13 July 1998 pursuant to s. 192 of the TCPA '90. The Euston remodelling works commenced on 28

August 1998. It followed that the issue that the Secretary of State had to decide was whether the remodelling works or 'operations'

> 'described in the application would be lawful if instituted or begun at the time of the application.' (i.e. 13 July 1998) (s. 192(2) and (3)(a) to (d), TCPA '90).

By s. 191(2), TCPA '90

> 'operations are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason);'

120. The first matter for determination was thus whether the remodelling works involved 'development' as defined in s. 55 TCPA '90. Railtrack did not dispute that the partial reconstruction and extension of Bridge No. 11, the alterations to retaining walls separating high and low level running lines and the extension of platform 15, constituted building operations and were therefore development within s. 55.

121. Apart from the extension of the phrase by s. 336(1) 1990 Act to include the formation or laying out of means of access to highways, 'engineering operation' was not defined in the 1990 Act. In Fayrewood Fish Farms Ltd. v SS (1984) JPL 267 the Court decided that 'engineering operations must mean operations of the kind usually undertaken by engineers, i.e. operations calling for the skills of an engineer'. That definition would include the remodelling works.

122. Railtrack accepted that the remodelling works, in large measure, went beyond mere repair and renewal and encompassed material alterations to the design and layout of existing track work and associated apparatus, including modifications to the overhead electrification equipment. Accordingly Railtrack did not, in this case, seek to disaggregate those works which might be classed as repair and renewal within the remodelling works and were content that the remodelling works as a whole should be classified as engineering works, constituting 'development' within s. 55 TCPA '90. It followed that the remodelling works, to be lawful within s. 191(2), must have been authorised by a grant of planning permission extant at 13 July 1998.

123. Railtrack contended that the remodelling works had now (and as at 13 July 1998) the benefit of planning permission granted by the GPDO 1995. Since this contention was challenged by the Appellants' pre-inquiry statement (4.2 to 4.15, 5.5, 5.8 to 5.11) it was necessary to set out the submissions of law in detail.

124. In this context it may be helpful first to identify matters which were common ground. All parties to the inquiry agreed that:

(i) Railtrack was a 'statutory undertaker,' within the definition in s. 262(1) of the 1990 Act; that was, a person authorised by enactment to carry on a railway;

(ii) the appeal site comprised the 2.8kms. of railway land between Euston Station and the 'southern' portals of Primrose Hill tunnels;

(iii) the appeal site was 'operational land' as defined in s. 263(1) of the 1990 Act: that was, land used by Railtrack for the purpose of carrying on its railway undertaking;

(iv) the appeal site constituted a single planning unit for the purposes of any relevant planning analysis; and

(v) the remodelling works should be treated as a single development proposal.

125. Article 3(1) of the GPDO 1995 granted planning permission for the classes of development described as permitted development in Schedule 2 to the order. Part 11 Class A to Schedule 2 described as permitted development, development authorised by –

'a ... private Act of Parliament, ... which designates specifically the nature of the development authorised and the land upon which it may be carried out.'

126. Condition A.1 of Part 11 required that the prior approval of the appropriate authority was first obtained to the detailed plans and specifications of certain forms of development including buildings and bridges. Accordingly, for development to qualify as permitted development under Class A of Part 11 three requirements must be satisfied. It must be shown that the development was 'authorised by' a local or private Act; the Act must be one which designated specifically the nature of the development authorised; and it must designate the land on which the development may be carried out.

127. The first requirement was self-explanatory in that the particular development must be authorised, as a matter of construction, by the private Act concerned (see Pyx Granite Co. Ltd. v. MHLG (1960) AC 260). The private Acts relied upon by Railtrack were identified in Document RT4/1, in particular s. 16 of the 1845 Act, as discussed below. As regards the second requirement, the phrase 'the nature of the development authorised' was to be construed by reference to the statutory context in which it was found; a context which included a requirement under Part 11 Condition A.1 that the prior approval of the appropriate authority to detailed plans and specifications for works itemised in the condition shall be obtained. Thus, the 'nature' of the development that was required to be designated specifically in the private Act was its essential quality – the kind, sort or class of development (Concise Oxford Dictionary (C.O.D.)). Identification of the precise details of that development was neither requisite nor necessary. As noted in volume 4 of the Planning Encyclopaedia at page 39135, in this respect the permission resembled an outline planning permission.

128. To 'designate' was to 'specify, particularise or describe as' (C.O.D.); and to designate specifically, required that the designation should be precise. Section 59(2) of the 1990 Act empowered the Secretary of State to make a development order by reference to 'development specified' or 'development of any class specified'; and he had exercised that power in relation to Part 11, Class A of Schedule 2 by specifying a class of development, namely development authorised by a private Act of Parliament. Bearing in mind that Part 11 comprised specification of a class and that it was the 'nature' of the development in any case falling within that class that had to be designated specifically under Part 11, that 'specific designation' required only that the authorising Act or Acts should give a specific indication or description of the kind, sort or class of the development authorised. That was exactly what they did.

129. The third requirement was that the private Act of Parliament should designate specifically the land upon which the development may be carried out. This requirement was met both in the texts of the Acts and through the plans deposited with them. In the context of Part 11, the use of the phrase 'land upon which it may be carried out' made clear that it was the land upon which the authorised development may be carried out which was to be specifically identified; not the precise location of the authorised development within that land.

130. Railtrack relied on a number of private railway Acts of Parliament, identified in Documents RT4/1 to RT4/5, as authorising the remodelling works such that they had the benefit of planning permission granted by Article 3(1) and Part 11 of Schedule 2 to the GPDO 1995. The content of the Acts and their accompanying plans and (where deposited) sections were neither challenged nor queried during the cross examination.

131. The key provision was s. 16 of the Railways Clauses Consolidation Act 1845 (the 1845 Act) which was incorporated with and so formed part of the London and Birmingham, Grand Junction and Manchester and Birmingham Railways Companies Act 1846 (Section II) (CD 3/4), the London and North-Western Railway (New Lines etc) Act 1873 (section 2) (CD 3/5), the London and North-Western Railway Act 1884 (section 2) (CD 3/6) and the London and North Western Railway Act 1912 (section 2) (CD 3/7). It was to be noted that the 1846 Act also applied the provisions of the 1845 Act retrospectively to the Acts of 1834 and 1838 which it replaced (CD 3 /4 section II pages 31-2).

132. S. 16 of the 1845 Act provided, inter alia, that it shall be lawful for the company, for the purpose of constructing the authorised railway, to execute works listed under several headings. These included 'INCLINED PLANES, ... 'ALTERATIONS OF COURSE OF RIVERS, ETC. ... DRAINS, ETC., WAREHOUSES, ETC.', and also:

> 'ALTERATIONS AND REPAIRS. – They may from time to time alter, repair or discontinue the before-mentioned works or any of them, and substitute others in their stead; and
>
> GENERAL POWER. – They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway:'

133. In Emsley v. North Eastern Railway Company (1896) 1 Ch. 418 the Court of Appeal held that the powers contained in s. 16 of the 1845 Act set out above were not restricted to the period laid down in the special Act for the construction of the railway but may be used by the company from time to time. A. L. Smith L.J. said at p. 435-6.

> 'The whole tenor of railway legislation has been to give the railway companies power to execute and uphold works which are necessary to enable them to maintain and work their railway, and to afford proper accommodation for their traffic as against the rights of individuals, it being considered for the public benefit that this should be so, but always subject to this, that if, in the execution of such works, the company injuriously affect the property of individuals they must make compensation to them for so doing."
>
> "If we are to cut down paragraph (*e*) of s. 16 of the Railways Clauses Consolidation Act of 1845, as we are invited by the plaintiffs to do, we shall be forcing a railway company either to buy off landowners at their own price when alterations, or repairs, or substitution of existing works which became necessary for the maintenance or user of the railway happen to injure the property of an individual, or else to force the company to incur the expense of going to Parliament and obtaining further powers."
>
> "In my judgement, paragraph (*e*) of s. 16 of the General Consolidation Act of 1845 was inserted and worded as it is – "from time to time" – expressly in order to obviate either of these results, and to enable a railway company to exercise the powers therein mentioned whilst they are working their railway without being liable to the Court of Chancery or any other Court stopping them by injunction,

but with this limitation, that the company must pay compensation to persons injured by such exercise of their powers. This, in my opinion is why statutory powers are given to a railway company."

and Lindley L.J. observed, at p. 430 –

"Sect. 16 of the Railways Clauses Consolidation Act, 1845, empowers the company to do various things, and it is remarkable that the clause which relates to repairs and substitution enables the company to do those things "from time to time." It has never yet been decided that this power cannot be exercised after the period for completing the works has expired, and I am not prepared to be the first to hold that it cannot. The reason of the thing and the expression "from time to time" lead me to think that it can."

134. So under the 'GENERAL POWER' in s. 16 Railtrack may do all acts necessary for, inter alia, maintaining, altering and using the railway. S. 3 of the 1845 Act provided that 'the railway' 'shall mean the railway and works by the special Act authorized to be constructed.' All the land within the appeal site comprised a railway authorised to be constructed by several Acts of Parliament as explained in Document RT4/1. Accordingly, the appeal site constituted land which was designated specifically as land within which the s. 16 General Powers may be exercised and the third requirement under Part 11 was met.

135. To alter was to change the character, position of (C.O.D.); to make otherwise or different in some respect: without change to the thing itself; to modify (Shorter Oxford Dictionary). Minor alterations to a building were deemed not to include development (see s. 55(2)(a) of the 1990 Act). On the other hand, alterations carried out to a building may be so extensive as to constitute, in effect, a new building (Hewlett v S.S. for Environment (1985) JPL 40 (C.A.)).

136. The remodelling works comprised development namely, engineering operations involving alterations to an existing railway, which were authorised by s. 16 of the 1845 Act. In detail the works, as a single project, consisted of modifying the layout of existing track work and ancillary railway structures using, in the main, new materials. No new ground was broken and no new land was taken. The route of the railway remained unchanged. Throughout the programme of the remodelling works the continuity of train services on the existing permanent way was maintained. Euston would continue to function as a railway terminus at all times. The replacement apparatus used in the remodelling operations (rails, cross overs, sleepers, gantries, portals, catenaries, cables etc.) was similar to that which was to be removed. The plant and machinery used to install the replacement apparatus was conventional, being that which was used daily on the rail network for routine maintenance operations.

137. Sections. 11, 14 and 15, dealing with the scope of initial deviations, were collected in the 1845 Act under the rubric 'Construction of railway'. These powers related to initial construction: they had no application where the General Power under s. 16 was being exercised; that was, where alterations were being made to the railway as constructed. For example, s. 11 referred to deviations 'in making the railway' and referred to the need for consent of owners. Once the railway was built no such consent was needed to alter it under s. 16. In any event, as shown in CD 13/3A, the remodelling works did not depart from levels already established in the trackbed of the railway. In Area 3, the Down Fast Line, when raised, would remain lower than the Up Fast Line by some 200-300mm.

138. Thus, while the precise arrangement of the existing trackwork and associated structures was altered by the remodelling works and new materials were used in place of old or time-expired materials, the continuity and integrity of the thing itself, the existing railway in the appeal site, was maintained both in itself and as part of the WCML. Its prime use and function as a permanent way was unaltered by the remodelling works; and in terms of visual perception it was to be doubted whether, to the lay observer, the railway and its associated structures would appear materially changed by the remodelling works. The remodelling works were, accordingly, alterations to the existing railway which, in their scale and function, were within the scope of railway works contemplated by s. 16 as a matter of fact and degree.

139. In so far as works carried out under s. 16 must be 'necessary', it was established by authority (R v Wycombe Rly Co. (1867) LR QB 310, Cockburn C.J. at p. 321) that 'necessary', in the context of the section, meant that the works must be requisite for the alteration of the railway, where the primary purpose was the alteration itself and not some ulterior purpose. The remodelling works had the primary purpose of altering the layout of the railway to bring it up to modern standards.

140. In summary, therefore, the remodelling works were necessary works which were authorised by s. 16 of the 1845 Act; were in the nature of alterations to the existing railway, a situation expressly provided for under the 'General Power' in s. 16; and were to be or were being carried out within the railway identified within the General Power; that is, the railway and works authorised to be constructed under the relevant private Acts (see s. 3 of the 1845 Act). The only exceptions to the case were the relocation of the amenity block and, possibly, the installation of the REB's. Under the heading 'Warehouses Etc' s. 16 did not designate specifically the land where such new buildings may be sited. The third requirement in Part 11 was thus not satisfied. Nevertheless, these buildings would be permitted development under Part 17 of Schedule 2 to the GPDO 1995 as discussed below.

141. This construction was supported by numerous private railway Acts. The more recent private Acts of the British Railways Board recognised the application of class XII (latterly Part 11) permitted development rights to the alteration, maintenance and repair of works or the substitution of new works (under section 16 of the Railways Clauses Consolidation Act 1845). See for example section 45 of the British Railways Act 1993 (c.iv) (Document RT16) which stated –

> '45-(1) In this section "Part 11 development" means development permitted by article 3 of, and Class A in Part 11 of Schedule 2 to, the Town and Country Planning General Development Order 1988 (which permits development authorised by private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out).
>
> (2) Subject to subsection (3) below, in its application to development authorised by this Act, the planning permission granted for Part 11 development shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the passing of this Act.
>
> (3) Subsection (2) above shall not apply to the carrying out of any development consisting of the alteration, maintenance or repair of works or the substitution of new works therefor.'

By this provision, Parliament recognised that the development permitted by Part 11 (and its statutory predecessors) included the development referred to in sub-section (3) of the provision i.e. development authorised by section 16 of the 1845 Act.

142. In their pre-Inquiry Statement (para. 4.8) the Appellants contended that the private Acts under which the railway was constructed could not be relied on to authorise the works. Article 3(7) of the GPDO 1995 provided that:

> 'Any development falling within Part 11 of Schedule 2 authorised by an Act or order subject to the grant of any consent or approval shall not be treated for the purposes of this Order as authorised unless and until that consent or approval is obtained, except where the Act was passed or the order made after 1 July 1948 and it contains provision to the contrary'. (emphasis supplied)

The words underlined implied that Part 11 Class A to Schedule 2 embraced development authorised by Acts of Parliament passed both before and after 1948. (See also Article 4(3)).

143. Class XII of Schedule 1 to the Town and Country Planning (General Development) Order 1948 (the precursor to Part 11) identified –

> 'development authorised by any local or private Act of Parliament ... which designates specifically both the nature of the development thereby permitted and the land upon which it may be carried out' (emphasis supplied)

as permitted development. No restriction: neither in 1948 at the inception of planning control, nor thereafter in successor development orders, had ever been placed upon development authorised by a private Act by reference to the year the Act became law despite the many opportunities available over the years to Ministers and to Parliament to introduce such a restriction in the successive revisions of the General Development Order since 1948.

144. It followed that the Appellants' contention in paras 4.8 and 4.10 of their pre-inquiry statement that the relevant 19th century private railway Acts could not be relied on under the GPDO 1995 or otherwise was not only unsupported by any express authority but was inconsistent both with the wording of Articles 3(7) and 4(3) and with the historical provenance of the GPDO 1995. It was also inconsistent with the literal construction of Part 11 of Schedule 2 which referred, without qualification, to 'a private Act of Parliament'.

145. Article 3(10) of the GPDO 1995 provided that

> 'Subject to paragraph (12), development is not permitted by this Order if an application for planning permission for that development would be a Schedule 1 application or a Schedule 2 application within the meaning of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988.' ('the 1988 Regulations').

146. Article 3(12)(d) disapplied paragraph (10) to development for which planning permission was granted by Part 11.

147. The Appellants (pre-inquiry statement 4.9) claimed that the remodelling works were not excluded by Article 3(12)(d) from the requirement to provide an environmental statement under the 1988 Regulations. Further, they stated (ibid 4.10) that reliance by Railtrack on the provisions of Article 3(12)(d) would be, in any case, inconsistent with the intentions and provisions of EC Directive 85/337 EEC as amended by Directive 97/11/EC. Neither submission was supported by the provisions themselves. Article 3(12)(d) declared expressly

that 'Paragraph (10) does not apply to – (d) development for which permission is granted by ... Part 11.' Article 3(12)(d) was intended to transpose into national legislation a requirement of the Directive, Article 1(5) of which provided that:

> "This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation since the objectives of this Directive, including that of supplying information, are achieved through the legislative process." (emphasis supplied).

The remodelling works were authorised by series of Acts of Parliament, in particular by s. 16 of the Railways Clauses Consolidation Act 1845.

148. As stated, Article 3(12)(d) of the GPDO 1995 exempted development within Part 11 from being caught by Article 3(10). Thus the development was excluded even if an application for the development would constitute a Schedule 1 application or a Schedule 2 application within the meaning of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 ('the 1988 Regulations'). Nonetheless, where the Appellants and the Council contended that the 1988 Regulations applied to the remodelling works, it was necessary to address those submissions.

149. In the Appellants' pre-inquiry statement at paragraph 4.5 it was stated that the remodelling works were works within paragraphs 7 and 12 of Schedule 2 to the 1988 Regulations, viz. works:

> "being the modification of an existing line for long distance railway traffic".

150. The Council had taken the same point in paragraph 3.5.2(2) of their statement and also their evidence in Document CC 1/1 para. 5.15. In neither case was there any discussion or explanation as to how this conclusion has been reached. Regulation 4(2) of the 1988 Regulations provided that neither a local planning authority nor the Secretary of State, shall grant planning permission for development the subject of a Schedule 1 or Schedule 2 application before considering an 'environmental statement' prepared in accordance with Schedule 3.

151. Schedule 1 development included –

> '(1) The carrying out of building or other operations ... to provide ...
>
> 7 ... a line for long-distance railway traffic.'

It was not suggested by any party that the remodelling works amounted to the provision of a line for long-distance railway traffic.

152. Schedule 2 development included –

> 'Development for any of the following purposes – 12. The modification of a development which has been carried out, where that development is within a description mentioned in Schedule 1.'

153. Railtrack did not dispute that the WCML, of which the appeal site formed a small part, was an existing line for long distance railway traffic. 'Line' in relation to railways was defined in the Shorter Oxford English Dictionary as;

'Track course, direction, route ... a single track of rails, as in the up line, the down line; a part of a railway system, as in main line, branch line; an entire system as in the Midland Line.'

Therefore, a literal construction of the phrase, 'modification ... of a line for long distance railway traffic', connoted an alteration of the track, course, direction or route of the existing long distance railway line falling short of the creation of a wholly new railway line.

154. The track, course, direction or route of the WCML was not modified by the remodelling works. All the works were carried out within the existing course of the railway. While the works involved realignment of some rails, they did not affect the route of the long distance railway: merely the local configuration of the Permanent Way. Even then, the changes in levels and in horizontal alignment (CD13 /3A) were minimal and were wholly within the limits of the level and alignment of existing trackwork or adjacent formations. Thus, if local alterations to the levels and alignment of existing trackwork were thought to meet the test of 'modification' to the line in Schedule 2 to the 1988 Regulations (a proposition which Railtrack did not accept), the remodelling works would in that respect be insignificant and could properly be regarded as de minimis. In this connection, it should also be noted that the question whether the Euston remodelling works fell within Schedule 2 of the 1988 Regulations must be answered strictly in relation to the development applied for. For the purpose of that classification the development must be looked at in isolation (see the judgment of Simon Brown J in R v Swale Borough Council ex parte R.S.P.B. (1991) PLR at 16E, H set out at paragraph 170 below).

155. Accordingly the unsubstantiated assertions by the Appellants and the Council that the remodelling works amounted to Schedule 2 development as modification of a line for long distance railway traffic did not bear serious scrutiny. Nonetheless, the Council had, in their case, addressed the further issue that arose under Schedule 2 of the 1988 Regulations namely whether the remodelling works would be likely to have significant effects on the environment by virtue of factors such as their nature, size or location (Regulation 2). This issue was addressed below.

156. At paragraph 4.10 of their pre-inquiry statement the Appellants contended that reliance upon Article 3(12)(d) of the GPDO 1995 would be inconsistent with the intention and provisions of Directive 85/337/EEC as amended by 97/11/E.C. The thrust of their submission was that the remodelling works did not enjoy permitted development rights under Article 3(12)(d) in relation to any rights conferred by legislation which predated the European Communities Act 1972.

157. This development began months before the TC&P (Environmental Impact Assessment) Regulations 1999 were brought into force. But assuming for present purposes that the 1985 Directive had direct effect and/or that its provisions were required to be applied directly by the Secretary of State despite its incorporation into English law by the 1988 Regulations, the question arose as to whether the remodelling works constituted a project within Annex II of the Directive. Railtrack contended, as a matter of fact and degree, that the remodelling works did not constitute the construction of a railway. They were alterations to an existing railway.

158. Annex II(12) included:

"Modifications to development projects included in Annex 1 ... "

Item 7 of Annex I included construction of lines for long distance railway traffic. Railtrack contended that the remodelling works did not constitute a modification to the line of the WCML. Accordingly, the remodelling works did not constitute a project within either Annex I or Annex II of the Directive. It followed that the Directive, (quite apart from the effect of Article 1(5)), did not require that the remodelling works be made the subject of an environmental statement. The question whether or not the remodelling works may have significant adverse effects on the environment was addressed below.

159. In his Advice to the Council dated 6 July 1998 Richard Drabble Q.C. (CD12/3 paragraph 4(vi)), referred to the case in the ECJ in Kraaijveld v Zuid-Holland [1997] Env. L. R. 265 as relevant to the issue whether or not the remodelling works involved a modification of an Annex I project. In that case, as stated in the headnote, the Appellants appealed against the local authority's approval of a dyke-reinforcement project without having considered the environmental effects of the relevant construction works on the ground that the decision to adopt "the new line for the dyke had not been prepared with the necessary care." As already pointed out, the remodelling works did not involve the adoption of a new line for the railway.

160. In the Kraaijveld case the ECJ held at paragraph 42 that:

> "Canalisation and flood-relief works" in point 10(e) of Annex II to the Directive is to be interpreted as including not only construction of a new dyke but also modification of an existing dyke involving its relocation, reinforcement or widening, replacement of a dyke by constructing a new dyke in situ, whether or not the new dyke is stronger or wider than the old one, or a combination of such works."

161. The facts of that case were very different to those which related to the remodelling works. In particular, the dyke-reinforcement plan involved major civil engineering works which by definition would have a significant effect on the environment (ECJ judgement at paragraphs 23, 27 and 32.). Nevertheless, in so far as the case offered some guidance, the remodelling works did not constitute the construction, relocation, reinforcement and/or widening, or the replacement in situ of a line for long distance railway traffic by a new line. The works comprised engineering operations involving only the alteration of the trackwork and associated railway infra-structure of that part of an existing railway line on the appeal site.

162. The Council considered that, on all the available evidence, the remodelling works would not be likely to have significant effects on the environment by virtue of factors such as their nature, size or location; and that accordingly, the remodelling works did not come within Schedule 2 development; and that the requirement that such development should be the subject of an environmental statement accordingly did not arise. In so far as this issue was relevant, Railtrack concurred with and endorsed the Council's case that the remodelling works did not cause significant effects on the environment.

163. Under s. 195(2)(b) and (3) of the 1990 Act the Secretary of State had to consider the application for a certificate afresh, in effect putting himself in the position that the Council would have been in had they determined the application. It followed that, by virtue of s. 192(2) ('would be lawful if instituted or begun at the time of the application.'), the Secretary of State should consider the merits of the application having regard to the facts and the law as they stood on 13 July 1998. Thus, if the 1988 Regulations applied (which Railtrack did not accept for the reasons stated), the issue to be determined by the Secretary of State would be whether, as at 13 July 1998, the proposed remodelling works would be likely to have

significant effects on the environment by virtue of factors such as their 'nature, size or location'.

164. Advice on the approach to identifying a Schedule 2 project was provided in Circular 15/88 paras. 18-33. Planning authorities were advised to have regard to Schedule 3 of the 1988 Regulations and the list of environmental considerations there set out which might be significantly affected by a project; these included human beings; flora; fauna; soil; water; air; climate; the interaction between any of the foregoing; material assets; the cultural heritage; noise and vibration etc. The general advice was that an environmental assessment would be needed for Schedule 2 projects in three main types of cases: major projects which were of more than local importance; occasionally for projects on a smaller scale which were proposed for particularly sensitive or vulnerable locations; in a small number of cases, for projects with unusually complex and potentially adverse environmental effects ... '

165. The remodelling works did not constitute a project with unusually complex and potentially adverse environmental effects. This was common ground and demonstrated that on the contrary, the procedures involved were standard procedures employing standard plant and were of a generic nature as the evidence showed (Document RT2/1 Section 5). Many, if not all, the operations involved in the remodelling works were akin to routine maintenance operations carried out from time to time on the railway. The distinguishing feature of the remodelling works was their more comprehensive nature and locational concentration; not the generic nature of the works themselves.

166. For Railtrack, Mr Billington did not agree that the remodelling works had more than local importance on the basis that the effects of the remodelling works, such as they might be, would only be felt in the location of the appeal site. The Secretary of State was invited to place weight on Mr. Billington's view in this regard. He was qualified in Environmental Management and had over 6 years project experience in environmental management including transport projects. Neither the Appellants nor any other party had produced evidence of any substance to challenge his conclusion. As concerned the sensitivity of the location, Mr Billington gave evidence that the location of the appeal site became sensitive only if the remodelling works were not handled properly. This was, in effect, only a statement of the obvious. In addressing the question of significant effect in this context, the Secretary of State should take account of the environmental controls accompanying the remodelling programme (Document RT2/1 Sections 2, 3, 4) and the ability of the Council to enforce those controls under the Control of Pollution Act 1974 (CoPA) and the Environmental Protection Act 1990 (EPA) as well as the enforcement powers available to other agencies (e.g. Thames Water plc). In the light of the environmental controls built into the remodelling works contract and the powers available to public authorities to enforce them, Railtrack contended that the Secretary of State could and should find that the appeal site, as railway land in London with long established user, did not become a particularly "sensitive" location in the context of Circular 15/88.

167. Turning to the actual environmental effects of the remodelling works Railtrack placed reliance on Mr. Billington's professional view that the Kennedy and Donkin environmental appraisal (CD6) was an adequate 'scoping exercise' for the purposes of the 1988 Regulations and thus for identifying the 'likely' environmental effects of the remodelling works; and that the appraisal still represented a fair overall description of the remodelling project identifying, as it did, noise as the main issue to be managed. (Document RT2/1 paras. 3.3-3.13 and 6.2-6.6).

168. The environmental appraisal did represent an accurate general statement of the scope of the remodelling works and their 'likely' effects. The works were sufficiently described in the appraisal and their likely effects as regards noise, community, ecology, atmospheric, contamination, landscape and visual, archaeology and heritage, water resources and traffic and transport were predicted, for the reasons stated, to be not likely to give rise to significant environmental effects subject to controls being made effective through the Code of Construction Practice and the employment of BPEO and BPM. Kennedy and Donkin were recognised and respected environmental consultants. Their appraisal and its conclusions should, accordingly, carry considerable weight unless demonstrated by compelling evidence to be unreliable or somehow not relevant. No such demonstration took place at the Inquiry.

169. The Appellants had not called any expert evidence (or indeed any evidence) to challenge the Council's conclusion, which was shared by Railtrack, that the remodelling works did not constitute a Schedule 2 application under the 1988 Regulations. The Appellants' witnesses had described themselves as 'amateurs' or as "not giving expert evidence on law or fact.". In so far as their case had been made in cross-examination, it was appropriate to deal with several points. These were:- the remodelling works as part of a larger scheme; that the Kennedy and Donkin appraisal formed an inadequate basis for determining whether or not the remodelling works were a Schedule 2 (or Annex II) application; and an alleged lack of consideration given to post-construction impacts of the remodelled railway in the appeal site.

170. On the first point the appeal site was as a matter of fact part of the WCML. The remodelling works were part of the modernisation of the WCML. However, it was common ground that the remodelling works comprised a discrete development to be carried out within a defined area (the appeal site). In R v Swale Borough Council ex parte R.S.P.B. (1991) PLR p. 6 Simon Brown J. held at p. 16E that

> 'The question whether the development is of a category described in either Schedule must be answered strictly in relation to the development applied for, not any development contemplated beyond that. But the further question arising in respect of a Schedule 2 development, the question whether it "would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location" should, in my judgement, be answered rather differently. The proposal should not then be considered in isolation if in reality it is properly to be regarded as an integral part of an inevitably more substantial development."

171. In that case the planning permission granted was for land reclamation on 125 acres at Lappel Bank in the River Medway. However, the reclamation was in effect only the first stage of a much larger combined civil engineering project to reclaim 250 acres of Lappel Bank by the deposit of spoil from a dredging operation in the river, in order first, to create a major new international seaport on the Isle of Grain; second, to extend Sheerness Docks; and third, create a short-term storage area for import/export cargoes. The remodelling works as a project were wholly different in nature from those in the Swale case. There were 3 works which involved civil engineering; Bridge 11; the works to internal retaining walls and the platform 15 extension. All were contained within the appeal site and none was related to any project outside the appeal site. The remainder of the remodelling works constituted alterations mostly to trackwork and associated apparatus. Whilst the new layout would be able to accommodate tilting trains, 'in excess of 95%' of the remodelling works were for present day use; that was, alterations to the configuration of the track layout, the better to accommodate existing traffic on the railway approaches to Euston Station.

172. As indicated by Mr. Baldwin in cross examination and as referred to in Document RT3/2 the WCML was being modernised, but only where necessary. Parts of the line would not be modernised at all. In the main the modernisation scheme involved the replacement of old railway infrastructure with new through a series of separate contracts let in relation to different parts of the line. Whilst the line, once modernisation was complete, would be able to accommodate all forms of rail traffic, including tilting trains, these would perform in the Euston approaches no differently from other trains due to the speed constraints on this part of the network. What relevance, if any, the accommodation of tilting trains on other parts of WCML would have in the consideration of other modernisation projects along the line would no doubt be a matter considered in one or more Transport and Works Order proceedings and any other relevant proceedings. Thus, the Euston remodelling works, whilst forming part of the overall modernisation of the WCML, were in practical and legal terms self-contained. They formed the subject of a single 'design and build' contract.

173. The 'key environmental issues' were noise and vibration (Document RT2/1 para. 2.12); this was agreed for the Council in cross-examination by the appellants. The noise predictions (but not the measured ambient noise levels) in the Kennedy and Donkin appraisal (CD6) were no longer relied upon; however they showed that, at worst, few properties would be seriously affected by construction noise (CD6, para, 3.5.7) using criteria applied to construction projects (CD6 paras. 3.2.8 and 3.2.9). Construction noise and vibration effects related to the remodelling works were, at the date of the application, 13 July 1998, capable of being made subject to control under section 60(2) of CoPA. The section operated where it appeared to the local authority that 'works ... are being, or are going to be, carried out on any premises.' Accordingly the Secretary of State could be satisfied that at the material time construction noise and vibration from the works were capable of being controlled such that they would not give rise to significant environmental effects.

174. This was the route subsequently taken and applications were made under s. 61 of CoPA and consents granted thereunder (CD10/1 to CD10/3), the worst case being shown at receptor 48, the rear façade of 36 Gloucester Avenue where the over night maximum hourly noise level was estimated at $90dB_{Laeq,\ 1\ hr}$ (CC2/1 : 4.9). Whilst it was not disputed that this was 'certainly extreme', the task involved (track renewal) was a routine one which could, in other circumstances, easily form part of a maintenance task; and the noise effect was of course transitory (CC2/1 4.13-4.15). The likely effects of construction noise at other properties could be deduced from the information accompanying the s. 61 applications.

175. Thus, as regards construction noise, the generality of likely effects was known and was always, in any event, capable of control; the effects, by definition, were transitory and temporary. Railtrack relied on Mr. Trevor-Jones' judgement in this respect. As he said, the point was that construction work inevitably caused noise; hence, the separate statutory regime to deal with it (ss.60 and 61 of CoPA). His judgement that the noise was not likely to be significant must carry considerable weight given his experience in these matters. It was a judgement that was supported by the evidence of Mr. Neave who, by virtue of living very close, witnessed the operation involved in the Bridge 11 works – one of the three works identified as having the most noise impact - and was impressed by the quietness of the operations and of the plant and machinery used. It was a judgement also supported by the fact that very few complaints had been made to Railtrack or Balfour Beatty and by the absence from the inquiry of any substantial body of persons objecting to the works. Miss Muir's evidence appeared to have principally related to noise associated with routine engineering works and not the remodelling project.

176. In this context (and as noted in Circular 15/88 para. 21 by the use of italics) Schedule 2 referred to 'significant' effects. It was not, and had not been, contended by Railtrack that construction noise effects would not occur but that having regard to all material considerations, including the controls available and the temporary nature of the operations, the noise effects would not be 'significant' in the sense used in regulation 2 of the 1988 Regulations

177. Sections 60 and 61 of CoPA provide a mechanism for regulating the emission of noise and vibration arising, inter-alia, from construction works. It was the well established policy of the Secretary of State that the planning system should not seek to duplicate other systems of environmental controls. This policy was clearly articulated in PPG 24 "Planning and Noise" (para.25) and PPG 23 "Planning and Pollution Control" which provided that:

> "The planning system should not be operated so as to duplicate controls which are the statutory responsibility of other bodies (including local authorities in their non-planning functions). Planning controls ... are not an appropriate means of regulating the detailed characteristics of potentially polluting activities."

178. This advice followed the decision of the Court of Appeal in Gateshead MBC v SoSE and Northumberland Waste plc [1994] 1 PLR 85 in which a decision by the Secretary of State for the Environment that "it is not the role of the planning system to duplicate controls under the Environmental Protection Act 1990" was held to be lawful. Therefore, as a matter of policy, law and, indeed, good practice it would not be appropriate to seek to regulate construction noise by planning condition when those matters were properly dealt with under the separate powers which Parliament had seen fit to confer on local authorities under CoPA. Furthermore, Mr. Trevor-Jones had confirmed in his evidence (CC2/1 para 5.3) that ss.60 and 61 of CoPA provided a more efficient mechanism for control of construction noise and vibration than the Town and Country Planning Act 1990.

179. As regards vibration, paragraphs 3.4, 3.20, 5.12-5.13, 6.2, 6.7-6.9 of CD10/1 indicated that any vibration effects would be negligible. This was confirmed by Railtrack in evidence and this view had not been effectively challenged by the Appellants.

180. Concerning post-construction effects, the remodelling works, by reducing the number of cross-overs and introducing continuous welded rail, made it likely that the noise generated by the running of any train over the remodelled works would be reduced. These new features would not only mean that fewer sharp sounds would occur but that the requirements for maintenance of the system would decrease, so reducing noise consequences. A marked reduction in the requirement for trains to stand idling outside the station would also reduce noise levels. It was also reasonable to look forward to the use of quieter rolling stock on the network. The Royal Commission on Environmental Pollution in its 20th Report (9/97) (Document AP/4/2) expressed the belief, at para 3.29, after hearing evidence, that developments in quieter track and rolling stock had been made and that greater priority should be given to updating the existing network. The Euston remodelling scheme exemplified the process of updating.

181. The Appellants had sought, by reference to accountancy practices and tax treatments, to suggest that the remodelling works amounted to more than repair and replacement. That point was not in dispute. The issue was whether the remodelling works amounted to the modification of a development comprising a line for long distance railway traffic. The works involved no modification of the line between London and Rugby, Glasgow and other places, the WCML remained exactly the same line before and after remodelling. Changing the

detail of track layout or signalling or adding lineside or overhead equipment did not alter the line, which equated to the route (just as one spoke analogously of the "line" of a special road (a motorway) under the Highways Acts). In the context of accountancy practices, Railtrack's treatment of expenditure was dependent on the accountancy framework it chose to adopt.

182. Without calling any evidence to support this aspect of their case, the Appellants had suggested that the increase in numbers and speeds of trains using Euston after completion of the remodelling works might give rise to significant environmental effects. However, as was demonstrated by Document RT10, increases in line speeds were limited and in no case greater than speeds now attained in parts of the appeal site. These facts, coupled with the limited opportunity for expansion in the numbers of trains using Euston in the future (Document RT1/1 8.1.7 to 8.1.9) did not support the argument that the use of the railway following the remodelling works was 'likely' to give rise to significant effects. At present there were 600 train movements per day in the appeal site (Document RT 1/1, para 4.2). There was no evidence that the noise level generated by this traffic either in the peak or off peak caused any significant complaint; still less that it was at all critical. On the contrary, Miss Muir no doubt spoke for many who lived along the railway when she said that she was 'quite used to trains' and that they made a 'comforting noise' which was 'something you get used to.' The present use of the railway at night was minimal. The remodelling works would not affect the matter. There would be no justification for concluding, therefore, that additional train services would materially affect the current perception of the railway by its adjoining residents.

183. Other matters raised in cross examination by the Appellants had not been shown to be of any substance. Contamination was first investigated by Kennedy and Donkin and had been exhaustively investigated since (650 samples analysed) with only one discovery of asbestos traces and all toxic materials being within ICRL thresholds. Ballast and associated materials were disposed of in accordance with these findings. Diesel locomotives had operated on tracks in the appeal site for years without generating either a record of complaints by residents or a history of concern by relevant authorities in relation to fumes. Diesel fumes inevitably comprised part of the city's atmosphere, being discharged by road traffic which was not subject to any limitation in numbers. There was not only no evidence to support the Appellants' contention that the intermittent visitation by diesel powered supply trains associated with the remodelling works would have significant environmental effects but evidence from common experience to suggest that this would not be the case.

184. Other air quality issues were considered in the Kennedy and Donkin appraisal (CD6, section 6) and found not to be significant (para. 6.7.1). The appraisal was not challenged in this respect. Lastly, the suggestion that by virtue of proceeding by a Design & Build contract Railtrack had somehow rendered the Kennedy and Donkin appraisal (which relied on a reference design) redundant, was not well founded. Mr. Byng-Maddick, who raised the issue, accepted that he was not giving expert evidence on any issue of law or fact. The practical procedures followed in carrying out the remodelling works were generic in any event and were constrained by the requirement to obtain 'possessions' and the requirement to meet HMRI standards. It was submitted that the Kennedy and Donkin appraisal provided a fair overall impression of the likely effects of the works and the specific tasks, subsequently described in Document RT2/1, which had been or would be carried out in the course of the remodelling works and which were subject to the CoPA s. 61 consents.

185. In conclusion on this aspect of the case, were the Secretary of State required, contrary to Railtrack's submissions, to consider whether the remodelling works constituted a Schedule 2

application he could not be satisfied that they did merely by proof of effects on the environment but only by proof of 'significant' effects. Accordingly a qualitative judgement would have to be made which would, in the circumstances, have to be supported by expert evidence. The Appellants called no such evidence; nor had they been able to refute the methodologies used on behalf of both the Council and Railtrack to arrive at the conclusions on environmental effects set out in the evidence of each.

186. That evidence demonstrated that the remodelling works by reason of being carried out within the confines of the existing railway; being in the nature of generic works not dissimilar from routine maintenance works as far as the tasks involved were concerned; being temporary, intermittent and locationally varied during the works programme; being capable of analysis as to their likely environmental effects and having been subject to that analysis, and being capable of control under CoPA s.61 and other environmental enforcement powers available to the Council, did not constitute a 'Schedule 2 application' within the meaning of the 1988 Regulations. This was because they did not, and were not likely to, have 'significant' environmental effects either as regards their construction or their subsequent use.

187. Part 17 of Schedule 2 to GPDO 1995 defined as permitted development

'Class A Railway or light railway undertakings

A. Development by railway undertakers on their operational land, required in connection with the movement of traffic by rail.'

The remodelling works came within the description of development in Class A and were not excluded by Article 3(10), or by the Directive, being neither modifications to the line for long-distance railway traffic nor having significant environmental effects. The phrase 'in connection with the movement of traffic by rail' was not defined in the Order but, as a general description, would carry a broad meaning. This approach to its construction was supported by the itemisation in Part 17A of development not permitted which implied that any works connected with railway traffic short of the construction of a new railway were permitted.

188. Article 4(4)(b) of the GPDO referred, in the context of 'Directions' that may be given under the Order, to:

'the alteration and maintenance of railway track, and the provision and maintenance of track equipment, including signal boxes, signalling apparatus and other appliances and works required in connection with the movement of traffic by rail;'

This arguably offered guidance as to the meaning of the phrase 'in connection with the movement of traffic by rail'. By this non-exhaustive definition, 'signal boxes and signalling apparatus' (which could include signal gantries and portals) were categorised as 'track equipment' and not buildings. A 'building' as defined in Article 1 included any structure or erection but did not include plant and machinery. Plant was defined as including

'any structure or erection in the nature of plant.'

189. Thus article 4 of the GPDO and Part 17 to Schedule 2 thereof embraced items including railway track, track equipment and structures or erections which were in the nature of plant and were not buildings. It was argued that the trackwork, including the rails and sleepers, the structures associated with signalling and overhead electrification and the amenity block and REB's, were all properly classified as either railway track, track equipment or plant as

defined and that, accordingly, their alteration was not subject to the exclusion from Part 17 of works involving the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected.

190. The amenity building and the REB's would not, if classified as buildings, in any event be excluded from permitted development under Part 17 because they were not amongst those buildings referred to in Class A1. By contrast, works in relation to Bridge 11 and the proposed extension to platform 15 of the station, had been or would be subject to the procedure specified under Part 11 of Schedule 2 discussed above.

191. In conclusion, the remodelling works had the benefit of planning permission by virtue of Article 3 and Parts 11 and 17 of Schedule 2 to the GPDO and were therefore lawful within the definition in s. 191(2) of the 1990 Act. On 16 December 1998, the Parliamentary Under-Secretary of State for the Environment, Transport and the Regions (Mr. Nick Raynsford) told the House of Commons that it would not be desirable for:

> "Railtrack to have to apply for planning permission every time it needed to carry out essential safety, maintenance or enhancement works on the rail network. To do so could at the very least impose serious delays and at worst impose unacceptable risks for rail customers".

Railtrack would respectfully agree with the Minister's statement. The Appellants' argument in this appeal, were it to prevail, would invite such consequences in the Euston area to the detriment of all concerned.

THE CASE FOR THE LONDON BOROUGH OF CAMDEN

Introduction

192. There were many statutes and statutory provisions to be considered in this case. From the earliest, the London to Birmingham Railway Act 1833 to the most recent the Environmental Impact Assessment Regulations coming into force in April 1999. In between there were more Railway Acts, the Town and Country Planning Act 1990, a European Directive and crucially the provisions of the General Permitted Development Order 1995.

193. However the Council's case was that once that maze was negotiated the issues in the case resolved to one primary question, "Will the works to be carried out by Railtrack be likely to have a significant effect on the environment by virtue of factors such as nature, size or location?" . The analysis of the relevant provisions of the General Permitted Development Order were contained in Document CC1/1, Section 5. This set out why the Council considered that the case boiled down to this one issue. If the answer to the question was "no" then the proposed works had the benefit of deemed planning permission under the GPDO and were lawful for the purposes of Sections 192 and 195 of the 1990 Act.

194. In considering whether the works would have any significant environmental effects the Council made 5 points: Firstly they had considered the issue carefully, not only internally but with the help of an independent expert consultant. On more than one occasion they asked for more detailed information in order to judge exactly what the proposed works entailed. Secondly, they considered the issue discretely. The Council were not influenced, nor could they lawfully have been, by whether or not it would suit one side or the other better if the works did or did not need planning permission.

195. Thirdly the Council considered the proposed works under 8 different categories or headings (Document CC1/1, para 2.3). This was to make analysis easier, it did not mean that they had

considered the potential impact of any item of work alone. They took into account the cumulative effect of the works and considered the implications of all the items of work being carried out together within a phased programme. Fourthly, and significantly, they considered the cumulative effect of the proposed works, not in an unrealistic vacuum, but in the context of what was currently on the ground, namely a major, busy and strategic railway. The West Coast Mainline had been in place with all the associated maintenance and ongoing modification for over 150 years. Visits to the appeal site showed the context in which the works would take place. There were many tracks, at different heights, sometimes crossing over or under each other, all of which would require maintenance and repair at various intervals in any event.

196. As a site visit also demonstrated, whichever came first, there were now residential properties very close to the railway tracks. The Council had considered the works in the context of the likely effects on adjoining residential accommodation. It would not have been appropriate to conclude that it was inevitable that there would be an effect because the properties were so close, so that the effect could be ignored. Therefore the test applied by the Council was whether or not the proposed works were likely to have significant environmental effects over and above those that would be caused by the railway in any event.

197. Importantly the Council also took the view that the works were unlikely to have any significant environmental effects once completed. The areas of concern, the live issues, arose from the effects of the works during the construction period. Any effects of the completed works were considered by the Council's independent witness, Mr Trevor-Jones (Document CC2/1 paras 4.17 to 4.26). That section of the evidence contained a table setting out how he had approached assessing the likely effects of the works once completed. In summary his judgement was that with the trend towards quieter trains and the fact that trains approaching Euston Station would have a less tortuous journey these factors would counter any increase in noise from either the greater number of trains which would be able to use the track or from any increase in their speed.

198. The Council initially considered a wide range of possible environmental effects ranging from damage to the fabric of listed buildings and ecology to noise (Document CC1/1, para 3.27). There was no evidence that there was any serious likelihood of environmental impact from any factors other than noise and vibration. The Council therefore concentrated on the issues of noise and vibration, and it was noise and vibration which their evidence covered in most detail.

199. As a result of applications made by the contractors who were actually going to do the work (Balfour Beatty Construction Limited) under the Section 61 of CoPA, the Council had detailed information as to how the works were actually to be carried out. These details included working methods and the machinery to be used for any particular task. This level of detailed information would be highly unusual in an application under the Town and Country Planning Act. The Council also sought the advice of their expert, to help assess and analyse the information provided and advise the Council of the consequences of working methods to be adopted.

200. Some of the tasks to be carried out were undoubtedly going to be noisy. The Council had considered what it believed would be the worst case, that was the properties at 36, Gloucester Avenue, at a time when the track immediately outside was renewed. This was the worst case partly because the railway was not in cutting at this point and the lines were close to the facade of the building. The noise which the occupiers of the property would

experience would be of limited duration and was to be considered in the context that other noisy maintenance work would have to have been carried out along this stretch of track at some stage in any event. The Council did not belittle the impact of the noise for that period on that property but it could not be considered in a vacuum. The test was whether the noise could be said to be a significant environmental effect when considered against noise that the property already did or would experience in any event. There had always been maintenance work to the tracks (Document CC2/1, paragraph 4.14). It was concluded that in the context of whether an Environmental Impact Assessment was necessary, this level of disturbance during a construction or works period did not constitute a significant effect.

201. The issue of vibration had also been considered, when details of the proposed works were presented to the Council. Expert evidence in a supplementary proof (Document CC2/6) gave more detail in the light of the further material from the appellants dealing with the construction of the Nash House block of flats in Park Village East. The information available through the CoPA procedure had been sufficiently detailed - down to the level of detailing specific equipment to be used for specific tasks, for a proper assessment. It was clear that the levels of vibration likely to be caused by the proposed works would not be significant. The Council had been able to monitor some of the works that had already been carried out and the results bore out their expert's initial judgement.

202. The Council accepted that there was no precise definition of a "significant" effect. However taking into account the full range of projects covered by the Environmental Impact regulations and in particular the fact that the most significant effect of the works would be an increase in noise levels for a limited period, the Council had reached the conclusion that the works would not have significant environmental effects. That was not to say that, as with any construction project, there would not be works which were noisy and that neighbours would not at times be affected by that noise.

203. With regard to a point of European law, Article 3(12) of the GPDO removed the need to consider whether or not an Environmental Impact Assessment was required for development under Schedule 2 Part 11 (Development which was authorised under a local or private Act of Parliament). The GPDO made no distinction between Acts of Parliament where the environmental effects of the works were specifically taken into account by Parliament before deciding to make the local or private Act and Local or Private Acts (usually older legislation) where there appeared to have been no such restriction. In this case the relevant Acts were many years before the introduction of any procedure for expressly considering the environmental impact of the proposals which Parliament were to authorise.

204. To this extent it may be argued that in order to put the relevant EEC directive (85/337/EEC as amended by 97/11/E.C.) into effect the GPDO should require consideration of whether an environmental impact assessment was required for works where Parliament did not expressly take the environmental implications of any works into account when authorising them under the particular Local Act. However, if that argument was correct the Council's case was not affected. This was because they had considered the environmental effects of the works as a whole. In reaching their judgement as to whether or not there would be significant environmental effects, they had not left out of account the works under Part 11. It followed that even if, in order to implement the Directive directly, there was the same requirement to consider whether an EIA would be required for Part 11 works as for Part 17A works, the Council would find that there were no significant environmental effects triggering the need for an EIA to be produced. Therefore the deemed grant of planning permission to works falling under Part 11 would still apply.

205. The issues to be determined were of fact and law, in order to answer the question as to whether or not the modification works required an express grant of planning permission. The correct answer to this issue was not affected by whether works such as these were best controlled by the planning system or other statutory provisions. What was relevant was that as a result of the applications made by Balfour Beatty under CoPA, the Council were able to consider detailed information about what the works entailed in coming to a decision on whether or not there would be an environmental impact. In particular details were given as to the working practices to be employed. These details were relevant to the assessment of the likely impact of noise and vibration. Procedures under CoPA had also allowed monitoring of the works as they had progressed. The results of this monitoring had confirmed the Council's initial assessments of the effects of the works.

206. In so far as the appellants sought to present evidence as to the history of the proposals or matters such as the operation of the Working Group, these matters were irrelevant to the issues as set out in the Secretary of State's letter of the 11th of March or any other issue properly before the Inquiry.

207. As indicated in their Statement of Case, the Council did not consider that the works required an express grant of planning permission and concluded that the works would not be in breach of planning control. Therefore a certificate should be granted to that effect.

The Planning Context

208. The application concerned land running from Euston Station to the Primrose Hill tunnels. It comprised railway tracks and ancillary features. The line formed part of a major route, serving the Midlands, north west of England, and Scotland. For most of their length, the tracks were set in a steep railway cutting with a retaining wall. Beyond these walls there were residential and commercial properties. The land was considered to be operational land for the purposes of Sections 263 and 336(1) of the 1990 Act.

209. The works (the Euston Remodelling Scheme) involved an upgrade of the line to make the infrastructure meet modern standards. The main elements of the work were:

a) track layout renewed without altering the vertical and horizontal alignment;

b) new track layout including alterations to the design and layout of existing track work;

c) alterations to retaining wall;

d) new and replacement gantries or portal structures supporting overhead electrification;

e) new and replacement signalling equipment and structures with computer controls;

f) extension of platform 15 at Euston by up to 50 metres;

g) partial reconstruction of Primrose Hill Bridge for new track;

h) small alterations, including provision of equipment cabins (REBs) and redevelopment of an amenity block outside Euston station.

210. The Council heard about the works from Railtrack in July 1997. Specific meetings on the project began in autumn 1997. Officers raised the matter of whether planning permission

was required. Railtrack were asked to submit detailed information in order for the Council to give a view as to the need for planning permission. This information was not forthcoming, although an Environmental Appraisal was submitted in April 1998. The Council were also aware, by this time, of increasing local concern about the works.

211. A WCML Working Group was established by Railtrack, and attended by Railtrack and Council officers, to maintain a dialogue with the community. Meetings initially took place monthly (now approximately every 4-6 weeks) and had been well attended by residents.

212. Railtrack's contractor (Balfour Beatty) had made applications under Section 61 of CoPA and the Council had granted consent, for works taking place from 23 August 1998 to 8 July 1999. These applications contained very detailed descriptions of activities, including information about the plant being used and noise generated, methods of controlling noise and predicted noise levels at a variety of receptor points. This information had enabled officers to give detailed consideration to the effects of noise and vibration, and other matters arising from construction works.

213. Based on the information available, the Council had assessed the potential impact on the environment arising from the nature, scale and location of the scheme. In doing this assessment, the Council took into account the fact that the works were modifications and renewal of the major, busy railway line which was already in place and which in any event required considerable upkeep, replacement and daily maintenance work.

214. This assessment was based on 3 main categories of potential impact:

On listed buildings/structures, archaeological heritage, strategic views, ecology and conservation areas:

It was not considered that the construction works or the finished railway would result in a significant environmental impact on these matters. The three listed structures in the vicinity of the works, or in the adjoining streets would not be affected, and neither would the character and appearance of the adjoining conservation areas (the site itself was not in a conservation area). The site was not an archaeological priority area. There would be no impact on strategic views. There were 3 sites of ecological interest, but again, neither the works nor the finished railway would significantly affect these.

Noise and vibration:

Was dealt with in detail below.

Contamination and airborne pollution:

Dust was not considered likely to have an impact as the railway was largely contained within a cutting. Contamination was also unlikely to be an issue as again the contained nature of the railway meant that the pathway for the distribution of contaminants was limited.

Works traffic:

The railway would be used to maximise transport of materials and equipment. The use of the adjoining roads would be small. Again, given the context of the existing major railway, it was not considered that the works traffic would result in a significant environmental impact.

215.It became clear that the two issues of concern to the residents which could not be resolved were the potential environmental impact of the works, and whether or not the works required planning permission.

216.The Section 192 application for the proposed development was submitted on 13 July 1998. The application was incomplete due to insufficient information. Correspondence was entered into about whether the application was complete or not. The applicants appealed against non-determination and made it clear that no further information would be forthcoming. The Council proceeded to consider the application on the basis of the information it had before it. No works had commenced on the site before 13 July 1998, the date of the Section 192 application. Further information received from Railtrack, on 5 September 1998 was incorporated into the application.

217.On 18 March 1999 the S192 application was considered under delegated powers. It was resolved that had an appeal against non-determination not been submitted, a certificate of proposed development would have been granted for the works. The appellants were notified of this by letter dated 18 March 1999.

218.An application for approvals under GPDO Schedule 2, Part 11 Class A was received for works to Regents Park Road Bridge (which was specifically authorised under certain railway Acts). Part 11 of the GPDO required the submission of details of the works for approval. The Council resolved (by letter dated 7 December 1998) that there was no objection to the works, subject to the consideration of further details. The details of the colour of the paint and some bridge detail were subsequently approved.

219.In consideration of the appeal issues the Council needed to decide whether the works as applied for required express consent, or enjoyed deemed planning permission under the GPDO. Deemed planning permission was granted if the works fell within the classes of development set out in that Order. The two relevant classes were Schedule 2 Class A Parts 11 and 17.

220.Part 11 provided that

> "Development authorised by – (a) a ...private Act of Parliament...which designates specifically the nature of the development authorised and the land upon which it may be carried out"
>
> is permitted unless
>
> "...it consists of or includes –
>
> (a) the erection, construction, alteration or extension of any building, bridge,....
>
> Unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained."

221.Officers considered that the works to 'g) Regent's Park Road bridge' and to 'f) platform 15 of Euston Station' were covered by this part of the GPDO. The application for prior approval for the works to the bridge had been submitted and approved by the Council. A similar application in respect of the platform works would be required.

222.With regard to b) the track remodelling work, it was considered that the impact of such works would be insignificant in the context of the cluttered environment of the railway between Euston and Primrose Hill, and that there would be minimal change in the appearance of the railway line. These works were considered to fall within Part 11 and did not require prior approval of the Council.

223. Under GPDO Schedule 2 Part 17 Class A, subject to certain exclusions, planning permission was granted in relation to:

"Development by railway undertakers on their operational land, required in connection with the movement of traffic by rail."

Provided that, the works did not require an environmental impact assessment.

224. In the light of advice available to them, officers concluded that the following elements were permitted development under Part 17 Class A.

a) renewal of trackwork;
c) alterations to retaining wall;
d) new and replacement gantries or portal structures;
e) new and replacement signalling equipment etc;
i) other small alterations.

225. As some of the works fell within GPDO Schedule 2 Part 17 Class A it was necessary to consider whether an EIA was necessary. If it was, then the works would not benefit from deemed consent and a specific grant of planning permission would be needed. The relevant legislation was the Directive 85/337/EEC, implemented by the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, (now superseded by the T&CP (EIA) Regulations 1999). The 1988 Regulations were relevant for this appeal. In order to be certain of satisfying the European Directives the Council also considered whether or not the works falling under Schedule 2 Part 11 of the GPDO would require an environmental impact assessment. For this reason the environmental impact of each and all the elements of the works were considered.

226. It was considered that the works came within Paragraph 12 of Schedule 2 of the 1988 Regulations, (and Schedule 2, Table Part 13 (a)) of the 1999 Regulations) being works for the modification of a line for long distance railway traffic.

227. The works formed part of an inevitably more substantial development – the upgrading and remodelling of the whole of the WCML, but the Council considered that the works would not be likely to have significant effects on the environment by way of nature, size or location.

228. The environmental impact of two aspects needed to be considered: the finished railway, and the construction works. The finished railway would result in a modernised line with fewer breakdowns and disturbances associated with breakdowns and maintenance work. The number and design of some trains would change (more trains, and travelling faster than the current trains) but it was not considered that these factors, when put in the context of the existing railway line, would have a significant environmental impact by way of the nature, scale or location of the modernised railway.

229. With regard to potential environmental impact from the construction works, these were recognised to be real, and of major concern to residents, particularly construction noises. Other impacts had been considered – such as vibration, dust, contaminants, impact on listed buildings etc – but were not felt to be likely to result in significant environmental impact resulting from their nature, scale or location.

230. With all of this, it was important to remember the context of the works. A new railway was not being created. An old railway was being modernised. The existing line was a major, strategic route carrying many trains past the residential properties, which adjoined the

railway land. There was ongoing maintenance of the track and associated equipment, much of which was done throughout the night. The proposed works were likely to result in a reduction in the amount of maintenance that was necessary because the dilapidated condition of the existing infrastructure required a high level of day to day maintenance.

231. The issue of the environmental impact of the construction work was considered in more detail below.

232. In summary, based on the material before the Council up to the end of February 1999, they considered that the works, whilst being carried out and when completed, would not have a significant impact on the environment by way of their nature, scale and location. An EIA was not required. The works therefore did not require an express grant of planning permission. The Council resolved that had an appeal against non-determination not been submitted, the works applied for would be lawful within the meaning of Section 192 of the 1990 Act and therefore that a LDC would have been granted.

233. In response to a comment by the appellants about part of the road collapsing in Park Village East, this had occurred about 9 or 10 years ago. It was caused by a burst water main. The road had to be closed for a month or so while repairs were carried out.

234. The proposal for a ramp from Mornington Terrace to the railway was discarded in April 1998.

Environmental Issues

235. An environmental impact assessment was required for works to modify a long distance railway if they would have significant adverse effects on the environment (Regulation 2(1) of the 1988 Regulations). The Council's view was that the Euston remodelling works would not be likely to have a significant effect on the environment, and therefore that an environmental impact assessment was not required.

236. Both the transitory environmental impact of the engineering works and the permanent impact of the modified train service had been examined. The construction and civil engineering work would adversely affect the environment. However, the effect would be temporary and could be controlled through the provisions of CoPA. The permanent effect of increased rail traffic would not be significant. The Euston remodelling works would not fall within the remit of Schedule 2 of the Regulations.

237. Railtrack had voluntarily commissioned an Environmental Appraisal (EA) of the works from Kennedy and Donkin [CD6]. They had identified the three key environmentally disruptive phases as:

a) works to Bridge 11

b) the remaining works north of Euston Station throat (Parkway); and

c) works to the immediate approaches to Euston Station.

238. A preliminary summary of tasks, equipment and quantities of material involved in each was provided in the EA. Refined proposals were revealed in applications for prior consent for work on construction sites under s.61 of CoPA [CD10.4, CD10.5]. Each application included a detailed description of the works to which it related with discussion of noise and vibration mitigation measures. Volume 2 of each contained a set of plans showing the locations of the works, the projected dates and times, and estimates of the resultant noise at a

number of 'noise receptors'. These applications went beyond the strict requirements of the legislation. They were confined to dealing with noise from construction and made no attempt to assess noise after completion of the works.

239. In terms of environmental effects, the difference between this project and other railway, road, sea port, commercial, industrial and residential developments was that no new ground was excavated and no land taken. All of the works were taking place on land which was already in railway use. Consequently, most of the environmental issues arising in major projects did not arise here. The only significant issues were noise and vibration.

240. The most significant environmental disruption which would arise from the project was noise during engineering works. Vibration had also been considered by the Council and a system put in place to monitor it and if necessary control it as work progressed. It was accepted that noise could be annoying and in any given population there could be a range of sensitivity to noise. Perceptions of noise would also be influenced by its character, which might not be related to its volume. Ultimately the question of whether noise caused a significant environmental impact was a matter of judgement.

241. The work fell into two categories. Much of it was track, catenary and signalling replacement repeated along the length and across the breadth of the formation. The 'non-repetitive' element was that which involved specific construction work. Much of the work must be carried out at night and at weekends.

242. The prior consent applications included descriptions of each repetitive task with details of the equipment, methods, timings and source noise levels involved. The information provided was complete and adequate for auditing. The Council had commissioned an audit to the extent of checking the source noise levels, critically examining the assumptions and checking the calculation procedures.

243. As a worst case example, the highest predicted noise level, estimated at 90dB $L_{Aeq,1hr}$, was shown at the rear facade of 36 Gloucester Avenue over the night of Saturday 15/ Sunday 16 May 1999. This work did not take place as programmed. Taking a worst case example was considered to be a robust method of assessment. Little would be gained by undertaking a similar exercise in respect of every property fronting the railway. Potential sensitive receptors were identified in the K&D report (CD6) at Figures 6 and 7 and itemised at Appendix B.

244. The s.61 consent conditions obliged the contractor to carry out the works using BPM to minimise noise disturbance. This meant using the quietest available plant, properly maintained and operated to minimise noise emission. The option of rescheduling the task to the daytime was unavailable because of the need to have full possession of the track and adjoining track(s). The use of temporary screens would have been considered and probably rejected owing not least to the very tight space constraint. The noise from the work would be monitored and the results reported to the Council through the channel agreed ahead of the start. The advantage of the monitoring and reporting system was that a view could be taken strategically on compliance with the s.61 conditions. The Council could intervene if any sign of a trend toward lax work practices emerged.

245. The predicted noise level at the rear facade of 36 Gloucester Avenue over the night of 15/16 May was very high, but it was not considered to represent a significant environmental impact in the context of the 1988 Regulations for two principal reasons. First, the task involved was a routine one, that of track renewal, which was a maintenance task. Railway tracks, like road surfaces, became worn out and had to be replaced. Interim stages of

maintenance including ballast raking and tamping were also very noisy. The task would have been carried out as part of the routine maintenance of the railway and its inclusion in this major project, within which it had been scrutinised, assessed and carried out under the conditions of a s.61 prior consent, meant that it would be more strictly monitored and controlled than it otherwise would have been.

246. Second, it was transitory. The task involved a build up of noise in the preceding week as materials were delivered, one weekend of intensive work and then a night during which the newly laid track was adjusted (de-stressed). This cycle would be repeated, with lesser associated noise levels at the facade in question, as the other three main lines were similarly treated. While the impact over those four weekends and mid-week preparatory works would undoubtedly be significant for the households affected, it did not amount to so remarkable an impact that it would trigger the need for an assessment under the Regulations.

247. The Council had been able to analyse the noise impact of specific works from the intricately detailed information provided in the s.61 prior consent applications. The level of detail greatly exceeded that to be expected from an Environmental Statement.

248. In terms of operational noise and vibration from the completed works, any alteration to the infrastructure which brought about a significant increase in the exposure of lineside properties to noise or vibration from trains in the longer term would be a material issue in determining whether the development fell within the realm of Schedule 2 of the Regulations. In the absence of an 'authorised' or generally agreed standard for assessing the significance of a change in railway noise, it would be reasonable to assess it by comparing 'before' and 'after' ambient noise levels ($L_{Aeq,t}$ - for an explanation of acoustical terminology see Document CC2.3/B). If the works were likely to bring about an increase in the exposure of lineside dwellings to noise of more than 3dB, operational noise would be a significant environmental issue. This was a very strict standard.

249. An increment or decrement by 3dB of a fairly steady sound, such as the level of sound in a room from a TV, was the smallest that most people would notice. It represented a very exacting standard for an environmental noise assessment. A largely qualitative evaluation of the operational noise level change that the remodelling would generate was set out in Document CC2.3/C. The results indicated possible increases of 2.5dB by day and 2.2dB at night, arising from the projected increase in rail traffic. It was concluded that the long term effect of the works on train noise levels at the facades of lineside properties would not be significant.

250. The nub of the present appeal was the question of whether the works would have a sufficiently significant effect on the environment for an Assessment to be required under Schedule 2 to the 1988 Regulations. The Council had reviewed the Environmental Appraisal voluntarily provided by Railtrack and the assessments of engineering noise and vibration made on behalf of Railtrack's contractor. It was concluded that the principal adverse environmental effect of the project would be from enhanced noise from the engineering works. CoPA provided a framework for the control of construction noise and vibration. The legal machinery specifically provided for this purpose was more efficient than any possible alternative, such as the use of planning conditions. The incremental impact would not be significant unless the exposure of lineside dwellings was increased by 3dB or more. In the final outcome, noise and vibration from trains was most unlikely to be increased significantly. It was concluded that while the proposed works would involve a degree of temporary disruption, there was machinery in place to regulate that. In the long

term the permanent effect of the works on the environment would be neutral, and consequently they would not fall within the remit of Schedule 2 of the Regulations.

251. In response to the further evidence of the appellants (Document AP/3/3 Supplementary), "noise" explicitly included vibration for the purposes of the CoPA. The Council were aware that there was local concern about ground conditions along the railway corridor. Ground vibration was automatically a cause for concern in civil engineering and it had been adequately considered by the Council throughout discussions with Railtrack and BBRP over the Euston Remodelling works.

252. Both the Environmental Appraisal (CD6) and the two applications submitted to the Council to date for prior consent to carry out works under s.61 of CoPA had been reviewed (Documents CC2.6, 2.8, 2.9, 2.10). The Council were not wholly satisfied with BBRP's proposal, and in particular with the proposition that BPM should be directed towards restricting ground vibration to 10mm/s ppv at lineside buildings. This value was too high.

253. In the time-limited consent subsequently granted by the Council, its freedom to require vibration monitoring to be carried out was not limited to the expectation of any particular value. Requests could be made at any time, within reason, and could be made in response to method statements indicating works that might cause vibration or in response to complaints received about vibration. The Council were reasonably satisfied that none of the techniques likely to be used in carrying out the works was different from the techniques used in any case in periodic track maintenance, and that none was likely to generate vibration levels high enough to be of serious concern. They were satisfied that none of the vibration levels monitored to date under the consent conditions posed any building damage risk.

254. The relevant British Standards demonstrated the order of magnitude between vibration levels likely to give rise to complaint and those likely to bring about even cosmetic damage to buildings. The Standard dealing with building damage risk also advised that the level of vibration likely to contribute to ground compaction was also an order of magnitude higher than the minimum level likely to give rise to complaint.

255. It was probable that buildings in this area had been exposed to low level vibration since the railway opened and that it had probably caused no harm. Ground water and the cyclical drying of the London clay was a more likely cause of building damage. Nonetheless, it was right and proper that a system should be in place to safeguard local residents' amenity during the works. The system available under s.61 of CoPA was the system designed for the control of noise and vibration from construction works and enforced through the general public law. The CoPA regime was more flexible, responsive, efficient, and less cumbersome than any conceivable alternative under planning law. The use of planning conditions to secure effective and efficient control of construction noise and vibration was not viable.

Conclusions

256. These conclusions considered the following:

(i) The nature and scope of the works.

(ii) Whether or not the works constituted development

(iii) Whether or not the works constituted a "modification" of the existing Railway line.

(iv) Whether or not the works were "likely to have a significant impact on the environment by virtue of their nature size or location".

(v) In the light of (i) – (iv), whether or not any elements of the works were granted deemed planning permission by virtue of Schedule 2 Part 17A of the GPDO 1995.

(vi) In the light of (i) – (iv), whether or not any elements of the works were granted deemed planning permission by virtue of Schedule 2 Part 11of the GPDO 1995.

(vii) In the light of (i) – (vi), whether or not a certificate should be granted under Sections 195(2)(b) and 192(2) of the Town and Country Planning Act 1990 that the operations would be lawful.

257. In terms of their nature and scope, the works were a major series of inter-linked engineering and building operations. They were to be carried out on a site of some 2.8 km in length and of varying but always significant width. The works required the use of specialist building and engineering plant and were to be carried out by specialist railway engineering contractors. The works would be carried out intermittently but in a predetermined sequence as part of a single project. The period of the works would be approximately 2½ years. It was important to note that at any particular point on the line the period of the works would be much less than 2½ years.

258. Although the works had been divided into 8 broad categories for ease of consideration they were undoubtedly part of a single project in which the precise tasks to be carried out had been evolving as Railtrack and BBRP had undertaken the project. The scope of the works was not encapsulated in any single document. The list of documents considered by the Council was set out in Camden Council's Statement of Case CC1/3 at paragraph 3.2. Detailed information as to the scope of the works was now in the CoPA Section 61 applications (CD10), the Kennedy and Donkin Report (CD6), and proofs of evidence of Messrs Baldwin and Billington on behalf of Railtrack (RT1/1 and RT2/1). Specific aspects of the works would be considered as relevant to the issues as they emerge rather than setting out the complete scope.

259. As to whether the works constitute development, the facts set out above (there may be others) demonstrated that the works constituted "the carrying out of building, engineering [and] other operations on land" for the purposes of Section 55(1) of the 1990 Act and as such constituted development which required planning permission in some form or other in order for them to be lawful for the purposes of Section 192(2). This was not disputed between the parties.

260. On the question of whether the works constituted the "modification of a line for long distance railway traffic", they did constitute the "modification" of the West Coast Mainline. Modification could be defined as a "small change or adjustment" (Collins dictionary). That was precisely what the works were about, adjusting the nature of the WCML infrastructure to modernise it; increase its capacity; make it safer and reduce the need for ongoing maintenance. Once the works were completed it would still be the WCML but slightly changed and adjusted.

261. Next it must be considered whether the works "would be likely to have significant effects on the environment by virtue of factors such as [its] nature, size or location". These were the precise relevant words from the Assessment of Environmental Effects Regulations 1988. This was the key issue of judgement in the case and there were 2 main points to consider before getting into the detail. These arose from "likely" and then "nature" and "location". The test was whether or not the works would be "likely" to have significant effects. This was an important difference with the appellants. It could not simply be said that the works

would inevitably have an environmental effect. In order for a proper judgement to be reached as to whether or not any given environmental effect was "likely" to occur, there must be some evidence as to what effect the works would produce so that the scope and magnitude of those effects could be judged. The WCML works were not being carried out on a green field site and the Council rejected the appellant's argument that the scale of the works inevitably meant that they would have significant effects.

262. The approach taken by the appellants was fundamentally flawed. This approach was to identify a possible environmental effect (ranging from noise to anthrax) and then say that an Environmental Impact Assessment was therefore required in order to assess the likelihood of it occurring and the extent of that environmental effect, should it occur. This approach was fundamentally flawed because it required the 1988 EIA regulations to read (perhaps as the appellants would like) that an EIA should be required for projects which " could possibly have any environmental effect", as opposed to the actual current wording of the regulations which was that an EIA was required for a project which "would be likely to have significant effects on the environment by virtue of factors such as [its] nature, size or location".

263. Whether or not it would be desirable for the regulations to be in a form reflecting the appellants' approach was irrelevant. They were not and a measured judgement based on evidence was required as to whether or not an environmental effect of the works was a) likely and b) significant before the requirement for the Environmental Impact Assessment was triggered. Whether or not there were likely to be significant environmental effects arising from the works was a matter for planning judgement. It was at least agreed that one proper approach was to identify potential effects and then seek the advice of suitably qualified experts on their likelihood and extent.

264. It was relevant to the determination of whether or not a source such as noise was likely to have a significant effect to consider whether any mitigating measures could be applied to the works so as to prevent or reduce any potential effect. Mitigation measures were to be taken into account at this stage since it was part of the "nature" of the works that they would be carried out in conjunction with mitigating measures. For example noise mitigation measures - the appellants' consistent reference to paragraph 3.5.7 (p38) of the Kennedy and Donkin report (CD6) was therefore on its own misleading, since the reference was to impacts prior to consideration of any mitigation measures (CD6- paragraph 3.5.10 (p38)).

265. Further the "nature" and "location" of the works was that they were modifying an existing railway line. This meant that their environmental effects had to be assessed in the light both of maintenance works that would go on in any event and in the light of any environmental benefits that would occur once the works were completed. Any suggestion that the effects of the works should be considered on an absolute basis in an unreal vacuum was rejected. The entire thrust of the 1988 regulations was that projects should be considered in their context.

266. Any environmental effects of the works fell into two categories. Firstly, those which could be considered and immediately judged to be unlikely to have any significant effects without the need for further investigation. Environmental effects in this category were set out in Document CC1/1, paragraphs 3.27. They included ecology, dust and other forms of contamination. Secondly there were those effects which could immediately be seen to warrant detailed investigation. In this case the Council had identified two such effects: noise and vibration.

267. Noise and vibration had been considered by the Council with the advice of a qualified and experienced expert who had considered the effects of works both whilst being carried out

and in long term. He was the only qualified expert to give evidence to the inquiry (Documents CC2.1 and 2.6). Detailed information was available to him. Initial monitoring of noise and vibration as the works had progressed had confirmed his conclusions, which were clear conclusions upon which the Council relied. Consideration of most extreme noise effects was a valid approach. The suggestion that the Council should have assessed the noise levels at every single facade of every household along the corridor was rejected. It was possible to make a judgement by considering the worst effect in detail and then considering whether any factors suggested that another location or another property would experience a greater impact. It was noted that the appellants did not suggest any other specific locations.

268. It was also important to note that the material had been (and was) available to the Council to carry out a house by house assessment if it was regarded as a valid or helpful exercise. The link between predicted noise level material in the Section 61 applications and location plans in Kennedy and Donkin report had been explained (CD6 - figures 6 & 7).

269. Despite persistent effort, there had been no sustainable criticism of the approach of the Council's expert and the Council relied on his conclusions. These were at CC2/1 paragraph - 4.13 to 4.16 - construction noise; Table 1 (with amendments made to take account of latest figures on long term changes to average speeds) - permanent effects. Their expert had considered the combined effects of different aspects of the works and different tasks being carried out. He had then considered those noise levels in the context of noise to be expected on the railway in any event (incremental effect of the works). It was accepted that there would be some high noise levels for short periods however, as set out above, it was appropriate under the "nature" and "location" of the works to take the "incremental approach". It was also important to note that they had had very detailed information. It was unusual to have the amount of detailed information in the Section 61 CoPA applications - details not only of the tasks to be carried out but their duration and the details of the equipment to be used. The majority of the additional pieces of information which had come to light had confirmed the Council's initial judgements eg the monitoring of noise levels and the evidence of Mr Neave of 148, Gloucester Avenue.

270. The appellants had sought to emphasise the disturbance experienced in the past from the noise from maintenance works (Sheila Jackson) and to emphasise occasions on which the project works had caused disturbance (although there was very little direct evidence of sleep being disturbed -even on the specific occasions when calls had been made eg Saturday 17th June (evidence of Roger Low)). It was accepted that high noise levels would occur so this in itself did not affect the Council's conclusions and in addition any reduction of noise due to reduced maintenance in the future would be an environmental benefit.

271. The appellants had sought to characterise the Council's expert evidence as mere technical calculations. They had also sought to suggest that relevant calculations and predictions at certain points were not possible (eg to sensitive receptors). This was simply not the case and it had been demonstrated that the Council had the information to make the calculations had they considered it relevant to do so.

272. It was right that every possible exercise of prediction and calculation had not been carried out but for the appellants to seek to make a point of this illustrated the flaw in their approach. Unless there was some material to suggest that the calculations would show that it was "likely" that noise would have a "significant" effect then simply to base a case on the fact that the calculation had not been done took the matter no further. For instance repeatedly asking for a document before the inquiry showing a particular calculation did not help the appellants.

273.The Council's case on noise was to be preferred. It was the only one supported by independent expert evidence and descended to detail following consideration of a large amount of material. The Council had not sought to minimise or conceal the effect of noisy works but to set them in their context and take a proper planning judgement as to their significance.

274.The issue of vibration was an illustration of a possible environmental effect which, when examined in any degree at all, was demonstrated to be unlikely. The Council relied on the evidence at Document CC2.6, paragraph 6.7 specifically, but on the conclusions and working methods as a whole. This conclusion was not seriously challenged in cross-examination. Again it was a conclusion made after detailed consideration of working methods and once again experience of the works in practice had supported rather than detracted from the conclusions. Consideration of vibration was not undertaken for the first time for the purposes of this inquiry. Vibration had already been examined and more detailed monitoring had been required as part of the Section 61 process prior to the preparation of any evidence.

275.With regard to the question of whether the works would be "Likely to have significant environmental effects", the most relevant evidence on this point was that of the site visit. Once the works were assessed in the context of the railway line with the existing requirement for ongoing maintenance it became clear that the conclusions reached by the Council sat entirely convincingly with the reality of the "nature" of the works and their "location". The proposed works were not likely to have significant environmental effects and thus that this requirement for an Environmental Impact Assessment under the 1988 Regulations was not triggered.

276.On the question of whether any elements of the work were granted deemed planning permission by virtue of Schedule 2 Part 17, Class A of the GPDO 1995 a number of conclusions could be drawn. The appeal site was operational railway land. Therefore, in the absence of the need for an EIA, planning permission was granted by GPDO Article 3(1) for the aspects of the work which were not the erection of a building. Using the classification of works adopted by the Council these would be:

a) renewal of existing track work without altering the vertical and horizontal alignment (ie not involving a material change in appearance)

b) -

c) alterations to retaining wall structures

d) new and replacement gantries or portal structures

e) new and replacement signalling equipment.

f) -

g) -

h) numerous other small alterations.

277.In relation to the works classified as "b) new track layout including alterations to the design and layout of existing track work;" a judgement would have to be made, taking account of alterations to horizontal and vertical alignment, as to whether or not there would be a material alteration to the design or external appearance of the railway. If there was such a

difference those aspects of the track alignment would be excluded from the ambit of class A by a combination of the words of "A1(a) The construction of a railway" and A2 "references to the construction or erection of any ... structure include references to reconstruction or alteration where its design or external appearance would be materially affected." This judgement was to be made in the light of a site visit. In the light of the provisions of Part 11 the point may be academic. The works to platform 15 and to Primrose Hill Bridge were excluded from the grant of permission by the provisions of A.1(b).

278. Whether or not any elements of the works were granted deemed planning permission by virtue of Schedule 2 Part 11 of the GPDO 1995 it was necessary to go on and consider Part 11 in relation to those works which did not enjoy deemed consent under Part 17; these were:

b) alterations to track layout (assuming these did have a material affect on the appearance of the railway)

f) extension of platform 15 at Euston Station by up to 50 metres

g) partial reconstruction of Primrose Hill bridge.

279. It was accepted that these works were covered by the relevant private Railway Acts of Parliament. There was a requirement in relation to Primrose Hill Bridge and the extension to the platform to submit details for consideration of visual amenity (paragraphs A.1 and A.2). These details had been submitted and approved for Primrose Hill bridge but not for Platform 15, and any LDC which was granted would have to reflect that.

280. As to the point on European law, this was set out in detail in the advice of Richard Drabble QC to the Council (Document CD12). Article 1(5) of the Directive which was the parent to the 1988 EIA regulations read:

> "This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process."

281. If it was right that the GPDO Article 3(12) and Schedule 2 Part 11 Class A, which purported to carry this part of the directive into UK law, went too far in removing the need for an EIA for all local or private Acts of Parliament, however old or recent, however environmentally friendly or unfriendly, then the development was nevertheless still lawful. This was because the Directive would take direct effect and remove Article 3(12) in relation to development authorised under old Local or Private Acts of Parliament. This would mean simply that Schedule 2 Part 11 would be subject to the same requirement to consider whether an EIA was required as Schedule 2 Part 17. Since the Council considered that an EIA was not needed - despite the fact that the vast majority of the works came under part 17 already - the overall conclusions would be the same. Therefore, whatever its merits, the EU law point was academic because of the conclusion of the Council that there was no need for an EIA. That conclusion had not been reached lightly and the reasons for it were set out above.

282. Thus a certificate could be granted on the basis that all elements of the works were lawful. This was the Council's determination (Document CC1/3 paragraphs 4.2 to 4.4). It was arguable that some aspects of the work would be lawful under both Part 11 and Part 17 of Schedule 2 to the GPDO. However for clarity it was submitted that under Part 17, Class A items

a) renewal of existing track work without altering the vertical and horizontal alignment (ie not involving a material change in appearance)

b) .

c) alterations to retaining wall structures

d) new and replacement gantries or portal structures

e) new and replacement signalling equipment.

f) .

g) .

h) numerous other small alterations

were lawful.

283.Item b) renewal of existing track work with material changes of horizontal and vertical alignment would be lawful under Part 17, Class A if it was judged not to have any material affect on the design or external appearance of the Railway as a structure.

284.In relation to Schedule 2 Part 11 class A , items

f) the extension of platform 15 at Euston Station by up to 50 metres

g) the partial reconstruction of the Primrose Hill Railway bridge

were lawful subject to the prior approval of the details of appearance in relation to the extension to Platform 15. Item b), renewal of existing track work with material changes of horizontal and vertical alignment, would be lawful without the need for such approval.

285.The appeal should be determined, in the terms of TCPA 1990 Section 195(2) (b) that, had the Council refused the application, it would not have been well-founded and a certificate granted.

THE CASE FOR THE APPELLANTS

Introduction

286.Residents of Camden appeared in the unprecedented position of asking the Secretary of State that their own appeal should be dismissed. They urged that the WCML Modernisation, one of the most significant programmes of railway modernisation since the end of the steam age, currently being progressed through one of the most sensitive and densely populated parts of London, should be carried out only subject to the most rigorous environmental safeguards.

287.It was unprecedented legally, because the applicants for the LDC were local people, who had made the application because the people who should have made it, Railtrack, as the successor track authority to British Rail, had refused to do so and because the LPA, which should have insisted that Railtrack apply for planning permission, had failed to do so. An application for planning permission would have enabled the LPA to require a full Environmental Impact Assessment to be carried out, in accordance with EC Directive and domestic regulations and to impose stringent conditions which would ensure that the environment of those through whose community this railway passed was properly protected.

288. On the eve of the 21st Century, Railtrack and the Council were both attempting to rely on legislation which dated from the age of Stephenson's "Rocket" to avoid the environmental protection provisions enshrined in late 20th Century European and domestic legislation. The Council were, at first, humiliated by Railtrack's lack of co-operation. When the application was first made, the Council were unable to determine the application because insufficient information was provided by Railtrack. This was in the late summer of 1998. The tendering process had already been commenced and the programme of works was about to start.

289. Despite being armed with the full force of statutory enforcement provisions contained in the Town and Country Planning Act, frozen in the beam of the headlights of this massive oncoming railway project, Camden had ducked their duty to ensure that they used their statutory powers to control the project's impacts on those people most affected by it. Instead of requiring a comprehensive EIA which would enable the LPA to consider all of the effects of the whole programme, they had settled for CoPA s.61 applications from Railtrack, which (a) were only concerned with a single environmental impact and (b) provided at any one time only assessments in respect of particular sections of the construction works.

290. So it had been left to local residents to force the issue to the point where this inquiry had been held. This was a major triumph for local people. It provided an opportunity to require the recalcitrant Railtrack to produce the necessary information, disclosure of which they had for so long sought to avoid. It required the LPA, which was seen by local people as being weak and obsequious towards Railtrack, to justify its actions or perhaps the lack of them. It was also important to recognise that the Residents were in a much better position than they were before the application was submitted. Two of the most controversial elements in the project had been eliminated and alternative, less harmful means of achieving the same objectives had been found. There was little doubt that without the threat of the application for a LDC and the appeal hanging over their head, those less harmful alternatives would never have happened. Much had already been achieved, because of the pressure created by the application and the appeal.

291. However, there was an immense disparity between the relative resources on each side. The appellants did not have the expertise to properly assess the strengths and weaknesses of Railtrack's case. Their witnesses were informed local people. None was an expert in the relevant fields of environmental assessment. Sadly, those who would be capable of carrying out that function on behalf of the community supported the promoters.

292. The appellants were, as individuals, no more or less affected than hundreds, perhaps thousands of local residents whose names could equally have been given as the nominal appellants. They were not, and had never been, opposed to the principle of improvement of the West Coast Main Line out of Euston Station. Indeed they were, in principle, supportive of a better public transport system which the upgrading of the line could bring.

293. The Government's policy on sustainable development ["A Better Quality of Life" White Paper on Sustainable Development HMSO May 1999] contained, as one of its Guiding Principles and Approaches the need for "transparency, information, participation and access to justice" [ibid p.32] in the decision making process. Railtrack were much less than transparent in the information that they had been prepared to provide, whether to the Council, or to local people. Moreover, the very nature of the contractual arrangements between Railtrack and their contractors, known as "design and build", were such as to leave much of the detail in the hands of the contractors. And it was in the detail which the devil, in a scheme of this kind, most definitely resided.

294. Residents had appealed because they knew that if carried out without being subject to the conditions which could only be imposed on planning permission for the scheme, there was every possibility that they may be ridden over roughshod by Railtrack. It was in this respect that the Council should have done everything that they could to protect the residents and, possibly to obtain improvements in mitigation as part of the project. Instead, regrettably, they had taken the side of Railtrack in support of their purported right to carry out this major development immune from the scrutiny of the town and country planning system.

295. The appellants' case was a very straightforward one. The starting point was that the scheme for the modification of the line from Euston Station to the portals of the Primrose Hill Tunnel should be treated as a single development project within a single planning unit, which required planning permission, and which was not granted by the GPDO 1995. The second point was that the nature of the project was such that it fell within the ambit of the Environmental Impact Assessment Regulations of 1988 and 1999. Thirdly, the project, in its construction phase and probably once operational, would have significant environmental effects.

296. Accordingly the environmental impacts caused by both the construction works and the operation of the railway, post-construction, should be the subject of an EIA and appropriate mitigation should be imposed by conditions attached to planning permission which the development required. In any case, Railtrack could not avoid the requirement for an EIA by virtue of Article 1(5) of the Directive and Article 3(12) of the GPDO 1995, where the domestic legislation which they relied on to come within those exceptions pre-dated the Directive (85/337/EEC) by one hundred and fifty years. Reliance could not be placed on, for example, the London to Birmingham Railway Act of 1833 that "...the objectives of the Directive, including supplying information, are achieved through the legislative process..." (Article 1(5) of 85/337/EEC).

297. The construction phase of the modernisation project had been the subject of an Environmental Appraisal (CD6), the status of which was so uncertain that Railtrack were unable to say at the pre-inquiry meeting on 28th April 1999, whether it was still relied on and whether it comprised an EIA for the purpose of the Regulations. Their written reply to the question was similarly opaque. That report was already out of date, but, in any case, was so inadequate that it could not properly inform any decision which purported to rely upon it. It was understood that the Council supported that view. Its inadequacy was illustrated by a 6 page letter which was written by the London Borough of Camden's Environmental Health Officer, on 20th May 1998 (Document AP4/1 Appendix 3). This was followed by a letter in similar terms asking about Railtrack's Code of Construction Practice.

298. So far as was known, no proper assessment of the post-construction effects had been made, (a point made by the Council in their letters) nor were there any proposals published which would incorporate mitigation of its effects. There would be more trains and faster trains, but it was not known what the environmental impacts of the railway would be, post-modernisation, nor what environmental improvements could be achieved as benefits from the opportunity afforded by the modernisation scheme.

299. The original railway was carved through a densely populated part of North London in the early part of the 19th Century. It was built at a time when environmental effects on those along its path came well down the list of its promoters' priorities. In 150 years no serious attempts had been made to reduce its impact on its surroundings. This project had the effect of creating a new railway within the historic limits of alignment of the 19th Century railway. It offered probably the only opportunity which was likely to appear in the next 30 years to

introduce modern environmental standards to the line. Yet, it appeared that no specific mitigation measures were intended, which could take advantage of the scheme to reduce the environmental effects of an ever busier and faster running railway line. If this was so, it was a major lost opportunity.

300. There was a sense of unreality about the case, with the appellants arguing that they should not be granted the certificate for which they had applied and the local planning authority, who failed to determine it, nevertheless arguing that the appeal, which was the result of their own failure to determine the application, should be allowed. Railtrack's case was one which was supported by the planning authority, from whom they withheld information, whereby they would argue that the Certificate for which they themselves refused to apply, should nevertheless be granted, so that they can then rely on it.

301. The precautionary principle propounded at the Rio Conference was now firmly enshrined in the Government's national and the European Union's environmental protection policy and repeated in the Government's most recent White Paper on Sustainable Development. (May 1999). That policy meant taking all reasonable measures to safeguard and protect those whose environment may be adversely affected by development. In order to determine what those precautionary measures should be, it was necessary to know just what the proposed development was and what were its effects.

302. To impose the precautionary and protective measures, it was necessary to have robust and effective regulation by those bodies who held the relevant powers. In this case, the best protection for the public, in a major infrastructure scheme of this kind, was to be achieved by ensuring that the project was subject to the development control and enforcement regime of the kind contained in Town & Country Planning legislation, together with the other environmental protection legislation, vigorously enforced by the planning and environmental health authority, the London Borough of Camden.

303. This would require that the appeal be dismissed, that Railtrack should apply for planning permission, that appropriate conditions relating to both the construction and the operational phases should be applied. The appeal should be dismissed because the project was development not permitted by the GPDO 1995. Accordingly it was not lawful and Railtrack should be advised to make a planning application for the whole of the works, supported by a full EIA.

Representations of Helen Bryan of 30, Park Village East, London NW1

304. The appeal site was a single unit consisting mainly of an open railway cutting running through a densely populated residential area. Nearly 16,000 people living within 200 metres of the site were potentially affected by any adverse environmental effects of the proposal. Redevelopment of the WCML was a single project, incorporating various individual elements, to modify an existing railway line and was 'development' within the meaning of Section 55 of the Town and Country Planning Act. It was illogical to separate the project into its individual elements for planning purposes. The scale of the project and its close proximity to surrounding residential areas meant that residents would experience effects cumulatively. The capacity for severe effects and their duration was uncertain as were appropriate precautionary measures in the absence of a full Environmental Impact Assessment. It was unreasonable that the Council's handling of this matter had forced residents to seek an EIA by way of this appeal.

305. This project should be subject of a planning application, preceded by a detailed Environmental Impact Assessment. This should be made available for public consultation

prior to formal consideration of the planning application to allow residents to contribute their own local knowledge as to the potential for adverse effects. When environmental effects and their likely duration had been identified, enforceable conditions should be attached to any grant of planning permission to contain identified risks.

306. This project was dealt with initially by the Council and Railtrack. At an informal meeting in January 1998 with Paul Wade of Railtrack and Camden Planning Officer Bob Turner it was said that redevelopment of the WCML was a major engineering project involving replacement of ballast and railway lines to accommodate new 'tilting' trains of the WCML franchisee Virgin Rail. Railtrack and Camden had held joint meetings about the project in 1997. Camden accepted Railtrack's view. The project was said to enjoy permitted development rights under the 1995 General Permitted Development Order. It was said that planning permission was not an issue; there would be 'consultation' with residents. An environmental impact appraisal was being prepared, to be available by end of February 1998. Works were due to go out for tender at the time of the meeting with a return date for tenders of March 1998. Work was to begin September 1998.

307. Considering the scale of the proposal, the nature of the work involved and potential for adverse environmental impact on surrounding residents, it was assumed any decision to proceed without planning permission had been taken on legal advice. Otherwise the situation was bizarre in planning terms. Environmental impact assessments were prepared for public consultation before planning permission was granted, yet tenders had gone out in advance of such an assessment or any public consultation on it.

308. On 20th February 1998 a press article based on a Railtrack press release warned the impact of the works, in terms of dust, noise and all night working, would render surrounding streets uninhabitable. Requests for information from Railtrack's "Helpline" proved useless.

309. On 3rd March 1998 a public meeting was held, chaired by Councillor Sacks, Vice-Chair of Camden's Development Control Subcommittee, and Railtrack; Bob Turner confirmed there had been no formal determination by the Council under Section 192 of the Town and Country Planning Act or otherwise, and neither their legal officers nor Counsel had been consulted. At that meeting Railtrack announced that work was to begin in September. The return date for tenders was 16th March. An environmental appraisal was being prepared. There would be 'consultation' through a joint Working Group of Camden, Railtrack and residents. Since 'consultation' in the planning sense by definition took place before a decision was made the relevance of the 'consultation' exercise was dubious. Councillor Sacks confirmed that Camden had taken no legal advice but undertook to do so.

310. Residents wrote to Councillors, planning officers and Railtrack objecting to the way this matter had been dealt with. Helen Bryan wrote to Councillor Sacks on March 4th 1998 querying Camden's handling of the matter. Councillor Sacks' response, of 23rd March 1998, enclosed an article from the Local Government Chronicle illustrating the difficulties of enforcing breaches of the 1990 Environmental Protection Act against Railtrack. That article reinforced residents' views that this project required planning controls.

311. The correspondence between residents, Councillors and officers of Camden Council and Railtrack illustrated the increasingly chaotic handling of the matter by the Council, whose responses were unsatisfactory if not actually evasive. For example, on 7th March 1998 Roger Low wrote to Mark Gilks, Director of Environment, about concerns of the Residents' Association following the public meeting. On 20th March 1998, Mark Gilks replied "..this matter is not closed. It would obviously be advantageous to the Council in many ways if

planning permission was required for this project because it would give greater control to the Council over the project planning process" and that Railtrack had not provided enough information for the Council to come to a definitive legal view. On 27th March 1998 Paul Wade of Railtrack replied to a letter from Roger Low of 14th March seeking clarification of Railtrack's authority to proceed without planning permission, saying " The authority to proceed with the WCMLRM was an internal and in principle decision of Railtrack and was taken approximately two years ago ...". On 30th March 1998 Councillor Sacks replied to a letter from Phoebe Robinow, Hon Secretary of the Residents' Association "I am quite clear the legal position is a straightforward one. Railtrack clearly have the power to carry out works within the curtilage of the railway line without requiring any form of consent from the Local Council". Counsel's advice was not sought until 6th May 1998.

312. In March 1998 residents were invited to participate in the 'Working Group' the purpose of which was " simply to facilitate discussion about the method of working." It was clear that the Council and Railtrack intended the Working Group to be a public relations exercise. On 2nd April 1998 Councillor Richard Arthur sent Helen Bryan a Memorandum from Mark Gilks suggesting that simply giving residents information addressed residents' demands for planning permission. Mr Gilks continued "The need or otherwise for planning permission is obviously an important issue .. we may not be in a position to come to a definitive legal view until we receive detailed information from Railtrack about their proposals." Given that tenders had been returned and contractors must have known what they were tendering for, this made no sense.

313. On 8th April 1998 Helen Bryan attended the Annual General Meeting of the Crown Residents' Association about the WCML project. Many members of this Association lived near the railway lines in the large blocks of flats between the south western end of Park Village East, Stanhope Street and Regent's Park. Long-time residents there knew the history of the area and many approached Helen Bryan to explain that having worked on the railway line they were concerned about asbestos as a possible contaminant, from being stored there in sheds or because asbestos was used in trains' brake linings.

314. On 15th April 1998 at a second public meeting Railtrack refused to give specific answers to questions from residents about possible environmental effects, including all night working and lights on gantries. The Council confirmed that they did not yet have legal advice about the planning position.

315. In early May the Kennedy & Donkin appraisal appeared (CD6). Railtrack had refused to confirm to the Appellants the precise status of this appraisal or the extent to which they relied on it.

316. Though the Working Group was regarded as a public relations exercise disguised as 'consultation', some residents attended solely to monitor an increasingly confused situation. Following the Working Group meeting on 13th May, Helen Bryan wrote on 3rd June 1998 to Councillor Richard Olszewski about Camden's handling of the matter. Councillor Olszewski became the main contact point between the Council, Railtrack and residents, in the absence of the matter being dealt with through normal planning channels.

317. The minutes of the Working Group Meeting of 13 May 1998 stated that Councillor Olszewski would act as Chair, which he did between June and November 1998. Mark Gilks reported to the Environment Committee on 13th October 1998: "The Working Group is administered by Railtrack but ...chaired by a Councillor. Councillor Olszewski chaired the June meeting and has agreed to chair future meetings". The Working Group was "..the

primary contact between Railtrack, resident's representatives, the contractor and the Council..."

318. In December 1998 a Sunday Times report and register of Councillors' Interests revealed Councillor Olszewski had been employed by private rail lobbyist Citygate Westminster between July-December 1998 (Document AP/8). Among Citygate Westminster's clients were Virgin Rail.

319. Following the Working Group meeting of 13th May 1998 Railtrack refused information sought by Camden's Counsel to enable him to advise on the need for planning permission. In June 1998 residents sought their own Barrister's opinion. Dated 9th June 1998 this advised planning permission was probably required, but advised residents could apply for a Certificate of Lawfulness for the works. That advice was copied to Mark Gilks on 13th June 1998 indicating residents would act on it.

320. On 13th July 1998 application was made for a Certificate of Lawfulness now subject of this appeal. On 17th August 1998, Chief Executive of the Council Steve Bundred informed Roger Low that the Council had not clarified the legal position despite the fact Railtrack was to begin work at the end of August and Members in Committee would determine the s192 application.

321. On 14th September 1998 Camden's Development Control department wrote that the application delivered on 13th July 1998 was formally registered on 2nd September and that a decision would be made under delegated powers by officers. This appeal for non-determination was made on 14th September. Planning Officer Alice Lester prepared a Draft Delegated Report on the S.192 application prior to a meeting of Camden's Environment Committee on 13th October 1998, recommending refusal of a Certificate of Lawfulness. Without a lawful development certificate the proposal was by definition unlawful without planning permission. That Draft Report to Committee was superseded by one from Mark Gilks, dated 13th October 1998, stating noise was likely to be the only significant effect, which could be controlled under Section 61 of the Control of Pollution Act 1974. He ignored concerns about :contaminants, particularly asbestos and anthrax, construction dust, fumes, emissions from works vehicles, light pollution, works traffic in the surrounding streets, vibration and infestation by rats driven out of the appeal site.

322. To date residents reported that high night time noise levels from continuous work prevented sleep on the southern end of Mornington Terrace and on the railway side of the tower blocks on Ampthill Square. Complaining to the Council or to Balfour Beatty's Helpline had no effect. Trains and works vehicles had been left idling all night. A shrill whistle from works vehicles to warn workmen off the tracks each time they moved was disturbing and at night was intolerable. Due to the WCML work, normal maintenance was carried out at night. Problems of all night noise arose from workmen parking, loading and unloading lorries on residential streets late at night. Works vehicles were left running during the day and blocked streets.

323. Stability of the surrounding streets and the buildings on them was a major issue. On Park Village East, Grade II* Listed Nash buildings stood on a 'ridge' between the railway line and a disused arm of the Regents Canal. The area was heavily bombed during the war. Other listed buildings on Oval Road literally backed onto the rail line. On King Henry's Road buildings sat on the very edge of a deep railway cutting.

324. Residents had had no alternative but to pursue the present proceedings. Public interest dictated that such a large project with such a potential for environmental impacts of unknown duration could not be adequately addressed outside the planning framework.

Representations by Mr C R Byng-Maddick for Mornington Residents' Association

325. The Association represented residents living in the Mornington Terrace/Clarkson Row area. All streets were in close proximity to the railway line. Some members who resided in Mornington Street were those whose flats faced onto Mornington Terrace. Clarkson Row properties were built in the 1970s, presumably with planning permission; their bedrooms faced directly onto the noisiest part of the track. The association through its Chair Mr C Byng-Maddick was one of the appellants. The primary concern of residents was the potential impact on their daily lives by reason of the size, nature and location of these works. In principle, residents were in favour of the works. Mr Byng-Maddick was aware of the letter dated 3 September 1998 from Councillor Richard Arthur (Document AP4/1 Appendix 3) to Mr Roger Low.

326. Since learning of the proposal in February 1998, the appellants' concerns had been focused on three main questions: what rights did Railtrack have to implement the scheme; who was responsible for granting permission; what controls could be exercised over the work?

327. These works were likely to have a significant impact on people living adjacent. Camden had accepted the view that this scheme was "permitted development" Concerns of residents were noise and disturbance, but also concern about vibration resulting from hydraulic hammers and compactors settling ballast and possible effects on house foundations. Also of concern were contaminants and the extent to which the contractors would control the release of toxic materials, traffic disruption and road closures resulting from both material deliveries and contractors' labour working on the appeal site. It was accepted that noise and disturbance were the main issues. The Association did not have the funds to employ a noise expert. It was recognised that the railway was an existing source of noise.

328. Public meetings in March and April 1998 reflected the concerns of local people living close to the railway lines. Presentation of Railtrack's proposals was hampered by Railtrack's ignorance of the operational nature and likely impact of the work and Railtrack's own public record, both locally and elsewhere, which did not inspire credibility.

329. Clarification had been sought about the status of the Kennedy & Donkin Report (CD6) and whether that document could be relied on as the EIA for this project. The report was based on assumptions. The 1988 Regulations were aimed at the effects of completed projects. The only reference to the completed project was Item 1.2.3. The long term effects of the WCML project were not addressed in the report, including the objective to increase the number of trains and to increase their speed. Guidelines set out in The Royal Commission on Environmental Pollution of September 1997 indicated targets to be achieved over the whole line. The Regulations, Schedule 4, on Environmental Impact Assessments which came into force in March 1999 were tougher and were concerned about the environmental impacts in the construction phase and long term impact.

330. The Executive Summary of the K&D document presented a 'relaxed' view on the issues. To quote: ".... majority of the temporary effects .....can be mitigated through good site practice." "..30-40 properties could be affected by construction noise for durations of fifteen or more consecutive working days/nights during the construction period." For facades overlooking the railway - "works of less than four days duration could give rise to noise effects" and "on average" this was assumed to happen 'only' on five separate occasions over

the construction period. Mitigation of the impacts on the Community would be achieved by "liaison with the general public". Ecology was of little concern but "excavation and removal of materials from the site could have an indirect effect through the deposition of dust, spillages of spoil materials or run-off following ballast removal." But ".... impact of dust on nearby residents will be controlled through the implementation of good practice..". Contaminated materials would be dealt with under Duty of Care Regulations.

331. This document was insufficient for Camden's Pollution Control officer, Mr Peter Carey. His letter of 20th May 1998 (Document AP/4/1 Appendix 3) to Railtrack's Consultation Manager, Paul Wade, prompted a number of questions and critical comments (Document AP/3/2, paras 3.7.1 to 3.7.9). On 28th May Mr Carey again wrote to Mr Wade (Document AP4/1/1, Appendix 3), responding to the draft Code of Construction Practice (CoCP) (Document AP/3/2, paras 3.8.1 to 3.8.6). Among the points made was, by reference to Appendix A, that the absence of any reference to planning legislation was a "surprising omission". The letter demonstrated the inadequacy of the K&D appraisal and CoCP given the size, nature and location of proposal. The body of the report indicated that the works were all likely to have significant environmental impacts on residents. Increases in road traffic were expected to be significant, which was especially disturbing since 30% of the vehicle movements would be at night. It was stressed that the assumptions being made were based on "professional judgement". Review of assumptions was required to reassess environmental impacts at each section of the site, with specific reference to the number of 'possessions'. The issue of contaminated land needed to be openly addressed in accordance with the requirements of the H&SE.

332. A community relations exercise was established in response to the concern of residents. The development of Working Groups had been no more than a PR exercise. These events were information broadcasts for interested parties. The establishment of the help-line was similarly viewed. However, details of the scheme were now more clear to residents than they had been in the past.

333. The effects of the proposed modernisation scheme would be extremely disturbing. Residents that faced the railway were all very concerned at the possible environmental impact of these operations. Residents who lived near the junction of two of the contractors' "possessions" would be likely to suffer twice the amount of disturbance. There was virtually total support for the appeal by local people from all parts of the community. This development needed a new detailed Environmental Impact Assessment. The way forward was to submit the scheme to further environmental appraisal and apply the stricter controls provided by planning laws, with the requirement for public consultation which did not apply to the S61 procedure under CoPA.

Representations for the Camden Town Conservation Area Advisory Committee (CTCAAC)

334. Marian Kamlish was Chair of CTCAAC and a resident of Nash House (Document AP/2/3). The area covered by the CTCAAC was shown at Document CC1/7. The committee met every three weeks to consider current planning applications in the conservation area and those in adjacent areas which could affect Camden Town conservation area. The principal criterion used by the committee in assessing any application was whether or not what was being proposed preserved or enhanced the conservation area. At present there were eight local resident and amenity organisations represented on the committee.

335. Due to the nature, size and location of the West Coast Main Line re-development, the committee was exceedingly concerned about the potential environmental impact on the

conservation area. However, it was agreed that none of the works would take place within the conservation area. CTCAAC were first alerted to this project through an article in a local newspaper in February 1998 and were deeply worried by the potential effects these operations would have on the buildings in the conservation area. The Grade II listed houses in Mornington Terrace built c1843 were the prime concern as they fronted the proposed works but, given the nature and scale of Railtrack's proposed operation, plus the direction of the prevailing wind, the consequent dust, noise and fumes would also be likely to affect a greater swath of the conservation area. At no time had any resident, or the committee, stated or inferred that they are against the West Coast Main Line project in principle. It was recognised that it was in the public interest.

336. The preliminary meeting held on 3rd March 1998 between Railtrack, Camden Council and the public was a fiasco, prompting one resident to write in a letter to the press of the absurdity of Railtrack's contractors being asked to tender without "any ability to factor the environmental impact into their costs". This was also of concern to the CTCAAC. In her role as Chair of the CTCAAC, Mrs Kamlish received a letter from Councillor Sacks dated 13th March 1998 asking her to participate in a 'Working Group' to be "set up to discuss the railway works"

337. On 3rd April 1998 the committee replied to Councillor Sacks stating that they believed her idea of forming a 'Working Group' was premature, and that they would be awaiting a planning application from Railtrack. The committee was aware of the Council's powers to control the way development was carried out by imposing conditions when planning permission was granted and, in the absence of planning permission, it seemed that there would be no means of controlling the works involved in this major project.

338. With great reluctance Mrs Kamlish did become a member of Railtrack's 'Working Group' but stated clearly on the application form that her main issue for concern was 'Legal Enforcement of Code of Working Practices via a Planning Application'. At a 'Working Group' meeting held on 13th May 1998, she again reiterated why the CTCAAC were particularly concerned about the fate of the listed buildings in Mornington Terrace, and on 15th May 1998, sent a letter enclosing maps and articles to Peter Millar of Railtrack telling him the history behind this Terrace and its significance to Railtrack's proposed redevelopment as follows:

> In 1902, according to the issue of 'The Engineer' for May of that year, demolition started in what was then known as Mornington Road (now Mornington Terrace) to remove all the large semi-detached villas facing the terrace which was still standing. Also 'swept away' at this period were the villas facing the ones still standing in Park Village East. Widening the 'Euston incline' was thus "in full swing", due to the fact that "the traffic had outgrown the accommodation provided for" (ie 4 tracks laid down in the 1830's). At this period (1902), the 'backfill' method appeared still to have been in operation, according to a local architectural historian. This led to the ground between the terrace of houses and the cutting wall of the railway, in what was renamed Mornington Terrace, to become, and remain to this day, decidedly unstable. Modern heavy traffic and speed bumps in both Mornington Terrace and Park Village East had exacerbated the problem, but the unknown effects of the proposed pounding, drilling, tamping and other engineering works on the other side of the railway wall, in consequence of the major development being undertaken by Railtrack, was cause for concern both to residents and to the CTCAAC.

339. At the 'Working Group' meeting held on 25th August 1998, Mrs Kamlish again expressed concern about the houses in Mornington Terrace and the state of the roads, both there and in Park Village East. Having lived in the area for over 30 years, she was well aware of the tendency of the roads in both Mornington Terrace and Park Village East to buckle and develop potholes for no apparent reason. Several years ago, in about 1990, the entire southern end of Park Village East sank so dramatically the road was closed for months to be repaired; this was apparently due to a burst water main.

340. At the 'Working Group' meeting held on 21st September 1998, the meeting learnt, as they had suspected, that the works to date had been "relatively small and minor" and that the contractors were confident "that works will not cause problems to foundations of local buildings". It was also pointed out by a vibration expert that "vibration travels more through solid ground rather than ground containing voids" but, as no geographical survey had been carried out concerning the exact nature of the state of the ground in either Mornington Terrace or Park Village East, due to the fact that no official environmental impact assessment prior to planning consent had taken place, this was not much of a consolation.

341. On 30th November 1998, the CTCAAC wrote to Peter Carey of the London Borough of Camden regarding a noise monitoring exercise carried out on Nash House. His reply dated 11thDecember 1998 agreed that a firework party held next door to Nash House on Saturday 7th November would have distorted the decibel figures "for that period for that location". He also agreed that "the majority of works carried out to date have been of a preparatory nature," and as a result, "the noise impacts have not been too severe". Also as it was winter and cold and wet, people's windows had been kept closed.

342. From January 1999 until April 1999, Railtrack had concentrated work on Euston Station itself and to the north of the station. Residents living near those areas had reported an ongoing problem with noise and at least one resident on Mornington Terrace had reported problems with vibration, but as Peter Carey's letter continued, "When there is a more sustained period of heavier work, in particular during the summer (of 1999) there is obviously still a potential for serious disturbance".

343. For a variety of reasons, Mrs Kamlish had not been able to attend the 'Working Group' for some time. Also, since reading in the national press on 27th December 1998 that Councillor Olszewski, who had accepted the job of chairing the 'Working Group' in May 1998, was in the employ of a company that lobbied Parliament on behalf of rail companies, she had been put off going. In the view of the CTCAAC, Councillor Olszewski should have told all those attending the 'Working Group' meetings he chaired about his daytime job, or even perhaps not taken on the chairmanship of the 'Working Group'.

344. The way in which the Council had dealt with the matter of the West Coast Main Line redevelopment had reinforced the view of the CTCAAC that the only way residents' rights and the buildings in the conservation area, as well as in the Regent's Park and Primrose Hill conservation areas, could be protected was under planning law, and they therefore requested that Railtrack be asked to apply for planning permission for their project, in the same manner as any other major developer.

345. Mrs Kamlish gave further evidence by way of a supplementary proof (Document AP/3.2/3) as a resident of Nash House, Park Village East. Nash House was a block of 8 flats built in 1963. The property was owned by the Crown Estate and managed by the lessees of the flats through the Nash House Management Company. Very recently, the Nash House

Management Company Secretary discovered in her filing system a document titled 'Nash House, Park Village East, Regent's Park' (AP/5/2). This document was not dated, but the design for Nash House was exhibited at the Royal Academy Summer Exhibition in 1962 and this document was probably prepared for that purpose.

346. The relevance of this document was that it appeared to incorporate the findings of the consulting engineer, S B Tietz. On page 2 of the document, the particular characteristics of the site were described. In particular the document noted:

> "A deep railway cutting forms a physical and visual break on the north side of the road. The subsoil is London clay, fissured to considerable depth due to physical movement of the railway cutting and pore water changes caused by this cutting, the draining of the canal and traffic vibration."

At page 4 of the document, Construction Details, it noted: "Foundations: - A full survey was conducted. Due to the poor quality of the clay down to considerable depth, and the earth movements that had occurred already in the area, it was decided to use piles."

347. Residents on Park Village East were concerned that many of the buildings on the street occupied a potentially precarious position on a ridge between the railway line to the north and an arm of the Regent's Canal to the south west. As Roger Low had indicated in his proof of evidence, there was a history of movement of the ground in this area and a history of movement associated with the railway. Residents were concerned about the effects of the Railtrack works on the street. The history of the area indicated that stability was a real issue, particularly in relation to the Grade II* listed Nash buildings. The Nash buildings were not built on piles and some had no foundations. Two of the Nash houses at Nos 32 and 34 Park Village East had been buttressed from the rear. Many of the Nash properties had experienced movement problems.

348. The decision to construct Nash House on piles clearly reinforced the case that there were potential risks for other buildings if the work went ahead without a full assessment of the likely impact of the works on the stability of the street. At Working Group meetings, repeated attempts were made to raise the issue of the stability of the streets running alongside the railway cutting, and in particular the issue of stability of both Mornington Terrace and Park Village East. However, both Railtrack and Camden Council had failed to address the issue adequately. The works ought not to be allowed to proceed without an environmental assessment, which should include a thorough investigation of all the possible impacts on the stability of the surrounding area and buildings.

Representations of the Park Village (and Environs) Residents' Association

349. Roger Lee Low was Chairperson of the Park Village (and Environs) Residents' Association. He was one of the appellants and had lived at 30 Park Village East NW1 for 20 years. Railtrack identified the appeal site as a single unit in their pre Inquiry Statement as shown on the Kennedy and Donkin (CD6) drawings. This was agreed. He had read Councillor Arthur's letter to him of 3 September 1998 (Document AP4/1, Appendix 3) before submitting the appeal.

350. The K&D report was not an Environmental Impact Assessment within the meaning of European Union law but in any event it was in some respects flawed. For example it stated: "Commercial and residential development has mostly grown up around the rail corridor as a result of this important local and national transport link." This was not accurate. The residential area existed before the railway. Between Park Village East and Mornington

Terrace, vast areas of housing were demolished in the early 19th century to make way for the cutting for the London to Birmingham Railway. Rather, it should be said, the rail corridor cut a swath through residential development. This was relevant because both streets were visibly sinking and stability was a real issue. No 1 Park Village East was built in 1892 and rebuilt in 1932 after subsidence arising from the failure of the retaining wall. No 6 Park Village East was suffering subsidence; No 22 had subsided in the 1960s after failure of the retaining wall and the British Transport Commission made an ex gratia payment; it was not known whether this was caused by bomb damage. No 30, Mr Low's house, was insured for subsidence but he was unable to renew with the existing insurers. He recognised that the houses were built on London clay which, through changes in water content, could heave and affect buildings.

351. Park Village East was an almost exclusively residential street composed of large blocks of flats, a YWCA hostel, housing for elderly Crown tenants at Richmond House, as well as eighteen Grade II* Listed Buildings. The appeal site ran through or near three conservation areas: Camden Town, Primrose Hill and Regent's Park.

352. The front door of Mr Low's house was approximately 17 metres from the appeal site. Most of the other listed buildings on Park Village East and Mornington Terrace were at a similar distance, whilst some were even closer. He did not agree with the conclusions in the K&D report as to the impact and significance of the proposed works on buildings of architectural significance. Their conclusions seemed to be based more on assumptions than on any actual investigation of potential effects on listed buildings, particularly in relation to the risk of vibration in an area demonstrably at risk of subsidence. At this stage, without further investigation as to the stability of the surrounding streets and a proper assessment of the potential risks, no sound conclusions could be drawn as to the impact of the work on either listed buildings or the character and appearance of the three surrounding conservation areas.

353. Railtrack had been unwilling either to give assurances that buildings would not be damaged in any way by the works, or to give undertakings to carry out any repairs necessary as a result of potential damage caused by the works. Railtrack's record to date in responding to claims for collateral damage caused by its works was deplorable. For example, as at 31 March 1998 Railtrack had received approximately 3000 claims in relation to works on the existing network to facilitate the Channel Tunnel rail services. Not only did Railtrack's Annual Report 1998 indicate that not one of the claims had been met, it announced it intended to resist all such claims (Document AP/7).

354. A properly drafted condition to a formal grant of planning permission was the only way to ensure that Railtrack identified all potential risks to buildings, listed or otherwise, and accepted ultimate responsibility for any repairs which may be necessary as a result of this project.

355. From the various opinions of Counsel acting for both Railtrack and the Council, it appeared that both had attempted to deal with the individual elements of the redevelopment as comprising individual developments for planning purposes. This seemed a nonsense in view of the fact that these individual components overlapped and were all contained within a single planning site.

356. Since Railtrack began work in September 1998, there had been many complaints from residents about excessive night time noise and all night working which prevented residents from sleeping. Residents had learned it was pointless to contact the Balfour Beatty Helpline or the Railtrack Hotline. Works vehicles had blocked streets and on Sunday 9th May 1999 a

crane on Mornington Bridge ran its engine from around 10 am until 7 pm, joined at intervals by up to four concrete mixers which also kept their engines running (Document AP/2/4)

357. Camden had estimated that there were approximately 16,000 residents in the borough who lived by or near the appeal site, ie, within 200 metres of the rail line. Railtrack had indicated the work would continue for 2½ years. Their own statements in the press on the likely effect of the works were worrying. Railtrack had described the work as "the largest project since the Channel Tunnel", and the K&D report indicated the nature of the works was such that in some cases re-housing affected residents was contemplated. In addition, large construction projects overran time estimates more frequently than not. Even so, the only assessment to have been done was the K&D report which was an appraisal based largely on assumptions, and not an adequate basis for assessing potential impacts in any meaningful sense. In view of the nature, size and location of the proposal, and the large numbers of people living near the railway lines, it was necessary to require Railtrack to carry out a full environmental impact assessment, to accompany an application for planning permission. Once the full range and likelihood of possible effects had been assessed, safeguards could be imposed by way of planning conditions.

358. Accounting treatments of expenditures were not necessarily applicable to planning issues. However, a brief review of some accounting issues may assist in determining whether these works were merely railway maintenance as Railtrack had alleged in the past, or whether they were modification of an existing rail line. Maintenance was generally expensed and major modifications to plant and equipment were generally capitalised. Were Railtrack to expense the full cost of these remodelling works, they might argue that the works were 'maintenance' and thus be permitted under the General Development Order. However, if the works were capitalised, it was difficult if not impossible to argue that the works were 'maintenance'. If they were more than 'maintenance' they must amount to 'modification' of the rail line.

359. Railtrack capitalised expenditure on track and then depreciated it over a 100-year period. This was not 'maintenance'. 'Plant' was depreciated over 3-20 years. Thus 'track' was not 'plant' as Railtrack may claim. While it was possible to use different methods of accounting for tax purposes and for shareholder reporting purposes, it was generally accepted that tax reporting often reflected economic reality more effectively. British tax law was very specific on the subject. Railways were allowed to deduct the cost of renewing railway lines by, for example, replacing rails and sleepers. This was not considered 'an improvement' since it only restored the worn track to its normal condition and did not increase the capacity of the line in any way. However, money spent on the replacement of one kind of rail by a superior kind was not deductible, since it increased the value of the railway line. Railtrack had made it clear that one purpose of these works was to improve capacity on the line. The number and frequency of trains was to be increased. This should be defined as an 'improvement'. Railtrack had said "...for the first time in Britain, tilting train technology would be introduced allowing trains to travel up to 140 mph." This clearly amounted to replacement of one kind of rail by a superior kind.

Representations for The Kenham Property Company

360. Miss Sheila Jackson, had lived for 35 years at 1F, Oval Road, NW1, a substantial, listed Victorian house well converted into six flats. The block was owned by the Kenham Property Company, a freeholder's company, which she represented, together with a number of other houses abutting the railway at the south end of Oval Road. She first heard of the

impending Railtrack works in February 1998 from a phone call from the local press asking for her reactions to the forthcoming West Coast upgrading and its effect on local people.

361. Her garden flat was 4.5 metres from the track and a nearby property, 1A, was immediately over the track. It appeared from the K&D report (CD6) at paragraph 3.5.7, that hers was among the "28 properties at risk of considerable disturbance" (paragraph 2.2.2) due to total renewal, remodelling of track line and ballast and major renewal to overhead electrical works. There were many more than 28 properties on Oval Road and Gloucester Avenue in similar proximity to the rail lines, including the blocks of flats at Darwin Court. There were hundreds of people potentially affected in this immediate vicinity. Their concern and apprehension regarding pollution and noise arose from the appalling disturbance experienced during presumably lesser routine work at night over several years, particularly the obnoxious diesel fumes which permeated even secondary glazing and shutters. She experienced excessive fumes in her back garden and on one occasion had reported this to the Council who had dealt with it. The current operations would exceed the routine works in nature, size and duration.

362. Paragraph 2.7.5 of CD6 stated that these disturbing works must be carried out during night possessions so that commuters and other train users should not be inconvenienced: this disregarded the disturbance to residents. For residents in Oval Road the length of the possessions (see paragraphs 2.7.6 and 2.7.14), involving 52 hour weekend plus daytime work close to their homes with a substantial volume of noise, would result in an unacceptable and unreasonable lack of sleep or rest.

363. The government now encouraged living in inner city areas, and those who had chosen to do so, in many cases not owning cars and travelling by public transport, were rewarded by a lack of consideration. Although the new high speed trains were said to be quieter (CD6 paragraph 1.2.3) , there would be more of them with the resulting dust, dirt and smell in this very residential area.

364. There was concern regarding the possible damage to property in close proximity to the track in Oval Road. When residents raised this at a meeting, a Railtrack representative told them to contact their insurers. Kenham Property Company did so and were told that any damage caused by the Railtrack upgrading works would not be met by their insurance company but should be covered by Railtrack's insurance. The letter (AP/4/5) was passed to Railtrack. A constructional surveyor's estimate of a survey of the property was £800 to £1,000, a cost he said should be met by the company responsible for potential damage, but it was understood Railtrack had refused to fund surveys on vulnerable properties in Mornington Terrace. Any expenses to protect residents and their property were regarded by Railtrack with an alarming lack of responsibility. The protection of residents from Railtrack's works so that they could carry on their lives normally could only be achieved by the implementation of full planning permission and environmental assessment at the earliest possible date.

Conclusions

365. In summary the appellants' case was as follows:

i The proposals amounted to development for the purposes of section 55 of the 1990 Act.

ii The appeal site comprised a single planning unit, or part of a larger planning unit.

iii The proposals should be considered as a whole as a development proposal.

iv The development as a whole did not comprise development permitted by Part 17 of Schedule 2 of GPDO 1995.

v The project did not comprise development authorised by a private Act of Parliament which designated specifically the nature of the development authorised and the land upon which it may be carried out. Accordingly it did not comprise development permitted by Schedule 2 Part 11 Class A(a) of GPDO 1995.

vi Both the construction works and the operational railway's environmental impacts post construction should be considered.

vii The development was likely to cause significant environmental effects.

viii An EIA was required for the development.

ix Planning permission pursuant to section 58(1)(b) of the Act was required for the development.

x The current works taking place within the site were unlawful, being in breach of planning control.

xi The appeal should be dismissed.

366.The principal legal issues were mainly those matters raised in the Rule 7 letter from The Planning Inspectorate dated 11.3.99. The principal difference of opinion between the appellants and Railtrack fell into three main parts.

(a)Whether the development constituted development, being " the carrying out of operations... to provide... [modification of] a line for long distance railway traffic" for the purposes of Schedule 1, para 7 of the 1988 Regulations and Schedule 2 para 12 of the 1988 Regulations.

(b)Whether the development was exempt from the requirement for separate planning permission and an EIA because permission was granted by Class A of part 11 of GPDO and Class A of Part 17 of the GPDO

(c)Whether the development was likely to have a "significant adverse effect on the environment by virtue of factors such as its nature, size or location" for the purposes of Regulation 2 of the 1988 Regulations.

367.The last of these points was a question of fact and law which rested, in part, on the evidence. In relation to the first two legal issues, the appellants and the Council were, at least in principle, agreed. The main disagreement was as to whether the development was likely to have a "...significant adverse effect on the environment by virtue of factors such as its nature, size or location.." so as to require an EIA and therefore planning permission.

368.There seemed to be no dispute between the parties that the works comprised "development" for the purposes of the 1990 Act, and hence required planning permission. Class A of Part 17 of Schedule 2 of the GPDO described permitted development by "railway undertakers on their operational land, required in connection with the movement of traffic by rail". The Order provided that development was "..not permitted by Class A if it consists of, or includes... (a) the construction of a railway, (b) the construction or erection of a hotel, railway station or bridge or (c) the construction or erection otherwise than wholly within a railway station of ...(ii)... other building or structure provided under transport legislation." The interpretation of Class A provided that "for the purposes of Class A, references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected."

369.There was no doubt that Railtrack was a statutory "railway undertaker" (section 262(1) of the 1990 Act) and that the land concerned was almost certainly "operational land" (section 263(1)(a) of the Act). Most of the works were not taking place within a railway station, and certainly not "wholly" within one. Ultimately, the question whether the various signals, overhead electrification systems and other structures and buildings, where they were not within a railway station, comprised buildings or structures for the purposes of Part 17 Class A was a question of fact and law. The development of the railway almost certainly comprised a building, given that, by section 336(1) of the 1990 Act, "building" included "structure or erection". The advice of Robin Purchas Q.C and Timothy Comyn concluded that the railway comprised a "structure".

370.Para A2 of Class A of Part 17 excluded "....alteration of a building or structure where its design or external appearance would be materially affected." As a matter of fact and degree, the project amounted to "the construction of a railway" given that it involved virtually the entire replacement of all of its elements, ballast, track, sleepers, overhead electrification and signalling equipment, drainage. However, if they did not amount to that, they certainly amounted to alteration which materially affected the design and appearance of the railway. Vertical and horizontal alignment of the tracks were changed, new buildings would be located at new sites, bridge 11 extended to accommodate track alterations and platform 15 was to be extended. The development must be considered as a single project, thus either under A1(a) or (c)(ii) the development must fall outside Part 17.

371.It would have been very surprising if the proposed works were to fall within the relatively limited scope of permitted development in Class A. The Encyclopaedia of Planning Law, at paragraph 3B-2146 characterised the scope of permitted development in this respect as "....only incidental works required in connection with the movement of traffic by rail...". In any case, Part 17 of the GPDO, Schedule 2, was qualified by Article 3 (10) of the GPDO which provided: "....development is not permitted by this Order if an application for planning permission for that development would be a Schedule 1 application or a Schedule 2 application within the meaning of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988." Schedule 1, paragraph 7 of these Regulations included "....a line for long distance railway traffic." Schedule 2 paragraph 12 of the Regulations referred to "modification of a development which has been carried out where that development is within a description mentioned in Schedule 1."

372.In view of the various descriptions of the works which would be carried out to the WCML the question was whether such works amounted to "modification of a line for long distance railway traffic". There could be little doubt that the West Coast Main Line was such a line. The term "modification" had no particular definition within the 1990 Act and no specialised legal definition as distinct from its common usage to mean a "partial change" (O.E.D.). Again, whether the proposals represented "modification" of the line was a question of fact, but plainly proposals on this scale represented at the very least a partial change, particularly given the alteration to the vertical or horizontal alignment of the line.

373.For Railtrack it had been suggested that the "line" had not been modified. This argument rested upon the alignment of the overall curtilage of the railway having been unchanged by the works. This was a very narrow definition of "line". There was nothing in the Act or the Order which suggested that modifications to the railway line within the overall curtilage of the railway were exempt. The works very clearly went well beyond repair or maintenance. Accordingly, the proposals taken as a whole were thus excluded from the Part 17 Class A permitted development.

374. With regard to Class A of Part 11 of GPDO, there were two points: whether the works were authorised by a local or private Act of Parliament; and if so, whether the development was exempt from the requirement for planning permission, regardless of whether the development was Schedule 2 development, by operation of paragraph 12(d) of Article 3 of GPDO 1995. The principal provision relied upon by Railtrack was section 16 of the Railway Clauses Consolidation Act 1845. It was not accepted that "constructing the railway" amounted to designating "...specifically the nature of the development authorised" for the purpose of Part 11. Section 16 of the 1845 Act did not extend to the comprehensive redevelopment, replacement and modernisation of the railway. This development was not the railway constructed pursuant to the 1845 Act. Nor did the works merely amount to alterations and repair which were permitted from time to time. Even if they were, such broad terms as alteration and repair did not designate the works which comprised this development. Accordingly the development, as a whole, was not authorised by the 1845 Act, or any other private Act of Parliament.

375. If Railtrack could show that the works were development authorised by a private Act of Parliament, they had a further and more substantial hurdle to cross. They had to show that they could rely on the exemption in Article 3(12)(d) to avoid the need to provide an EIA. The question was whether Railtrack, in relying on the Victorian private railways acts to come within Part 11 and Article 3 (12)(d), could defeat the objects of the Directive. The projects in Annex I and II of the Directive were, so far as relevant to this scheme, identical to those projects identified in Schedules 1 and 2 to the 1988 Directive. The purpose of the Directive had been most recently described in the House of Lords: "This Directive was adopted to protect the environment throughout the European Union by requiring member states to ensure that planning decisions likely to have a significant environmental effect were taken only after a proper assessment of what those effects were likely to be. It requires that before the grant of "development consent" for specified kinds of project, member states should ensure that an environmental impact assessment is undertaken" R.v.North Yorks ex parte Brown [HL] [1999] 1PLR 116 per Lord Hoffman at 118B.

376. Any domestic legislation, whether enacted before or after the relevant EC law, must be read so as to be consistent with European Community legislation (Case C - 106/89 Marleasing v. La Commercial Internacional de Alimentacion S.A [1990] ECR I -4135; Pickstone v. Freemans plc [HL] [1989] AC 66). In the case of irreconcilable conflict between a provision of EC Law and a provision of domestic law, the EC provision took precedence and domestic law had to give way (Case 106/77 Simmenthal II [1978] ECR 629; ECJ and HL in Case C-213/89 R.v. Secretary of State for Transport ex parte Factortame *(No 2)* 1990 ECR I - 2433; [1990] 3 WLR 818). Article 1(5) made it clear that the disapplication operated in relation to those projects which were the subject of a specific act of national legislation where ".... the objectives of this Directive, including that of supplying information, are achieved through the legislative process..."

377. Railtrack's case was that the 1988 Regulations did not apply to the works because the "planning regime introduced in 1947... ...expressly excludes the requirement for an environmental assessment in relation to such works". This argument fell at the first hurdle. Reliance on one's parentage and re-enactment was notoriously the downfall of domestic legislation which failed to comply with EU law. Nor did the fact that the GPDO had been enacted subsequent to the Directive help (Simmenthal (supra) paras 16 & 17). It followed that on any reading of the effect of the GPDO, it could not exclude the requirement for an EIA if the project was "likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location". Extra force was added to this submission by the

House of Lords Standing Order 27A which provided for the deposit of an EIA in accordance with the 1988 Regulations where such an assessment was necessary in relation to any "... bill authorising the carrying out of works the nature and extent of which are specified in the bill on land so specified..".

378. This was referred to in Circular 3/95 "Permitted Development and Environmental Assessment" at paragraph 11. Two questions arose: did the C19th private Acts qualify as "specific acts of national legislation" for the purposes of the Directive; and was this a project, "... the details of which are adopted by a specific act of national legislation"? The whole scheme of the operation of the legislation, including the GPDO must be that those developments which were authorised by "specific act of national legislature" required an EIA during the parliamentary procedure, while those which would not normally require express planning permission, but were not authorised by private or local Acts, were caught by Article 3(10) of the GPDO. It could not have been the purpose of Article 1(5) of the Directive that development which was authorised by Acts of the national legislature which might predate the Directive by 150 years should be excluded. Rather, it provided for alternative pathways, each subject to the appropriate scrutiny of such projects. The private Acts of the C19th could not, as a matter of law, specifically adopt the details of this project - they were simply not known at the time.

379. The proposition that, somehow, major infrastructure projects which were likely to cause significant adverse environmental effects should be excluded from the requirement of an environmental impact assessment because their authorisation stemmed from primary legislation, however antique that legislation may be, was hostile to the fundamental object of the Directive. Accordingly, Railtrack was not able to rely on the various Railways Acts of the 19th Century to avoid the requirement for an EIA. Thus, if this was a project for which an EIA was required, it was, by Article 3(10) not permitted by the Order and required specific planning permission.

380. The next question was whether it was a project where "....an application for planning permission for that development would be a Schedule 1 application or a Schedule 2 application within the meaning of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988." (GPDO 1995 Article 3(10) Prima facie, this was exactly the kind of project which, by virtue of its nature, size and location would normally require an EIA, both by virtue of the works and the end product - the operational railway. Circular 15/88 contained relevant advice at paragraphs 20 to 25. The project was one whereby "as part of the Railtrack's Core Investment Programme, 2.8 km of track between Euston Station and Primrose Hill Tunnels will be renewed and remodelled to meet current and future operating requirements of the line, as the first phase of the modernisation" of the "...West Coast Main Line between London, the Midlands, the North West and Scotland." (CD6 para 1.2.1) The project was clearly a "major project" of "more than local importance". Although many of its environmental impacts were local, it was otherwise unrelated to the local scene. The project was of such a scale and nature that its construction would take more than two years of heavy engineering works. Projects to which the Directive applied were defined as, inter alia, "...the execution of construction works..." [85/337/EEC: Article 1(2)]

381. The project should be considered as a whole, rather than as a series of discrete projects. Indeed there was a serious question whether the whole of the modernisation of the WCML should be considered as a single major infrastructure project, particularly in respect of its post construction impacts (R. v. Swale BC ex p. RSPB). When completed and operational, the project would allow for regular and frequent heavy rail passenger and freight services to

operate along this section of line at greater frequency and at higher speeds than at present. The project was clearly in a "sensitive location" as defined in paragraph 25 of the 1988 Circular, being entirely within an area containing a "..heavy concentration of population". It was also within an area where nationally important historic buildings within designated conservation areas were sited directly adjacent to the site. As Circular 15/88 noted at Para 24 "For any given development proposal, the more environmentally sensitive the location, the more likely it is that environmental effects will be significant..."

382. There was no indication that the Council ever properly assessed the project in the light of the guidance in the Circular. The report to committee dated 13th October 1998 (CD 7 & 8 Appendix A) which purported to refer to relevant guidance made no reference to the Circular. Similarly nor did any of the Council's legal advice. The procedure for establishing whether an EIA was needed was a screening process. Thus, given that the project was plainly one which, upon carrying out the exercise described in Appendix B of Circular 15/88, would be likely to cause significant adverse environmental effects, it was necessary to consider whether there was evidence of environmental impacts which would rebut that presumption.

383. It was common ground that the most significant environmental impact both during the construction phase and in operation of the modernised railway, was likely to be noise, although vibration and the movement of contaminated ballast and the effects of construction work on air quality by generation of dust and other emissions were also potentially significant.

384. The Kennedy and Donkin report [CD 6] was accepted by both Railtrack and the Council as not comprising an EIA for the purposes of the EIA Regulations 1988 or 1999. This report advised that "...some 34 properties have been predicted to receive a significant noise impact during the construction period..." [CD6 para 3.7.2] The Report considered mitigation measures but concluded that "If , following the provision of all practical mitigation, noise levels, which are considered to be unacceptable, are experienced at certain properties for significant periods of time, Railtrack may wish to consider whether a scheme of noise insulation or temporary rehousing would be appropriate.." Thus, at the time of the submission of the appeal, the only environmental appraisal of construction effects suggested that there would be significant noise impact on residential properties and that these might be experienced at certain properties for "significant periods of time", such that rehousing might be needed.

385. Just prior to the opening of the inquiry it was made clear by Railtrack that they no longer relied on the noise evidence in the K&D report. They had put forward no expert witness to give noise evidence, nor did they give the reasons why the K&D report was not relied upon. Given the importance of the issues and given that all parties agreed that noise was the most significant environmental impact, it was extraordinary that Railtrack did not call anyone who could answer concerning noise. This was left to the Council. However, with all its flaws, despite Railtrack no longer wishing to rely on the K&D report, with its somewhat inconvenient conclusions, it must form part of the evidence in deciding whether the project was likely to cause significant environmental impact.

386. The two aspects of the project, that was construction and post construction, should be dealt with separately. Concerning construction, the question of whether an EIA was required was supposed to be a matter dealt with prior to work commencing. In this case there was an unusual situation whereby the works had already commenced and some of the environmental effects could be measured. The works were taking place in a situation where Railtrack were

fully aware that their works were taking place under intense scrutiny and where an adverse decision here could have profound effects on the way that they carried out the works on future phases of the WCML modernisation, as well as this one. They were doing everything possible to reduce the environmental effects and were on their best behaviour. Given the level of detail that Railtrack's environmental consultants had provided, it was remarkable that they had failed to provide the relevant information actually needed to properly identify and quantify the environmental impact of the proposals.

387. In order to identify the significance of the environmental effects of noise caused by construction works, it was necessary to identify what numbers of people or properties were affected, to what extent and for how long they were exposed to the noise. No such evidence had been provided. The section 61 applications, which Railtrack and the Council relied on for their assessments, provided only partial and fragmentary information. Their principal function was to give information about mitigation, rather than to assess the impact on the community. There was no evidence which identified the noise impacts of the phase of works from July 1999 to the end of the contract in October 2000, which would presumably be the subject of the next section 61 application, yet to be agreed by the Council. The section 61 applications in the form submitted were inadequate as a means of assessing noise impact. From the local community's point of view, the section 61 mechanism was wholly inadequate as a substitute for an EIA because they were not consulted on section 61 applications.

388. The Council's approach to the regulations was wrong and, accordingly, their assessment of the significance of the noise impact of the works should not be relied on. In cross examination their expert accepted that there was nothing in the Regulations or the Circular which restricted EIAs to long term or permanent effects. Their interpretation of the word "significant" was wrong, as a matter of law. The term "significant" was not defined in the Regulations or the Circular. That word should be given its natural and ordinary meaning and should be used in that way in any determination as to whether the environmental effects were significant. Ordinary definitions included "noteworthy; of considerable effect" (OED 6th Ed) and "important, worthy of consideration" (Chambers 20th Century Dictionary). Indeed the question of significance was not one of expert opinion, but one of judgement, to be made by the decision maker.

389. Crucially, it was accepted for the Council that their expert evidence did not identify changes in noise levels caused by the works. It was agreed that the section 61 applications did not identify changes in levels of noise, they simply identified some of the absolute noise levels during the work. Yet it was accepted for the Council that the environmental impact could not be considered without considering the change in noise levels. They also agreed that any assessment of the degree of noise nuisance needed to take account of the length of time that people were exposed to the noise and the number of occasions. The section 61 applications could only give a partial picture, as they only deal with sections of work and only selected properties. Finally, they agreed that the extent of the significance of impact involved a consideration of how many people or properties were affected and that this assessment was not made either in their evidence or in the section 61 applications.

390. So, of the four agreed key factors, two of them (change in noise levels and numbers of affected properties) were not quantified at all. Absolute noise levels were considered in the evidence, but not against any threshold which gave them any measure of nuisance. In any case, without reference to ambient levels, they were of very limited use. Period of exposure was assessed in the evidence and in the section 61 application in relation to only a sample of properties. The Council's evidence was deeply flawed in both their understanding of the test for "significance" and in the absence of crucial factual data and thresholds against which to

assess that data or any way of identifying the degree of nuisance which would arise and for how many properties or people. Although the K&D report identified sensitive receptors which would be exposed to noise it remained the fact that there was no exercise which had been carried out whereby this could be cross referenced with the identified noise levels at any receptor from the section 61 application.

391. As to significance, it was agreed that there was nothing in the Regulations or the Circulars which suggested that temporary, sporadic, intermittent or transitory effects were not capable of being significant. Indeed, it was a matter of common human experience that some of the worst noise nuisances were just that, being both sporadic and intermittent. In the light of this, the evidence which had been presented by the environmental experts was of very limited use; indeed it was worse because it was based on false premises. There was a real danger that the Secretary of State would misdirect himself, if he were to rely upon the judgements of either Railtrack's or the Council's experts.

392. Instead, such data that there was should be considered. The K&D report should not be disregarded. That report, with all its flaws, identified significant noise impacts on a number of properties caused by the works. Unfortunately the numbers were not quantified. The works also tended to take place at the time when they were most likely to cause nuisance - at night or at weekend. Plainly on any ordinary or normal reading of the Regulations, the noise impacts were "significant". Taking the "broad significance of the issues raised by the proposal", and the description of the scale, nature and location of the proposals, this was plainly a project where, on grounds of noise impacts alone, an EIA was required for the construction works.

393. However, there were indications that noise was not the only issue. A major justification for the use of EIAs for major development projects was that, by carrying out the assessment, environmental impacts which might not, at first, be apparent were identified. It must be a matter of some concern that evidence of the presence of asbestos in the old ballast was only revealed in cross examination. No evidence was led by Railtrack on that matter. The section 61 CoPA procedure was only concerned with noise and therefore would not identify such matters. No evidence was given as to the extent of its presence, its concentration, the type (blue, white, brown etc), nor the methods used for its removal. It was impossible to quantify any environmental risk arising from its presence, because Railtrack did not provide any information and the Council did not seem to have been involved or informed at all. In the circumstances, and taking the precautionary approach, the presence of carcinogenic material such as asbestos in old ballast on the site would tend to indicate that an EIA was desirable, where large scale ballast removal was a major ongoing feature of the works.

394. With regard to air quality, Railtrack relied on the K&D report in so far as they asserted that its conclusions were still accurate. No assessment, either of existing levels of air pollutants, nor of any emissions was made. The only evidence was the assertion in the KD report at para 6.5.2 that "...the likely impact of diesel or petrol engines from either fumes or PM10 is considered insignificant due to the high existing level of traffic in the area...".

395. The primary concern of the appellants had been with the construction effects of the railway, which represented an immediate and serious adverse effect on the environment for residents in the vicinity of the project. However, it was common ground that the environmental impact of the operational railway was also relevant to the question whether the project caused significant adverse environmental effects. Evidentially, there was very scant information about the environmental impact of the operation of the railway post construction. The K&D report made no attempt to assess the operation of the railway post

construction. Railtrack had produced no evidence of the effects of the operation of the railway post modernisation.

396. The Council had produced some work relating to operational noise, post construction. The number of trains on the original Railtrack projections generated an additional 2dB, and the increased speed of trains increased the noise levels by 1.4 dB. Thus the combined levels caused an increase of 3.4dB. To give that figure a meaning, because 3dB was equal to a doubling of noise energy, it must mean that the effect of the operational railway was the equivalent of two trains passing on occasions where, at present there was only one. This was, in the ordinary and natural meaning of the words, a significant adverse environmental effect.

397. It was essential to consider the existing situation - indeed that should be the starting point for any assessment of environmental impact. However, there was a need also to consider the absolute effect of the railway project, when it was complete. If it was not possible to do so, then by minor increases in, say, noise, by a process of attrition, the environmental conditions in the vicinity of a major national infrastructure project such as this may become intolerable. Given that the purpose of this scheme was to enable more trains and faster trains to run, and the scheme was one which would prima facie require an EIA it was a matter for amazement that Railtrack had stayed almost entirely silent on this and all other aspects of the environmental impact of the operational railway. It may be right that the new trains would be quieter and the lesser number of joints in the rails will reduce noise, but it was not good enough that they had failed to produce a shred of evidence to support this.

398. Such comprehensive modernisation projects offered rare opportunities to improve the quality of life of those who were affected by them. In this case, the opportunity would be unlikely to come again for at least 30 years, being the design life of the scheme. The inference that those who lived next to the railway chose to do so should be rejected as well as the suggestion that a poor environment was all that they could expect from living in the urban area. It was that kind of thinking which led to the degeneration of the inner cities.

399. Railtrack acknowledged that this scheme included no specific environmental mitigation measures; only those whose claimed mitigation effects were co-incidental to their operational requirements. It should be a finding of fact that, whilst the only evidence of impact caused by the completed scheme was one of deterioration of the environment, the promoters of the scheme accepted that this project incorporated not one specific measure or feature to mitigate the environmental impacts caused by the WCML between Euston and the Primrose Hill Tunnels.

400. The nature, scale and location of the project would indicate that it was one in respect of which an application for planning permission would be a Schedule 2 application for the purposes of the EIA Regulations 1988, which would be likely to have significant effects on the environment, both in its construction works and after the works were completed. Accordingly, the project was not permitted development pursuant to the GPDO 1995. Thus no certificate under section 192 could be issued and the appeal should be dismissed

401. A number of benefits might flow from requiring a grant of planning permission for such development. These were set out in detail in Document AP/10, paragraphs 3.124 to 3.139. These included the benefit of subjecting the project to scrutiny in the public interest, where there was a planning application to be determined. The requirement for an EIA and planning permission would ensure greater control over the construction phase. It would also enable the LPA to negotiate improvements and to insist on Best Available Techniques being

applied to environmental mitigation of the effects of the finished modernised railway. This may well add to costs and delay but it was doubtful if these were significant when compared to the benefits.

THE CASES FOR INTERESTED PERSONS

Mr S Neave

402.He lived and worked at 148 Gloucester Avenue NW1. His house was close to the Regents Park Bridge (Bridge 11), being within 20 metres of it. He had watched the alteration works which had taken place during a period of more than a year. They involved the replacement of a concrete pier. Trains had brought in new material and taken away demolition waste including old masonry. The work had caused him little disturbance and he had no objection to it. The only noise had been caused by the banging of wet clay from a bucket and on complaining he was told it would not happen again. The powerful machinery used was well silenced and the workmen generally polite and civil.

Miss M Muir

403.She lived at 10, Mornington Crescent, which was a house backing onto the railway at the southern end of the crescent. These were possibly the only houses backing onto the railway which were designed by John Nash. The whole crescent was completed in 1832. The house was only two rooms deep. She had lived there for 8 years and was used to the noise of trains, which could be a comforting noise. However, the works carried out at night since last year had not been intermittent. The noise had been dreadful and there was no refuge from it. Her windows looked over the railway and she had experienced a cacophony of noise including drills, hammering and workmen shouting. The noise travelled straight into her daughter's bedroom. It was impossible to have windows open.

404.The prospect of floodlights and dust pollution would be harmful to health and the quality of life. Miss Muir was used to normal maintenance work; there were always gangs of men working somewhere on the line. She had little confidence in Railtrack's safety record from newspaper articles she had read. Their notification procedures were erratic. She had only received one notification of future works from them; that was on 3 September 1998 relating to works from 4 to 20 September. She had made several calls to their contact numbers to complain and only once received an apology. There was no notification before the works which took place all through last Christmas and the May bank holiday, nor was there any apology afterwards. An £8000 donation by Railtrack to a charity was an insult to residents whose holidays had been disrupted. It was wrong that the interests of Railtrack's shareholders appeared to be more important than those of local residents.

405.Miss Muir was also disappointed with the Council who had shown themselves to be efficient in other areas. She was also concerned by the conflict of interest displayed by Councillor Olszewski.

406.It was only through the commitment and determination of the residents' associations, of which she was not a member, that the inquiry had been brought about.

Mrs T Drakes

407.She was treasurer of the Park Village (and Environs) Residents' Association.

408.Some of the cross examination of Helen Bryan appeared to suggest that she had been acting for residents as a lawyer. That was incorrect; she was a resident of Park Village and shared

the views of her neighbours. Mrs Drakes had receive a considerable volume of letters from local residents all supporting the appeal. Ms Bryan had put in hours of voluntary work assisting with the preparation of the case.

Ealing Aircraft Noise Action Group (EANAG)

409.EANAG was a major party to the recently closed Heathrow Terminal 5 inquiry (Document IP1/1). The Group was concerned to read about the implications for Railtrack if the appeal was dismissed. Consequently they wrote to the Government Office for London (Document IP1/2). If Railtrack should become obliged to have local public inquiries for those parts of the various proposals which did not require to be examined under Transport and Works Act Procedures to enhance rail access to Heathrow, then the provision of this additional rail access would be delayed almost indefinitely. The appeal should be decided in favour of the status quo, which had operated satisfactorily since the initial construction of the railway network.

Mr S Plowden

410.He was a transport planner with extensive professional experience and involvement with environmental and citizens' groups (Document IP2/1). The inquiry had been focused on the method of carrying out the work rather than the desirability of its outcome which most people seemed to regard as self-evident. However it was important to distinguish between restoration, which was desirable, and up-grading to carry high speed trains, which was more questionable

411.High speed trains had a number of disadvantages. Firstly fuel consumption rose sharply with speed, contributing to global warming. Secondly noise rose sharply with speed in a similar way. This was not a problem in this locality since trains would continue to enter and leave Euston slowly. However it would be a problem along most of the track as far as Glasgow. Thirdly, because of acceleration and deceleration delays, high speed trains could only operate with a limited number of stops. High speed trains were likely to encourage a trend for people to travel further to work and for journeys for all purposes to become longer. Fourthly, unless all trains on a particular line were high speed, their introduction on that line would reduce its capacity, creating problems for local passenger trains and freight trains. Lastly, it cost more to upgrade the line to carry high speed trains than simply to restore it to a good standard of maintenance.

412.Mr Plowden could not quantify these factors, but Railtrack should be required to do so. For many years anyone proposing to build or extend an airport or build a new road had been obliged to provide a noise contour map and to estimate the population living within each contour band. It was astonishing that Railtrack had not been required to do so. They should also be required to give detailed quantified comparisons for each of the other factors listed, between the two main options of restoring the line for more safe and reliable operation and upgrading it to accommodate high speed trains.

WRITTEN REPRESENTATIONS

Primrose Hill Conservation Area Advisory Committee

413.The CAAC welcomed the WCML upgrading. They had given careful consideration to the K&D report. They accepted that insofar as the proposals related to repair and maintenance they did not require planning permission However they considered that other elements of the works required Listed Building consent

414. There was serious concern that Railtrack's description of the work had proved imprecise, in particular in relation to Bridge 11. It was noted that listed buildings within the appeal site and adjacent to the Primrose Hill Conservation Area were Stephenson's Camden incline handling engine house and railway vaults and the Primrose Hill Tunnel portal, both listed Grade II. It was not accepted that the mitigation measures proposed in the K&D report at paragraph 9.6 were, taken alone, acceptable. Where any work would alter a listed building it should be subject to procedures for obtaining listed building consent, having regard to PPG 15, at 3.2. Any planned work which could affect the listed buildings should be subject to control. The precautionary principle should be followed in respect of listed buildings (PPG 15, 3.3).

Regent's Park Conservation Area Advisory Committee

415. The CAAC welcomed the WCML upgrading. Their comments were limited to issues relating to Park Village East, which contained Listed Buildings and their settings. The CAAC were aware of the long term and continuing problems due to unstable ground conditions between the railway and the former canal. The contention at paragraph 9.6.2 in the K&D report about the distance of the listed buildings from the works was not accepted. Any work which might affect the strip of land and the Listed Buildings standing upon it and the setting of those buildings should be subject to Listed Building consent. The precautionary principle should be followed in respect of this major group of Listed Buildings (PPG 15, 3.3).

Mr S Passmore

416. Mr Passmore lived at 15 Eskdale, Stanhope Street and wished to make comments on behalf of residents of Eskdale, which overlooked the line at Granby Terrace. Their concerns were for children and the elderly. This was going to be a major long term project involving all night working. It would be far noisier than normal maintenance and would have a devastating effect on local residents. It would have a detrimental effect on children going to school. Pollution from dirt and dust was another concern and it should be controlled. He had experienced this sort of noise during the 1960s, it was so bad that the MP of the time had visited in the middle of the night. Thereafter work was completed during daylight hours. Planning permission was essential so that there was control over Railtrack's activities. The Council's view that planning permission was not necessary was not understood. Residents' interests should be taken into consideration.

FINDINGS OF FACT

(Figures in square brackets indicate the paragraph, or document, from which facts are derived.)

417.I find the following facts:

The Site and Surroundings

(i)The site comprises railway tracks, running mainly in a cutting with steep brick faced sides between Euston Station and the Primrose Hill tunnel portals. It is approximately 2.8 km long. [6]

(ii)The track forms part of a larger route, known as the West Coast Main Line (WCML), serving the West Midlands, North Wales, the North West of England and the western side of Scotland. [6]

(iii)Apart from some commercial properties and railway land outside the site, the track is flanked by mainly residential properties, including those in Mornington Crescent, Mornington Terrace, Park Village East, Oval Road and Gloucester Avenue. The site is well contained by the retaining walls flanking the tracks on either side, the terminus of Euston Station at one end and the ornate portals of the Primrose Hill tunnels at the other end. [7, 8]

Background

(iv)The main parties agree that:

(a) Railtrack Plc is a statutory undertaker within the meaning of s262 of the 1990 Act;

(b) the site comprises Railtrack's operational land as defined in s263 of the 1990 Act;

(c) the site is a single planning unit;

(d) The remodelling works, subject of the application, should be treated as a single project subject to a single contract.

(e) The works commenced on 28 August 1998. [9, 57]

(v)The LDC application under s192 was dated 13 July 1998; the appeal was made on 14 September 1998. [2, 321]

(vi)Euston Station accommodates in excess of 600 train movements per day serving about 115,000 passengers daily. [31]

(vii)The station operates with 18 platforms served by 3 Up lines and 3 Down lines. [32, Document RT1/4]

(viii)In 1996 Her Majesty's Railway Inspectorate (HMRI) served an improvement notice following a derailment caused by the condition of the Permanent Way. [36]

(ix)HMRI required a 20 metre retardation zone to be provided behind each buffer at the station. [41]

(x)The Council resolved on 18 March 1999 that it would have granted an LDC had an appeal not been made. [217, 232]

The Secretary of State's Rule 7 Issues (from his letter dated 11 March 1999, paragraph 3)

Scheme Details - paragraph 3(1)

(xi)Plans of the project accompanied the application. [CD2]

(xii)The scheme was the subject of an environmental appraisal report by Kennedy & Donkin in April 1998. This appraisal does not take the form of an environmental statement under Regulation 2(1) of the 1988 Regulations because it does not follow the precise format of Schedule 3 in relation to "specific information".[9, 26, CD6]

(xiii)The Kennedy & Donkin Report included an assessment of the construction strategy and a programme, including what possessions of the railway would be required to carry out the works. [43]

(xiv)Possessions are required to provide a safe working environment. [55]

(xv)In brief the works comprise:

(a) track layout renewed without materially altering the vertical and horizontal alignment;

(b) new track layout including material alterations to the design and layout of existing track work;

(c) alterations to retaining walls;

(d) new and replacement gantries or portal structures supporting signalling equipment and overhead line electrification (OLE);

(e) new and replacement signalling equipment and structures with computer controls;

(f) extension of platform 15 and minor works to other platforms and buffer stops;

(g) partial reconstruction of Bridge 11 (Regents Park Road) to accommodate realigned track;

(h) small alterations, including provision of equipment cabins and redevelopment of an amenity block outside Euston Station near the EWS depot. [25, 45 to 54, 79, Documents RT1/1 and RT5]

(xvi)The purpose and objectives of the work are:

the replacement and simplification of existing track layout between the country end of Euston Station and the southern portals of the Primrose Hill tunnels including removal of cross-overs and hence conflicts between train paths into and out of the station;

the rationalisation and upgrading of the signalling equipment on the approaches to Euston Station in order to comply with the current safety and other standards; to improve the timing of access and egress of trains to and from the station and to reduce and thereafter minimise maintenance work;

the replacement and modification of the electrification system with modern apparatus in accordance with current standards. [10, Document RT/5]

(xvii)Operational consequences will include a substantial improvement in the accessibility of Euston through simplified train paths with minimisation of train delays outside. Average line speeds will be increased in part but will still be subject to current speed limits through and at the Primrose Hill tunnel portals and in the approaches to the station. The capacity of the station approaches will be increased in relation to the number and class of passenger trains which may be accommodated. [10, Document RT/5]

(xviii)A detailed programme for carrying out the works is set out in Document RT1/10 [57]

(xix)Between August 1988 and Easter 2000 track renewal, works to retaining walls, the Bridge 11 works and OLE works will take place. From Easter 2000 to September 2000 blockades of the station will commence. [57]

(xx)Details of completed works as at the end of May 1999 are shown at Document RT2/13. [92]

(xxi)A proposed ramp at Mornington Terrace has been omitted and the Bridge 11 works modified so as to be less intrusive. [25, 72, 234]

(xxii)The Bridge 11 works are now complete. [52]

(xxiii)Types and numbers of plant used in the various generic activities such as track relaying and OLE work, together with time-tabling details are contained in Document RT2/11. Photographs of track relaying equipment are at document RT2/12. [80, 87, 88, 89, 90]

(xxiv)As a requirement for tendering, tenderers submitted a Tender Environmental Management Plan setting out their Proposed Environmental Management System for the project. [69, Document RT9]

(xxv)Construction noise and vibration levels are controlled by adoption of best practicable means (BPM), (S72, CoPA). [71]

(xxvi)Prior consents for work on construction sites under s 61 CoPA have been granted subject to a number of conditions including a requirement to use BPM at all times and to monitor noise and vibration. [73, Document RT2/4]

(xxvii)So far 36 weekly environmental method statements have been submitted listing tasks being undertaken and machinery being used with lists of typical mitigation measures. [73, Documents RT11/1 to RT11/7]

(xxviii)Environmental controls to minimise noise and vibration are contained in Document RT2/5. These include use of low noise plant and mobile noise screens; maximisation of day time working; fixed noise barriers at Juniper Crescent, Gilbeys Yard and Mornington Terrace and noise and vibration monitoring and reporting. [74]

(xxix)Environmental controls to safeguard the water environment are at Document RT2/7. [75]

(xxx)Environmental controls to safeguard air quality are at Document RT2/9. [75]

(xxxi)Environmental controls for traffic management are at Document RT2/10. [76]

(xxxii)Prior to commencement of works on site, method statements are produced detailing methodologies to be adopted. There are two types of statement: task specific method statements and environmental method statements. The latter include those matters listed in paragraph 4.3 of Document RT2/1. [78]

(xxxiii)The total cost of the scheme ranges between £100M and £150M and the lifespan of the works is predominantly 30 years. [58]

(xxxiv)The works are being funded through Railtrack's Core Investment Programme [60]

(xxxv)The works are primarily motivated by the need to overhaul and upgrade this section of the WCML. [61]

Details of Planning Permissions - Paragraph 3(2)

(xxxvi)Railtrack rely on grants of planning permission by virtue of Article 3 and Parts 11 and 17 of Schedule 2 of the GPDO 1995. [191 and Document RT15]

(xxxvii)Prior approval to the detailed plans and specifications of the Bridge 11 works, as required by Condition A.1 of Part 11 of the GPDO was obtained from the Council on 7 December 1998. Prior approval of those details in relation to the extension of Platform 15 has yet to be obtained. [218, 221]

Details of Local or Private Acts or Orders - Paragraph 3(3)

(xxxviii)Railtrack rely on a number of private Railway Acts of Parliament, identified in Documents RT4/1 to RT4/5, for the purposes of Article 3(1) and Part 11 of the GPDO 1995. [104, 130]

(xxxix)The key provision they rely on is s16 of the Railway Clauses Consolidation Act 1845, which was incorporated with and so formed part of the London and Birmingham Grand Junction and Manchester and Birmingham Railways Companies Act 1846 (Section II) (CD3/4), the London and North-Western Railway (New Lines etc) Act 1873 (Section 2) (CD3/5), the London and North-Western Railway Act 1884 (Section 2) (CD3/6) and the London and North-Western Railway Act 1912 (section 2) (CD3/7). The 1846 Act also applied the provisions of the 1845 Act retrospectively to the Acts of 1834 and 1838 which it replaced (CD3/4 section II pages 31-2). [104 to 115, 131]

(xl)Extracts from the relevant provisions of these Acts are at CD3; plans and sections deposited with them are at CD4. At CD4/1 is a composite plan showing the centre line of the railway as authorised by the Acts. [108]

(xli)Within the appeal site, the centre lines of the four core railway authorisations faithfully describe the present corridor. The authorised limits of lateral deviation are as wide, if not wider, than the current railway boundary. All limits abut or interlace, without any gaps. [114]

Environmental Impact Assessment Considerations – Paragraph 3(4)

(xlii)Railtrack do not dispute that the WCML, of which the appeal site forms a small part, is an existing line for long distance railway traffic. [153]

(xliii)The proposed works do not involve the construction of a new railway line. [65]

(xliv)The works are confined to the boundaries of the existing line; no new land is taken.[154, 239]

(xlv)The works involve the realignment of some rails, but they do not affect the route of the long distance railway. [45, 46, 65]

(xlvi)Changes in levels and in horizontal alignment are set out in Document CD13/3A. [154]

(xlvii)The Appellants and the Council claim that the works are within paragraphs 7 and 12 of Schedule 2 to the 1988 regulations "being the modification of an existing line for long distance railway traffic". Railtrack dispute this. [149, 150, 154, 226, 372, 373]

(xlviii)The works will provide an opportunity for additional rail services, leading to some increase in train movements, but no increase in night time movements. [47, 48]

(xlix)The existing and final track layouts with respective speed limits are shown in Document RT10. [63]

(l)Other sections of the WCML in separate locations will be subject to renewal works. There will be sections of the whole WCML which will not need to be modernised. [64]

(li)Works trains are not allowed to remain idling for long periods. [84]

(lii)Projected hours of working are determined by the availability of possessions. [91]

(liii)Construction noise is subject to control through the s61 CoPA procedure. [94, 212]

(liv)Few complaints of noise have been made. Since 28 August 1998, 26 calls to the project help line have been received, not all of which were complaints. [94]

(lv)Railtrack has instigated a programme of public consultation. One of the conditions on the s61 consents requires that local residents likely to be affected by the works are advised at least 14 days before they commence. [95 to103]

(lvi)As a worst case example, the highest predicted noise level, estimated at 90dB $L_{Aeq,1hr,}$ was shown at the rear façade of 36 Gloucester Avenue over the night of 15/16 May 1999. [174, 243]

(lvii)In terms of operational noise, post construction, an increase of more than 3dB was considered to be a significant environmental issue. [248]

(lviii)Of the vibration levels monitored by the Council to date under the s61 conditions, none posed any building damage risk. [253]

(lix)The appellants accept that noise and disturbance are the main environmental issues. [327]

(lx)Camden Town Conservation Area, and other conservation area boundaries are shown at Document CC1/7. [334]

(lxi)Survey and design details of Nash House, Park Village East are contained in Document AP/s/s. [345]

(lxii)Two of the Nash houses in Park Village East have been buttressed from the rear. [347]

CONCLUSIONS

Bearing in mind the foregoing facts:

418. The issues raised by this appeal are primarily matters of fact and law, which are for the Secretary of State to determine. However, my conclusions are as follows.

419. The core issue in the appeal, as identified by the Secretary of State on 11 March 1999, is set out at paragraph 3 above and is essentially a question of whether the works are permitted development under the provisions of the GPDO 1995, Article 3(1) and Class A of Part 11 and Class A of Part 17 of Schedule 2.

420. The works are as briefly described above, at paragraph 417 (xv) (a) to (h). I am satisfied that they fall within the definition of development contained in s55 of the 1990 Act, as being a mixture of primarily building and engineering operations. This was not disputed by any of the parties. Accordingly planning permission is required.

421. It was common ground between the parties that Railtrack Plc is a statutory undertaker for the purposes of s262 of the 1990 Act and that the site comprises Railtrack's operational land as defined in s263 of the Act. I see no reason to disagree with that.

422. Although the site forms a small part of the much larger WCML, I consider it appropriate to treat it as a single planning unit for the purpose of this appeal. This is because of the strong physical and visual containment of the land by retaining walls, the station and the Primrose Hill tunnel portals. Moreover, the land contains the complex layout of weaving tracks and equipment which form the approaches to Euston Station and to that extent it differs in character somewhat from the more regular and linear form of the main line itself.

423. Whilst the remodelling works can be subdivided into some 8 categories of activity, I agree with the parties that it is appropriate to treat the whole as a single project, subject to a single contract and programme. The works are in many respects inter-related and they share a common objective of renewal and updating to provide a more efficient means of organising and handling railway traffic into and out of this important main line station.

424. In my opinion it is the very self-contained character of the remodelling scheme in terms of both its physical nature and its strongly identifiable objectives for improving this particular part of the WCML which make the project stand alone from any other works which may be planned for the WCML as a whole. It is for that reason, having regard to the matter raised by the Secretary of State at paragraph 3(4)(a) of his Rule 7 letter (Document 4), that I conclude that the works do not form an integral part of an inevitably more substantial development. If that is accepted, then the facts of this case are distinguishable from those of R v Swale Borough Council ex parte Royal Society for the Protection of Birds [1991] 1 PLR 6.

425. The works did not commence until after the date of the application which was, therefore, appropriately made under s192 of the 1990 Act. The works were actually begun on 28 August 1998, that is to say before 14 March 1999. If they were permitted development then any requirement for an environmental (impact) assessment would fall for consideration under the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 ["the 1988 Regulations"], as elaborated by advice in Circular 15/88, rather than the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

426.I turn next to deal with the substantive issues raised by the Secretary of State at paragraphs 3(2) to 3(4) of his Rule 7 letter. In very brief and simple terms it is Railtrack's case that most of the works are permitted by Class A of Part 11 of Schedule 2 of the GPDO 1995, with only the new amenity block and possibly the REBs being permitted by Class A of Part 17. Although the Council agree that the works are lawful, their case is somewhat different as to the split between which elements are permitted by Part 11 and which by Part 17. The appellants, acting as third parties, take the view that none of the works are permitted by the GPDO because only Part 17 would be available to Railtrack but that, because of the provisions of Article 3(10) of the GPDO and the requirement for an environmental assessment, permission is not granted under Part 17 and hence the works are not lawful.

427.I propose to analyse the issues mainly by reference to Railtrack's case because, having adopted the role of the appellants in this unusual case they have, logically, also adopted the burden of proving that the development is lawful. Most findings of fact are derived from their evidence because, as promoters of the scheme, key facts are for the most part solely within their knowledge.

428.Firstly, I see no reason in law, and none was suggested to me, as to why parts of a single project cannot be permitted by different parts of the GPDO, in the same way that express planning permission can be, and often is, granted individually on a series of applications for parts of the same project.

429.Dealing with Part 11, Class A, this permits, among other things, development authorised by a local or private Act of Parliament which designates specifically the nature of the development authorised and the land upon which it may be carried out. Comprehensive submissions were made for the appellants about the precedence of European law over domestic legislation, by reference to a number of decided cases (Document AP10). This is a matter entirely for the Secretary of State and I have reached only tentative conclusions on that point. It seems to me that there is nothing on the face of the permission under Part 11 or the GPDO as a whole which sets any limit on the age of the local or private Act. The Order is an item of modern subordinate legislation which came into force on 3 June 1995, several years after the 1988 Regulations and the related EC Directive 85/337/EEC. As Railtrack argued, had Parliament wished to set some age limit on the orders or Acts which a developer might rely on under Part 11, they had the opportunity to do so when approving the GPDO and did not. To interpret Part 11 by reference to any question of the desirability of requiring an environmental assessment in some cases, as the appellants seek to do, is to import policy considerations into a question of pure fact and law.

430.On its face, the appellants' other argument, by reference to Article 1(5) of the Directive, is attractive. Article 1(5) provides that:

"This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation since the objectives of this Directive, including that of supplying information, are achieved through the legislative process."

The fact that in passing Acts in the 19th century, Parliament could not possibly have had regard to a 20th century European Directive is self-evident. However, as stated above, Parliament had the opportunity to address that point in 1995 when approving the GPDO and did not do so.

431.I therefore conclude that Part 11, Class A is applicable to part or all of the proposed works if its other provisions are satisfied. Railtrack rely on a number of private Acts. Primary reliance is placed on s16 of the Railway Clauses Consolidation Act 1845 which sets out a

'GENERAL POWER' to do all acts necessary for making, maintaining, altering or repairing and using the railway (CD3/3). Section 16 also refers to works for the purpose of the constructing of the railway, including 'inclined planes' such as bridges, 'alterations of courses of rivers etc' and 'alterations and repairs' such that the 'company' may from time to time alter, repair, or discontinue any of these works and substitute others in their stead. It seems to me that the terms of s16 of the 1845 Act are sufficiently specific as to the nature of the development which it and the incorporated Acts authorise, in order to satisfy the provisions of Part 11 Class A. Whilst section 16 covers a broad spectrum of activities it is very specific in describing their scope. Where the general power of altering, maintaining or repairing the railway is concerned, it is less detailed. However it would have been impracticable for the draftsman to cover every category of repair and maintenance, such as relaying track, renewing signals and replacing outworn ballast by specific mention. In the context of a Railways Act it is reasonable to construe it as covering such activities, in my opinion. The decision of the Court of appeal in Emsley v North Eastern Railway Company (1896) 1 Ch.418 is long standing authority for the proposition that the s16 powers are not restricted to the period set down in the special Act for constructing the railway, but may be used by the company "from time to time".

432. With regard to the Part 11 requirement that the relevant Act(s) should designate the land upon which the development may be carried out, I accept Railtrack's argument that this is satisfied within the text of the Acts and through the plans deposited with them (CD4). CD4/1 is a useful composite map showing the centre line of the railway as authorised by the Acts, a line which clearly falls entirely within the appeal site, the whole of which is operational railway land. Given that the permission granted under Part 11 is akin to an outline permission because of Condition A.1, the land is in my opinion designated in the deposited plans with sufficient precision to satisfy the requirement. The terms of Condition A.1 and A.2 in Part 11, when read together, suggest that the authorising Act is not required to specify the precise location of the development within the designated land.

433. On the question of deviations from the initial levels and lateral deviations referred to in sections 11, 14 and 15 of the 1845 Act, on the face of it these appear to refer to lines and levels on initial construction of the railway and not later alterations, as argued for Railtrack. If that is wrong, the evidence in CD13/3A indicates that any changes in horizontal and vertical alignment are minor and wholly within the limits of the level and alignment of the existing trackwork.

434. I therefore conclude with regard to the 8 categories of work comprised in the remodelling project, set out at paragraph 417(xv) above, that, with the possible exception of the structures referred to in item (h), all would be permitted by Part 11, Class A of Schedule 2 to the GPDO 1995, as being necessary acts for altering or repairing the railway. The items in category (h) are distinguishable because they would be completely new structures as opposed to the alteration of existing structures, as in the case of Platform 15 and Bridge 11.

435. Prior consent under Condition A.1(a) of Part 11 would be required for the extension of Platform 15 and the partial reconstruction of Bridge 11. It has already been granted for the latter but has yet to be obtained for the former.

436. If this conclusion is accepted, so far as permission is granted by Part 11, notwithstanding the provisions of Article 3(10), there would be no need for an environmental assessment because of the provisions of Article 3(12)(d) of the GPDO. Moreover, having regard to the facts already found and conclusions already reached, I consider that the structures described in item (h) would be permitted by Part 17, Class A of the GPDO. They would be located on

a railway undertaker's operational land and required in connection with the movement of traffic by rail. They would not amount to the construction of a railway nor fall within any of the categories of excepted development set out in A.1 or A.2. Taken on their own I am satisfied that the replacement amenity block, REBs and other minor alterations would not require a Schedule 1 or Schedule 2 application within the meaning of the 1988 regulations. A lawful development certificate could therefore be granted in terms which reflected these conclusions, including no doubt a saving about Platform 15 in respect of Condition A.1 of Part 11, Class A.

437. Turning to paragraph 3(4) of the Secretary of State's Rule 7 letter, if the above conclusions are not accepted, it would be necessary to consider to what extent the whole project is permitted by Part 17 Class A of Schedule 2 to the GPDO. In my opinion all of the works comprising the single project are development by a railway undertaker on their operational land required in connection with the movement of traffic by rail. With regard to A.1 of Part 17, it does not comprise the construction of a railway, in the sense of a new railway where none existed before. With the exception of the partial reconstruction of Bridge 11 none of the items in categories (a) to (h) is excluded by A.1 and A.2 of Part 17, in my opinion. Accordingly, and with that single exception, the whole project qualifies for permission under Part 17, Class A in my opinion. However, the provisions of Article 3(10) of the GPDO must be considered before it can be concluded that permission exists.

438. As already recognised, development is not permitted by the GPDO if an application for that development would be a Schedule 1 or Schedule 2 application within the meaning of the 1988 Regulations. Schedule 1 (1) describes the carrying out of building or other operations to provide – "7. ..; a line for long-distance railway traffic;...". That is not, in my opinion, what this project comprises and none of the parties suggested that it was; as a matter of fact the site contains a small part of such a line which has been in existence for over 150 years; it therefore comprises development which has already been carried out. Schedule 2 provides at 12. "The modification of a development which has been carried out where that development is within a description mentioned in Schedule 1". Clearly the WCML as a whole is an existing Schedule 1 development. It is therefore necessary to consider whether the remodelling works amount to a "modification" of such a line.

439. In answering that question it seems to me to be necessary to consider whether the eight categories of work which comprise the project, when taken together, amount to a modification of the long distance WCML. Although by any measure the project is substantial in scale, duration and cost I do not consider that, as a matter of fact and degree, it amounts to the modification of a long distance railway line, even if some of the categories of work are repeated elsewhere along its total length.

440. "Modification" implies some change which falls short of building a new line, which would be likely to encroach on additional land. Thus the creation of additional tracks within an existing railway boundary may amount to a modification if they are sufficiently substantial. That does not appear to be the case here; in fact some lines have been removed. The course of the railway will remain unaffected and in my judgement, the completed project is unlikely to have any significant effect on the character or appearance of the existing railway. The line will continue to function and carry traffic throughout the duration of the project. For a time some of the replaced "hardware" such as signals, gantries, portals, equipment boxes and ballast may appear new and well maintained, but this will fade as they weather. Even allowing for the provision of the REBs and the replacement amenity block, no substantial new or altered structure will appear and there will be no major changes in vertical or horizontal alignment of the tracks, such as the construction of an overhead monorail or the

provision of tracks in new tunnels, which would undoubtedly amount to a "modification". The use of the line would likewise be unlikely to change in any material way, in my view, notwithstanding its ability to accommodate more and faster trains. In all of these respects I consider that the Council's definition of "modification", as being a slight change or adjustment, is too strict in this context.

441. Accordingly, I conclude that the project does not fall within any description in Schedule 2 of the 1988 Regulations. Consequently an environmental assessment would not be necessary for those works and the provisions of Article 3(10) of the GPDO would not apply.

442. If that conclusion is not accepted it is necessary, finally, to consider the question raised in paragraph 3(4)(b) of the Secretary of State's Rule 7 letter. That is to say, whether the works, or any more substantial development of which they form a part, would be likely to have significant effects on the environment by virtue of factors such as their nature, size or location. Schedule 3 of the 1988 Regulations sets out a list of selection criteria.

443. I have already concluded that although the appeal site forms part of the larger WCML, this is a self-contained and discrete project. It does not, in my opinion, form an integral part of an inevitably more substantial development. Thus its effects, of whatever significance, are likely to be confined to the area surrounding the site. For similar reasons, I do not regard this as a major project of more than local importance, of the kind referred to in paragraph 20 of Circular 15/88. Moreover, as a busy central urban area, I do not consider the Euston area to be a particularly sensitive or vulnerable location. Nor is it a project with unusually complex and potentially adverse environmental effects.

444. The evidence, from all quarters, indicates a number of likely effects, both during the construction phase and in the operation of the railway after completion. During construction the factors giving rise to most concern are noise and vibration, but also effects on air quality and the fabric of nearby buildings, particularly listed buildings, and the setting of these. Post construction the effects would be likely to arise from the ability of the line to carry more and faster trains, hence giving rise to concerns about increased operational noise and disturbance. I propose to deal with these in turn.

445. The only noise and vibration evidence was given by the Council, who have instructed a recognised expert in that field. I have placed considerable weight on his analysis as an impartial expert employed by an impartial public authority. In this respect his approach of taking a worst case example seems to me to be an entirely appropriate one. He acknowledged that the predicted noise level at the rear façade of this property, 36, Gloucester Avenue, was very high for the period when the particular phase of the works was taking place near that property. However, as he pointed out, the character of the task involved was similar to routine track renewal which could take place at any time outside this major project and that it would be a transitory event. This seems to me to be typical of most if not all of the engineering tasks within the project. They take place within the context of an existing section of busy main line in an urban area, with nearby residential properties; they often take place at night and weekends; they proceed on a segmental basis such that any effects are confined more locally than the whole 2.8 km long site and are limited in duration. The difference between this project and routine track renewal and maintenance, on an ad hoc basis, is the concentration of work over a planned programme. But, for any given receptor, it seems to me that the effects would be little or no more detrimental than routine maintenance and renewal, albeit some near the junction of two possessions may be more affected, as Mr Byng-Maddick pointed out.

446.On balance, therefore, and without minimising the understandable concerns expressed by residents, I agree with the Council that the effects of construction noise are not likely to be significant and that an environmental assessment is not required on that score. The fact that the works are regulated by the s61 procedure under CoPA, is an added bonus in this context.

447.With regard to vibration, the Council have monitored vibration levels under the terms of the s61 consents and have concluded that there is no risk of any building damage. Whilst there is evidence of unstable ground conditions in areas adjoining the site, particularly Park Village East, much of the movement which I observed appeared to be of long standing. I have no evidence on which to disagree with the Council's finding that it is likely that buildings in the area have been exposed to low level vibration since the railway opened, probably without harm, and that ground water and the cyclical drying of the London clay is a more likely cause of building damage. Again the s61 procedure is an effective means of safeguarding residents' amenities during the period of the works.

448.Concerning air quality, it seems to me that adequate measures to control dust, such as the wetting of ballast prior to handling, would be likely to avert any serious effects in this respect. The single sample of asbestos found in the 650 ballast samples taken is indicative of a very low level of incidence, falling well short of a significant effect, in my opinion. It arose from old demolition works unconnected with the project and was appropriately dealt with. There is no other evidence of likely significant local atmospheric contamination, as a result of the project.

449.Concerns were raised by a number of Conservation Area Advisory Committees about the effects of the project on listed buildings and conservation areas. I have already concluded above that there would be no significant risk to the stability of any buildings as a result of the project. I have also concluded that the completed project will have no effect on the character or appearance of the site itself. That being so there is unlikely to be any wider adverse impact on the character or appearance of any conservation area or on the setting of any listed building, including those located within the site. Whilst parts of the site may have a transitory appearance of untidiness during the works, this would be unlikely to have a significant visual impact, either on conservation areas or the setting of listed buildings. The need for any listed building consent would not therefore arise.

450.Dealing with the impact of the scheme after completion, aside from any visual impact, which I have concluded would be negligible, the only other likely effect is increased noise and disturbance from the use of the remodelled line. Again the only expert evidence was primarily provided by the Council. That analysis involved a comparison of before and after ambient noise levels and set a strict test of a 3dB noise increase in the exposure of trackside dwellings to noise. Set out in Document CC2.3/C is a qualitative evaluation of operational noise level change, as predicted to be generated by the remodelling. This indicates possible increases of 2.5dB by day and 2.2dB at night, which I agree with the Council would not be significant. Moreover, the reduction in jointed rail, fewer cross-overs and less need for maintenance and repair in the foreseeable future would be likely to reduce noise and disturbance from the railway, thus bringing about a positive benefit.

451.The points made by Mr Plowden, about the disadvantages of running high speed trains on the national rail network, raise much wider issues about speeds of all forms of traffic. In my opinion, these matters are outside the scope of this appeal.

452.There is no evidence of any likely significant effect on other factors, either during or after the construction phase, including the archaeological heritage, strategic views and ecology.

In terms of traffic, maximum use of the railway is being made for the transport of materials and equipment such that there will be little, albeit some, need to use adjoining roads. I agree with the Council, therefore, that in the setting of a major railway, the works traffic would not be likely to have a significant environmental effect.

453. In conclusion, having regard to the nature, size and location of this project I find that it will not be likely to have any significant effect on the environment, and hence it would not require an environmental assessment under the 1988 Regulations. That being so my earlier conclusions that the works are permitted by Parts 11 and 17 of Schedule 2 to the GPDO remain unaltered. Had the Council been able to determine that the development was lawful and had issued a Certificate in those terms, their decision would have been well founded, in my opinion.

RECOMMENDATION

454. I recommend that the appeal be allowed and that a Certificate of Lawfulness of Proposed Development under Section 192 be issued in accordance with the application.

I have the honour to be,

Sir

Your obedient Servant

C H JOHNSON

APPEARANCES

FOR RAILTRACK PLC

Mr Gerard Ryan QC with Mr Timothy Comyn and Mr David Edwards	Of Counsel, instructed by Messrs Rees and Freres, 1 The Sanctuary, Westminster SW1P 3JT
He called	
Mr Dominic Baldwin BEng MSc MICE	Senior Project Manager with Railtrack PLC
Mr Alistair Billington MSc BSc MIES	Senior Environmental Consultant seconded from Ashdown Environmental Limited to Railtrack PLC.
Ms Barbara Gray	Project Public Relations Manager with Railtrack PLC
Mr Brian Spanswick	Legal adviser with Railtrack PLC

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Harrison	Of Counsel instructed by the Solicitor, Camden London Borough Council
He called	
Mrs Alice Lester BSc Econ, Mphil	Principal Development Control Planning Officer with the Borough Council
Mr David Trevor-Jones FIOA	Consultant in Acoustics, Noise and Vibration

FOR THE APPELLANTS:

Mr Jonathan Clay	Of Counsel instructed by Raybold & Co, Solicitors, 76A, Belsize Lane, Hampstead, London NW3
He called	
Ms Helen Bryan	Resident 30, Park Village East, London NW1
Mr Christopher Byng-Maddick	Joint appellant
Ms Marian Kamlish	Chair of Camden Town Conservation Area Advisory Committee
Mr Roger Lee Low	Joint appellant.
Miss Sheila Jackson	Resident of 1F Oval Road, London NW1

INTERESTED PERSONS:

Mr Leonard Lean	Chairman of Ealing Aircraft Noise Action Group 45, Drayton Gardens, Ealing W13 0LG
Miss Margaret Muir	10, Mornington Crescent, London NW10.
Mr S Neave	148, Gloucester Avenue, London NW1
Mr Stephen Plowden	69, Albert Street, London NW1.
Ms Tricia Drakes	6, Park Village East, London NW1

INQUIRY DOCUMENTS

Document	1	Lists of persons present at the inquiry
Document	2	Council's letter notifying interested persons of the inquiry with circulation list.
Document	3	Written representations from interested persons.
Document	4	Secretary of State's Rule 7 letter dated 11 March 1999.

CORE DOCUMENTS *(All having the prefix "CD")*

1. Papers relating to the appeal
   - 1.1 Application under section 192 of the Town and Country Planning Act 1990.
   - 1.2 Correspondence applicable to the Application.
   - 1.3 Appeal dated 14 September 1998 under section 195 of the Town and Country Planning Act 1990 with supporting documents (as supplied by the Appellants to Rees & Freres on 18 May 1999).

2. Kennedy and Donkin Limited plans Nos. 73803/10/GD001 and GD002.

3. **Authorising legislation**
   - 3.1 The London and Birmingham Railway Act 1833 (3 Geo.IV cap.xxxvi), Recitals and sections 5 to 8, 48 and 49.
   - 3.2 The London and Birmingham (Extension to Euston) Act 1835 (5 & 6 Geo.IV cap.lvi), Recitals and sections 1, 2, 7 and 10.
   - 3.3 The Railway Clauses Consolidation Act 1845, Recitals and sections 1 to 16.
   - 3.4 The London and Birmingham, Grand Junction and Manchester and Birmingham Railway Companies Act 1846 (9 & 10 Vict. cap.cciv), Recitals, sections 1 to 4, 8 and 72.
   - 3.5 The London and North-western Railway (New Lines, &c.) Act 1873 (36 & 37 Vict. cap.clvi), Recitals and sections 1 to 4.
   - 3.6 The London and North-western Railway Act 1884 (47 & 48 Vict. cap.ccvii), Recitals, sections 1, 2 and 27.
   - 3.7 The London and North Western Railway Act 1912 (2 & 3 Geo. 5 cap.lxvi), Recitals and sections 1 to 3, 5 and 38.

4. **Key plan and relevant extracts from deposited plans and sections relating to the above Acts of 1833, 1835, 1873 and 1912.**
   - 4.1 Key plan showing the centre lines of the railways authorised by the above mentioned Acts of 1833, 1835, 1873 and 1912.
   - 4.2 Deposited plan for the 1833 Act.
   - 4.3 Deposited plan and section for the 1835 Act.
   - 4.4 Deposited plan and section for the 1873 Act.
   - 4.5 Deposited plan and sections for the 1884 Act.
   - 4.6 Deposited plans and sections for the 1912 Act.

5. Improvement Notice dated 28 February 1996 served on Railtrack PLC by H M Railway Inspectorate (the Health & Safety Executive).
6. Environmental Appraisal (April 1998) prepared by Kennedy and Donkin Limited including plans.
7. Report to the Environment Committee of Camden LBC dated 13 October 1998.
8. Report to the Environment Committee of Camden LBC dated 20 January 1999.
9. Report of Officers of Camden LBC agreed 18 March 1999 in respect of a decision made under delegated powers and Notification Letter.

10. **Statutory approvals and consents granted in relation to the Euston remodelling works.**

10/1 Application for consent under section 61 of the Control of Pollution Act 1974 dated 19 August 1998. (2 volumes)

10/2 Application for consent under section 61 of the Control of Pollution Act 1974 dated 11 September 1998. (2 volumes)

10/3 Conditional consent under section 61 of the Control of Pollution Act 1974 dated 30 September 1998.

10/4 Conditional consent under section 61 of the Control of Pollution Act 1974 dated 9 October 1998.

10/5 Letter of Camden LBC of 22 October 1998 to residents regarding the above consents.

10/6 Approval relating to Bridge No. 11, Regents Park Road dated 17 December 1998 with related application and correspondence.

10/7 Extension dated 14 January 1999 relating to consent under section 61 of the Control of Pollution Act 1974 dated 9 October 1998.

10/8 Approval relating to Bridge No. 11, Regents Park Road dated 8 March 1999 with related application and correspondence.

10/9 Approval relating to Bridge No. 11, Regents Park Road dated 25 March 1999.

10/10 Application for approval relating to Bridge No. 11, Regents Park Road (Murals) dated 13 May 1999.

11. The joint opinion of Robin Purchas QC and Timothy Comyn dated 28 August 1998 and Summary.

12. **Advice received from Richard Drabble QC.**

12.1 Instructions to Richard Drabble dated 6 May 1998.

12.2 Written summary of advice given by Richard Drabble in conference on 8 May 1999.

12.3 Advice of Richard Drabble dated 6 July 1998.

12.4 Instructions to Richard Drabble dated 9 October 1998.

12.5 Advice of Richard Drabble dated 13 October 1998.

12.6 Advice of Richard Drabble dated 9 November 1998.

13. **Information supplied by Railtrack to Camden LBC.**

13.1 Note of 29 April 1998 supplied by Railtrack to LBC on the general context of the remodelling project.

13.2 Map of the West Coast Main Line to Crewe and Manchester.

13.3 Description of works where levels will be significantly altered.

13.3A Description of Proposed Changes in Levels of Works.

14. **Public Documents**

14.1 House of Commons Debate on 16 December 1998 relating to Railtrack's permitted development rights (House of Commons Hansard 16 December 1998 Cols. 934 to 941).

RAILTRACK'S DOCUMENTS

RT1/1 Proof of Evidence of Dominic Baldwin

RT1/2 Summary of Proof of Evidence of Dominic Baldwin

Appendices to Proof of Evidence of Dominic Baldwin

RT1/3 Site Location Plan

RT1/4 Single Line Diagram Schematics Existing and Proposed Layouts

RT1/5 Health and Safety Improvement Notice

RT1/6 Permanent Way Existing Layout (July 1998)

RT1/7 Permanent Way Proposed Scheme Layout

RT1/8 Overhead Line Electrification Equipment Diagram

RT1/9 Regents Park Road Bridge Drawing

RT1/10 Schedule of Works, locations and timescales

RT2/1 Proof of Evidence of Alistair Billington

RT2/2 Summary of Proof of Evidence of Alistair Billington

Appendices to Proof of Evidence of Alistair Billington

RT2/3 Copy of Letter from London Wildlife Trust

RT2/4 Copy of Current Section 61 Consent

RT2/5 Project Noise and Vibration Controls

RT2/6 Pictures of Portable Noise Screens

RT2/7 Project Water Quality Controls

RT2/8 Copies of Consents from Thames Water

RT2/9 Project Air Quality Controls

RT2/10 Project Traffic Controls

RT2/11 Table Showing Numbers of Plant and Time Tabling of Activities

RT2/12 Photos of Track Relaying Equipment

RT2/13 As Built Programme [*substituted: 9 June 1999 (2nd Day)*]

RT3/1 Proof of Evidence of Barbara Gray

Appendices to Proof of Evidence of Barbara Gray

RT3/2 Newsletter

RT3/3 Graph of Working Group attendances

RT3/4 S.61 Information letter

RT4/1 Proof of Evidence of Brian Spanswick

RT4/1A Summary of the Proof of Evidence of Brian Spanswick

Appendices to Proof of Evidence of Brian Spanswick

RT4/2 List of Relevant Provisions of Core Authorising Acts of Parliament

RT4/3 List and general purport of Relevant Provisions of other Authorising Acts of Parliament

RT4/4 Relevant Provisions of Acts in RT4/3

RT4/5 Relevant Deposited Plans and Sections relating to Acts in RT4/3

RT5 Statement of Case

RT6 Note on the Railtrack and Project Help Line

RT7 Letter of 28 October 1998 from Peter Miller, WCRM Environment Manager to Peter Carey, London Borough of Camden (*9/6/99: 2nd day*)

RT8 (a) Letter of 2 July 1998 from Chairman, Railtrack to Mark Gilks, Director, London Borough of Camden (*10/6/99: 3rd Day*)

(b) Letter of 5 August 1998 from Rees & Freres to Aiden Brookes, Senior Solicitor, London Borough of Camden (*10/6/99: 3rd Day*)

RT9 Extract from Invitation to Tender Document (*10/6/99: 3rd Day*)

RT10 (a) "Appendix F – Euston Final Layout/Speed" (*10/6/99: 3rd Day*)

(b) "Appendix H – Euston Existing Layout–speeds" – (2 pages) (*10/6/99: 3rd Day*)

(c) Average linespeeds through appeal site now and post remodelling (*10/6/99: 3rd Day*)

RT11 Method Statement

RT 11/1 Method Statement for week beginning 22/5/99 (*10/6/99: 3rd Day*)

RT11/2 Method Statement for week beginning 27/2/99 (*11/6/99: 4th Day*)

RT11/3 Method Statement for week beginning 6/3/99 (*11/6/99: 4th Day*)

RT11/4 Method Statement for week beginning 13/3/99 (*11/6/99: 4th Day*)

RT11/5 Method Statement for week beginning 20/3/99 (*11/6/99: 4th Day*)

RT11/6 Method Statement for week beginning 27/3/99 (*11/6/99: 4th Day*)

RT11/7 Method Statement for week beginning 24/4/99 (*11/6/99:4th Day*)

RT12/1-4 Plans showing track remodelling works at Paddington (*11/6/99: 4th Day*)

RT13 Supplement to proof of evidence of Brain Spanswick explaining RT12/1-4 (*23/6/99: 5th Day*)

RT14 Note on priority given to maintenance trains (*23/6/99: 5th Day*)

RT15 Opening and closing submissions for Railtrack.

RT16 British Railways Act 1993.

CAMDEN COUNCIL'S DOCUMENTS

CC1/1	Proof of evidence of Alice Lester
CC1/2	Summary proof of Alice Lester
CC1/3	Pre-Inquiry Statement
CC1/4	Letter dated 20 May 1998 to Paul Wade Railtrack PLC.
CC1/5	Letter dated 20 May 1998 to Tim Jones Railtrack PLC.
CC1/6	Letter dated 9 September 1998 from Railtrack PLC.
CC1/7	Plan of Conservation Area boundaries.
CC2/1	Proof of evidence of David Trevor-Jones.
CC2/2	Summary proof of David Trevor-Jones.
CC2/3-2/5	Appendices to Mr Trevor-Jones' evidence.
CC2/6	Supplementary proof of Mr Trevor-Jones.
CC2/7	Summary of Mr Trevor-Jones' supplementary evidence.
CC2/8	Appendix to Mr Trevor-Jones' supplementary evidence.
CC2/9	Guide to Evaluation of human exposure to vibration in buildings.
CC2.10	Evaluation and measurement for vibration in buildings: BS7385:Part2:1993.
CC3	Brief opening and full closing submissions for the Council.

THE APPELLANTS' DOCUMENTS

AP/1	Appellants' pre-inquiry statement.
AP/2/1	Summary of Helen Bryan's evidence
AP2/2	Summary of Christopher Byng-Maddick's evidence.
AP/2/3	Summary of Marian Kamlish's evidence.
AP/2/4	Summary of Roger Low's evidence.
AP/3/1	Proof of evidence of Helen Bryan.
AP/3/2	Proof of evidence of Christopher Byng-Maddick
AP/3/3	Proof of evidence of Marian Kamlish.
AP/3/4	Proof of evidence of Roger Low
AP/3/5	Proof of evidence of Sheila Jackson.
AP/4/1	Appendices to Helen Bryan's evidence.
AP/4/2	Appendices to Christopher Byng-Maddick's evidence.

AP/4/3	Appendices to Marian Kamlish's evidence.
AP4/4	Appendices to Roger Low's evidence.
AP/4/5	Appendices to Sheila Jackson's evidence.
AP/5	Extract from Design Manual for Roads and Bridges
AP/5/1	Supplementary proof of Marian Kamlish.
AP/5/2	Appendix to supplementary proof of Marian Kamlish.
AP/6	Extract from 1870 Ordnance Survey.
AP/7	Railtrack's 1997/98 Annual Report and Accounts.
AP/8	Correspondence concerning Councillor's Register of Interests.
AP/9	Photograph of works vehicles.
AP/10	Brief opening submissions and full closing submissions, with appendices, for the appellants.

INTERESTED PERSON'S DOCUMENTS

IP1/1	Statement of Ealing Aircraft Noise Action Group (EANAG).
IP1/2	Correspondence between EANAG and Government Office for London.
IP2/1	Statement of Mr S Plowden,with Report of Noise Review Working Party 1990.

The Planning Inspectorate

An Executive Agency in the Department of the Environment, Transport and the Regions, and in the Welsh Office

Report on

An Application for Costs by Mr C R Byng-Maddick and Mr R L Low and Others

Concerning their appeal against the failure of the

Camden London Borough Council

To determine an application for a Certificate of Lawful Development relating to land at

RAILWAY LINES BETWEEN EUSTON STATION AND PRIMROSE HILL LONDON.

Inspector : C H JOHNSON FRICS

Inquiry dates : 8 to 11 June, 23 June and 2 July 1999

Reference : APP/X/98/X5210/003059

Tollgate House
Houlton Street
BRISTOL BS2 9DJ

Reference: APP/X/98/X5210/003059

Date: 10 AUG 1999

To the Right Honourable John Prescott MP
Secretary of State for the Environment, Transport and the Regions

Sir

I have the honour to report that between 8 June and 2 July 1999, I held an inquiry at the Town Hall, Camden into appeals under Section 195 of the Town and Country Planning Act 1990, as amended. The appeals were made by Mr C R Byng-Maddick and Mr R L Low in conjunction with various residents' associations and organisations (as listed in the application) and are against the failure of the Camden London Borough Council to determine the application within the prescribed period. The site is land comprising railway lines between Euston Station and Primrose Hill, Camden. The application was made under Section 192 of the amended Act and is dated 13 July 1998. It sought a Certificate of Lawfulness of Proposed Use or Development (LDC) for engineering works by Railtrack PLC comprising the remodelling of existing railway lines between Euston Station and the Primrose Hill tunnels. A detailed description of the proposed works was annexed to the application (Document CD1/1). At the inquiry Mr C R Byng-Maddick and Mr R L Low and other appellants made a claim for costs against the Camden London Borough Council. A copy of my inquiry report is appended.

Submissions by the Appellants

1. Circular 8/93 was largely directed at refusals of planning permission therefore this claim had to be read in the context of a s195 appeal, which was referred to in Annex 7 of the Circular. The grounds for the claim were unreasonable behaviour. All of the conditions for an award, as set out in Annex 1, paragraph 6 were met. The Council had failed to take proper account of the advice from their lawyers, of the statutes concerned and all of the circumstances. Their failure to decide the application within the prescribed period was unreasonable and a full award of costs was sought. Reliance was placed on Annex 3 of the Circular, paragraphs 26 to 28.

2. Given the information available to the Council, they should have refused the application. When they finally made their decision in March 1999 they had no more information than at the date of the appeal. By the expiration of the 8 week period they only had the Kennedy & Donkin report (CD6) and the s61 applications. These were inadequate for them to issue a Certificate. The questions they had to consider were whether the works were permitted development and whether an EIA was required. It is evident that they took no account of Circular 15/88. Their report of 13 October 1998 (CD7) summarised the legislation but made no reference to Circular 15/88. If they had read that Circular they could have seen that a decision could be taken on what was before them at the time.

3. The officer's summary, at paragraph 4.8 of CD7, of Richard Drabble QC's advice (CD12) omitted any mention of the significance of environmental effects. Richard Drabble's advice throughout had been consistent with Circular 15/88, but the officers' approach was a very different one. If they had taken that advice they would have refused the application.

4. Consequently their failure to have regard to advice was unreasonable. Alternatively if they found themselves without full information, their duty was to refuse the application. The burden of proof lay with the applicant. Had the application been refused, the applicants would have been delighted and there would have been no need to appeal. Hence the costs of the inquiry would not have been incurred. All relevant conditions in Circular 8/93 had been met and a full award of costs should be made.

Submissions by the Borough Council

5. As a general point it was unhelpful to refer to the report at CD7, which was dated October 1998. The appellants had to show unreasonable behaviour between 13 July 1998 and 14 September 1998, being the respective dates of the application and the appeal. Moreover, it was quite clear that what the appellants had wanted was a public inquiry, to raise the issue of whether the project required planning permission.

6. The application lacked detailed information. The Council were not previously unaware of the proposals. Section 192 applications were to be determined as matters of fact and law. What the appellants wanted was a refusal so that they could say that the proposals were by definition unlawful. This was misguided and ran counter to the advice in Circular 10/97 at paragraph 8.12.

7. In determining what was to be an important application, with both transport and residential amenity implications, the Council were entitled to seek additional information, as they did, and as the Secretary of State indicated was desirable in his pre-inquiry letter.

8. The Council had worked within the correct legal framework. They had indicated an initial view in the letter from the Leader of the Council dated 3 September 1998. They had legitimately sought further information given that the case concerned modification and not development of a fresh site. This meant that the extent of the additional works over and above the normal running of the railway was important.

9. The Council had made available all relevant documents, including their legal advice and the draft report, with which the appellants had made play. The Council had sought further information from the applicants but it was clear that they did not want to co-operate, wanting the application to be refused. Between the dates of making the application and submitting the appeal, there was no other reasonable action which the Council could have taken. It revealed the weakness of the appellants' claim that they had to rely on criticisms of a report dated October 1998, which was drafted almost a year before the application. Both named appellants had read the letter dated 3 September 1998 from Councillor Arthur (Document AP/4/1). There was nothing in the documents, evidence or history of the matter to suggest that the Council did anything but act responsibly. It had a duty to make a considered judgement and act fairly in relation to all those who had legitimate interests to pursue within the Borough. They had not acted unreasonably and the claim should be refused.

Response by the Appellants

10. Unreasonableness in this context had its ordinary meaning, not "Wednesbury" unreasonableness. The real question was whether there had been a proper exercise of

statutory responsibility. The consideration of the claim should not be confined to the period between the dates of the application and the appeal. The October 1998 report was the best evidence of the Council's stance in relation to this project. The letter from Councillor Arthur cast no light on the situation at all. As to the appellants' motives, they wanted their elected Council to make sure that Railtrack subjected their project to proper control. It was accepted that it was pointless to pursue an application with the objective of seeking to show that an activity was unlawful. Their objective was to concentrate the Council's minds in order ultimately to protect their environment.

Conclusions

11. As I understand it, the nub of the appellants' claim is that the Council should have refused their application under s192, either for lack of information or because they were satisfied that a requirement for an environmental assessment existed, which precluded the works from being permitted development. Having received no decision by the eighth week they appealed promptly, which effectively took the matter out of the Council's hands. It is clear from their case that, from the outset, they did not want a Certificate to be granted for these works and that the purpose of making the application was to subject the project to a thorough examination. That was achieved by means of the inquiry and, in remarks on their behalf when opening their case, they welcomed the opportunity of being heard.

12. Against this background the appellants are seeking their costs on the grounds that the Council acted unreasonably, thereby causing them to incur the unnecessary expense of the inquiry.

13. Having regard to all the circumstances of the case and its history, including the appellants' listed chronology in Document AP10, I consider that the Council not only acted reasonably and responsibly but that they probably went further than was required of them in discharging their duty in this case. Conscious of the importance of the project, and alive to the concerns of local residents, it is understandable that they would handle such an application with considerable care. The Secretary of State, in his letter of 1 February 1999, referred to the complex legal issues raised by it among his reasons for deciding that he should determine the appeal himself.

14. The Council were plainly in a very difficult position. They could easily have refused the application for lack of information, in circumstances where the applicants were not the developers and could not readily have supplied that missing information. However, that would have advanced the matter no further; the application would simply have been abortive and would not have determined the question of lawfulness, one way or the other. It is clearly this sort of circumstance that the advice in Circular 10/97, paragraph 8.12, has in mind in commenting: "...it is pointless for third parties to pursue objections to activities by making LDC applications."

15. Rather than take that easy option, and no doubt conscious of the considerable public interest in the matter, the Council continued to consider the application and continued corresponding with the appellants and Railtrack. In the event the Council did not have the opportunity to determine the application, because of the appeal. Given the complexity of the matter, no criticism can be made of them for not deciding the application within the 8 week period, in my opinion. To that extent, the appellants precipitated the inquiry themselves.

16. Bearing all of these considerations in mind, I conclude that the Council did not act unreasonably in failing to determine the application within the prescribed period and that the appellants' claim for a full award of costs against them should fail.

Recommendation

17. I recommend that the application by for an award of costs against Camden London Borough Council by Mr C R Byng-Maddick, Mr Roger Low and others be refused.

I have the honour to be

Sir

Your obedient Servant

C H JOHNSON