

## **DELEGATED REPORT / CASE OFFICER'S ASSESSMENT**

**Ref No:** ST/0476/20/CLP  
**Proposal:** Application for a Lawful Development Certificate for proposed use or development in relation to the dual tracking of the metro railway (development to pre-existing light and heavy rail network) between Pelaw and Jarrow Stations (the Metro Flow Project, as detailed within the submitted Supporting Technical Note) and all associated development.  
**Location:** Metro railway between Pelaw and Jarrow Stations

This report relates to an application for a Lawful Development Certificate in respect of the dual tracking of the metro railway between Pelaw and Jarrow Stations. The metro is a light rail network for the Tyne and Wear area, which is owned and operated by Nexus, The Tyne and Wear Passenger Transport Executive (the applicant). The proposed dual tracking would not result in a material change of use of the Metro line or Hebburn and Jarrow Stations, and consequently the proposed development is limited to operational development.

The applicant has advised that an application for a Lawful Development Certificate is sought on the basis of an envelope (an area) of development against a description of works. With limited exception (where prior approval is needed under the General Permitted Development Order ) the final design to be determined by the Design and Build Contractor appointed by Nexus will not be subject to further approval of the local planning authority, unless the proposed works (operational development) extends beyond the land and description of works covered by the Lawful Development Certificate. The appointed contractor will act as agent for Nexus with reliance upon its permitted development rights (or those of Network Rail prior to any land transfer). Nexus have also stated that any additional works required to be carried out in conjunction with the project that are beyond the operational boundary of Nexus or Network Rail which constitute operational development and are more than *de minimis* will be the subject of separate applications for planning permission, if permitted development rights are not available. Furthermore, the applicant has noted that there may be works that have not been included in the description of the proposed development to operational land that require consents (i.e. planning permission or prior approval) unless relying upon other permitted development rights. Specific mention has been had to compound and laydown areas.

The proposed works are described in detail within the submitted Supporting Technical Note accompanying the application. General arrangements have been shown on plans and drawings accompanying the application and the description of the proposed development to be carried out and thereafter operated within the boundaries of the Plans comprises:-

- Demolition and removal of materials, waste and apparatus;
- Site clearance including removal of trees and vegetation;
- Use of areas for laydown/compound/temporary storage of materials/waste;
- Track realignment;
- Track lowers;
- Platform extension(s) at Hebburn Station;
- Platform reduction works at Jarrow Station;
- All associated earthworks;
- All associated track drainage;
- Installation of new and replacement signalling;
- Installation of new replacement Overhead Line Equipment (OLE);
- All associated electrical connections;

- Boundary treatment including temporary removal and replacement of fencing and gates;
- Replacement landscaping;
- Bridge Strengthening repairs; and
- All associated enabling and other engineering works.

The application also includes supporting technical notes (as an appendices) which describes in more detail the extent to which the scheme is expected to be carried out and requirements and status in terms of design, quantum of development (with reference to the requirements for materials), scale (upper dimensions), layout, scope for deviation (details of any anticipated variation as part of the detailed design exercise to be undertaken by the appointed contractor), and construction methodology / installation. The proposed works are described in more detail within the following section 'Background and project details' of this report.

Further information has been included within the submission that is for information purposes only and relates to materials and construction activity. It has been advised that the precise quantum and type of materials required, waste generated for and by the development project and the frequency and quantum of vehicle movements associated with the project will depend upon a number of factors including the final design, availability and the construction and installation methods chosen by the appointed contractor. It is acknowledged that the development will require the use of the highway network by vehicles (associated with the contractor employees /sub-contractors) including the movement of people, materials, waste, plant and machinery. Estimates for vehicles movements on the highway network have been provided for information, but it is noted that these matters are not regulated by the conditions to Part 18 class A of the GPDO (detailed further below) and are therefore not matters for consideration or assessment by the Local Planning Authority.

The extent of the red line boundary (referred to by the applicant as the development envelope) has been detailed in accompanying plans. Plans has been provided to identify the full extent of the project, which includes development works within the boundaries of both South Tyneside and Gateshead Metropolitan Boroughs, and a further red line site plan (Drg no. BB025-20201103-001received 03/11/2020) has been subsequently submitted to identify the site area for development works within South Tyneside only. Plans have also been submitted that indicate general arrangements for the proposed development (but as noted above, will be subject to further detailed design by the appointed contractor). Nexus have advised that all of the proposed development is expected to be carried out within the existing operational boundary of the railway.

As referenced above the proposals extend across the authority boundary into Gateshead. Gateshead Metropolitan Borough Council have received an application for a Lawful Development Certificate for works within their authority boundary, (application reference: DC/20/00502/CPL) for which no decision has currently been made. The red line boundary for this application includes track and the junction at Pelaw.

### **Background and project details**

Prior to the use of the tracks for freight and the metro, historically the railway tracks have been used for over 100 years having been created as part of the Victorian railways.

The railway between Pelaw and Bede is currently divided into two independently owned, operated and maintained infrastructures. The track and supporting infrastructure used by the Tyne and Wear Metro (owned by Nexus, the applicant) and the track and supporting infrastructure used by Freight traffic is under the control of network Rail. The transfer of Network Rails interest will be transferred to Nexus as part of the project and confirmation of this has been included with this application through correspondence from Network Rail.

Both sets of infrastructure exist within the same operational footprint having been divided in 1981 to support the introduction of the Tyne and Wear Metro, whilst retaining freight access to the Jarrow Oil terminal.

Network Rail infrastructure is operated bi-directionally along its entire length allowing trains to operate into and out of the terminal. Currently one freight train operates a day into and out of the oil terminal. The metro owned infrastructure includes 3 sections of single track with two passing loops at Hebburn and Jarrow Stations. The metro operates in both directions on these single track sections allowing access into and out of the South Shields terminus. The passing loops consist of two lines for metro operations in addition to the Network Rail single line for the freight service. The metro lines operate underneath Overhead Line Equipment (OLE) which provides traction power. Network Rails infrastructure operates with no OLE. Both infrastructures have additional supporting infrastructure and structures such as equipment cabinets, overbridges under which tracks pass, track access points for maintenance and signals.

Existing metro operations have 10 metro trains per hours on the single track sections and up to 5 trains an hour on each line in the passing loops between 5.30am and 12am.

The proposal to dual track the metro railway between Pelaw (located within the boundary of Gateshead Metropolitan Borough Council) and Jarrow Stations would be achieved through combining the Metro and Network Rails Infrastructure with works to the existing track infrastructure. The proposed works would include the removal of some sections of existing track (e.g. where there are currently three adjacent tracks sections) and the laying of new track and associated switches including sections of new crossovers. In order to avoid largescale bridge reconstructions there are four proposed track lowers of varying lengths and depths (requiring some earthworks to support embankments to prevent collapse). Track drainage design will also need to be revised. It has been advised that the existing track drainage system outfalls into the local drainage system at approved locations. The design includes the replacement of the existing drainage system and utilises existing outfalls and use of sustainable drainage systems (SUDs) and natural drainage of the land. New Overhead Lines will be installed to the Network rail track and the existing overhead lines to current metro line will be replaced. Nexus have advised that the wires will need to be higher than existing to allow for trains to run beneath the wires (at 4.5m) and new support masts will also be required in four areas (varying from 1900m to 700m lengths).

In addition to the works described above, changes to the signalling system will be required. There are currently 27 signals located throughout the area, connected by 29 location cases (metal free standing low level structures sited track side). Nexus have advised that due to the age of the signalling system (installed in the 1980's) current signals and location cases are proposed to be removed and new signals and location cases installed alongside alterations to a number of existing apparatus being retained. It is proposed that the number of signals would be reduced, but the number of location cases would increase.

Within the track section there are two existing stations, Hebburn and Jarrow. Both these structures were built in the 1980's when the metro was first constructed. Jarrow Station has two separate platforms adjacent and located either side of the metro line track and connected by a footbridge. Hebburn Station has two staggered platforms which are located either side of Station Road overbridge. It is proposed that through the project these stations will be refreshed and re-branded in line with other metro stations on the wider network. No changes to the layout or structure of the stations are proposed. However, adjustments and lowering of the platforms at the stations so that they are compliant with platform train interface requirements of the Rail Accessibility Requirements (RVAR) legislation of a 65mm gap and a 50mm step, will be required. In respect of Jarrow Station the works required are minor alterations to the existing platform edge and level. The platform slab may also need to be reconstructed, however the appearance will not alter from the existing.

Nexus have stated that works to Hebburn Station are more substantive and currently two options are under consideration to be taken forward by the contractor to a detailed design. The first option would result in the lowering of the existing platform by 300mm which would require the reconstruction of the

platform and the second option would remove the need for a track lower, but require a change to the platform layout.

Within the section of track from Pelaw to Jarrow stations, there are four overbridges, five underbridges and four footbridges. The track works have been designed to avoid any bridge removal or replacement. None of the overbridges and footbridges will be affected by the works. In relation to the existing underbridges, strengthening works and brickwork repairs are proposed.

Site access (staff, plant and materials) will be required using a combination of private vehicles, minibus transportation, low-loader plant delivery vehicles and engineering train. Compound areas will be required and works to existing track side compound areas at Glen Street and Bede will need some preparation works including vegetation clearance and site levelling. Further site compounds may be required, but it has been advised by the applicant that if necessary this would form part of a separate application process (as needed).

The proposed revised track layout will be owned and managed by Nexus with freight trains running between passenger trains. Nexus have named the project 'Metro Flow', a DfT approved project which will deliver:

- More capacity – an estimated 24,000 additional spaces per day across the system to transport more customers
- More frequency – a 20% uplift in daytime service network wide each week, reducing overall customer journey times; and
- More resilience – improvement in service recovery in the area of the network which is most affected, meaning a reduced impact on customer during times of disruption.

Alongside the above, Nexus have set out within their supporting statements that the project will deliver economic, environmental and social benefits to South Tyneside and the wider region.

The applicant has advised that it is proposed the main works will be delivered during a 12 week period starting September 2022 (subject to review). It has been identified that the aim of the programme is to minimise the duration of track closures and impact to operational services. In order to deliver this programme, there will need to be preparation works approximately 6-8 weeks before and after the 12 week construction period and site operations will be 24 hours / 7days a week with HGV movements limited to daytime (typically 08.00 to 22.00 hours.)

### **The application for a Lawful Development Certificate**

The applicant states in their supporting accompanying evidence that the proposal (as outlined above) is afforded permitted development rights under Schedule 2, Part 18, Class A of the Town and Country Planning (General permitted Development) Order 2015 (GPDO). Part 18, Class A relates to development under local or private Acts of Parliament and states that permitted development is development authorised by-

- a) A local or private Act of parliament, or
- b) An order approved by the Houses of Parliament, or
- c) An order under section 14 or 16 of the Harbours Act 1964 orders for securing harbour efficiency etc, an orders confirming power for improvement, construction etc of harbours)

Which designates specifically the nature of the development authorised and the land upon which it may be carried out.

There are conditions set out at A.1 and it is stated that 'development is not permitted by Class A if it consists of or includes-

- a) The erection, construction, alteration or extension of any building, bridge, aqueduct, pier or dam;  
or
- b) The formation, laying out or alterations of a means of access to any highway use by vehicular traffic,

Unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained.

At A.2, it is stated that the prior approval referred to in paragraph A.1 is not to be refused by the appropriate authority nor are conditions to be imposed unless they are satisfied that –

- a) The development (other than the provision of or works carried out to a dam) ought to be and could reasonably be carried out elsewhere on the land; or
- b) The design, external appearance of any building, bridge, aqueduct, pier or dam would injure the amenity of the neighbourhood and is reasonably capable of modification to avoid such injury.

This report proceeds, within the following assessment section, to review the applicable legislation that the applicant submits enables Nexus to carry out the development under part 18, class A and considers the operational development proposed against conditions A.1 and A.2.

Other matters for consideration relate to Environmental Impact Assessment and impacts to Habitats. The effect of articles 3(10) and 3(12) of the GPDO is that PD rights under Class A, Part 18 do not require prior screening out of the development from Environmental Impact Assessment (EIA). Further consideration of this matter is detailed below. Additionally to EIA, all permissions granted under the GPDO are subject to a condition (The “habitats condition”), that development which is likely to have a significant effect on a European Protected Site (alone or in combination) must not be begun until relevant procedures set out in the 2017 Habitats regulations have been undertaken. The potentially affected European Sites in respect of the proposal relate to the Durham Coast Special Area of Conservation and the Northumbria Coast Special Protection Area (Ramsar site). The relevant procedures include seeking an opinion from Natural England: whether or not there is likely to be a significant effect on a European Site. If there is likely to be a significant effect, a Habitats Regulation appropriate assessment (HRA) is required, before the Council may give approval under the habitats condition.

The applicant within their supporting statement acknowledged that as part of the reliance on permitted development rights, Article 3(1) of the GPDO makes it a requirement that none of the proposed development takes place before confirmation is secured from the local planning authority concluding no effects on the integrity of European sites for the purposes of the Conservation of Habitats and Species Regulations 2010. The applicant has advised that they have already carried out an informal screening process in consultation with Natural England and that Nexus, or their appointed contractor will provide details to the local planning authority to satisfy the requirement prior to the commencement of development enabling the local planning authority to carry out appropriate assessment.

### **Assessment**

An application for a lawful development certificate is assessed purely on the basis of the factual evidence / information submitted in support of it and on any other factual evidence / information that the Council may have (such as its own records) or may obtain during processing of the application. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

## Evidence submitted and assessment of the evidence

A Statement In support of the application has been submitted which sets out the statutory basis for the applicant's reliance upon permitted development right under Part 18 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

The statement provides background which can be briefly summarised as follows:-

- Nexus utilises much of the former railway infrastructure constructed in the 19<sup>th</sup> and early 20<sup>th</sup> century by North Eastern Railway (NER) Company, as well as operating on Network Rail network in its Sunderland branch.
- The metro comprises an electrified rapid transit system which Nexus was authorised to operate by the Tyneside Metropolitan Railway Act 1973 (1973 Act).
- The majority of the above infrastructure was acquired by Nexus from the British Railways Board (conveyances provided).
- The remainder of the land (for which copies of title deeds have been provided) within the control of Nexus not acquired from the British Railways Board comprises of areas purchased to facilitate the construction and reconfiguration and extension of the junction at Pelaw carried out by Nexus.
- The remainder of land within the red line boundary is owned by Network Rail. This land is currently all operational and will be transferred to Nexus by Network Rail following the first registration of the land at the Land Registry (a letter from Network Rail accompanies the application to confirm this position).
- Publications confirm that Hebburn Station and the Pelaw to Jarrow railway line opened in March 1872 and OS map extracts (1892-1914) shown Hebburn Station in its present location confirming its construction at this time. The railway and station remained operational until June 1981 at which time it was closed for conversion to the Metro and reopened for this use on 24 March 1984.

It is accepted that the supporting information and evidence has demonstrated that the branch line and stations (the subject of the proposed development and this LDC application) has been in unrestricted rail use for circa 150 years by Network Rail, Nexus and its predecessors. The reconfigured section of the line at Pelaw (located within the boundary of Gateshead Metropolitan Borough) has been in operation for 20-30 years.

The statement proceeds to review the relevant local and private Acts of Parliament. As set out above, Part 18 Class A permits the carrying out of 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.”

The relevant Acts can be summarised as;

### Tyneside Metropolitan Railway Act 1973 ('1973 Act')

- Authorises Nexus to be empowered to operate existing railway and link, alter and extend the railway to form is metro system ad a 'rapid transit railway' including the part of the branch line between Pelaw and Jarrow.
- The 1973 Act contains a series of powers and rights in respect of parts of the Metro and authorised works.
- Work no. 8 within the 1973 Act and deposited drawings is specifically referenced in the application. This covers a section of line at the Pelaw branch to a point north of the point which the line runs parallel to Richmond Avenue. These areas are not within the South Tyneside boundary; the entirety of Work No. 8 is located with the boundary of Gateshead

Metropolitan Borough. Although the application explains authority to carry out works within Work No. 8 pursuant to the 1973 Act, this is relevant to Gateshead MBC's assessment only.

- This junction section at Pelaw was reconfigured under The Tyne and Wear Passenger Transport (Sunderland) (Order) 1998 which extended the Metro line to Sunderland. Similar to Work No. 8 (see the above bullet), this section of track around Pelaw is located with the boundary of Gateshead Metropolitan Borough. Although the application explains authority to carry out works pursuant to the 1998 Order, this is relevant to Gateshead MBC's assessment only.

Save for the works carried out under the 1973 Act and 1998 Order, the remainder of the Pelaw to Jarrow line was constructed much earlier and opened in 1872 (see below) and is therefore treated as 'existing railway' for purposes of the 1973 Act.

#### North-Eastern Railway Company (Pelaw and Other Branches) Act 1865 ('1865 Act')

- Records indicate that the operational railway line between Pelaw to Jarrow line together with Hebburn Station were originally constructed pursuant to powers contained in the 1865 Act. Section 15 of the Act contains a description of the line (alongside a plan to the 1865 Act) which mirrors the route of the existing lines between Pelaw and Jarrow (Simonside). Section 15 in particular authorised the company to '*...make and maintain...the Railways following, and all proper Stations, Works and Conveniences connected therewith*'. None of the aforementioned capitalised terms were further defined, so are to be given their natural meaning. The 1865 Act did not specify the number of lines to be constructed under these powers.
- Importantly, Section 2 of the 1865 Act incorporates the RCCA to the railways authorised under the 1865 Act. This means the provisions of the RCCA apply to the Railways, Stations, Works and conveniences within the area of lands authorised by the plans to the 1865 Act.

#### The Railways Clauses Consolidation Act 1845 ('RCCA')

- The RCCA contains provisions inserted in Acts authorising the making of railways. It contains in Section 16 a general power to, amongst other things, '*do all other acts necessary for the making, maintaining, altering or repairing and using the railway.*'
- RCCA powers relating to the on-going making, maintaining, altering, substitution and/or repairing of railway arise in connection with the line in South Tyneside by virtue of the transfer of lines, pursuant to Section 23 of the 1973 Act.
- Section 23 of the 1973 Act in particular enables pre-existing powers from earlier Acts of Parliament to be passed down to Nexus as part of the transfer by the Railways board of a relevant section of railway. As such, railway between Pelaw and Jarrow forming the proposed development has been transferred to Nexus from the Railways board. Nexus has supplied evidence confirming it owns the majority of the line and is to acquire the balance from Network Rail to enable it to carry out the proposed development, such that Nexus will in turn benefit from the existing rights, powers and privileges enjoyed by Network Rail, once acquired.

Turning back to the GPDO and summarising the above. For development to fall within Class A of Part 18, it must satisfy all the following:

- a. It must be authorised by a local or private Act of Parliament.
- b. That Act must **designate** specifically the **nature** of the development.
- c. That Act must **designate** specifically the **land** on which the development may be carried out.

As to **a.** above, the local Act relied on here for that part of the proposed development in South Tyneside is the 1865 Act (via Section 23 of the 1973 Act), and which in turn incorporates the powers of the RCCA as set out above.

As to **b.** above, the relevant local Act must '*designates specifically the **nature** of the development authorised.*' The GPDO does not define this further; so the phrase should be given its natural meaning. Importantly, it is clear from the use of the word 'nature' that the local Act relied upon does not itself have to particularise the development proposed. As detailed above, Section 16 of the RCCA provides for the alteration and substitution from time to time of works. Section 16 is expressed in wide terms, and its application is not therefore limited or confined to any original set of works or design.

The submitted statement refers to examples of statutes incorporating the RCCA, such as the British Railways (Stanstead ) Act 1987 and the Channel Tunnel Rail Link Act 1996. Case law has also been referenced, The Court of Appeal in *Emsley v North Eastern Railway Company (1896)* No 1 Ch. 418, where it was held that section 16 RCCA embraces not only works contemplated at the time but also grants powers that may be exercised from 'time to time' without any limit as to the time, after the completion of the construction of the railway. Section 16 RCCA contemplates changes being made over time to the pre-existing structures on the site and the substitution by more modern structures, machinery and apparatus in order to facilitate the continuing modernisation and efficient operation of the railway.

The local planning authority therefore agrees with the applicant that the 1865 Act, by incorporating Section 16 RCCA, designates specifically the *nature* of the development that is proposed to be carried out. The *nature* of the proposed development here falls squarely within those matters authorised pursuant to Section 16; that is to say, acts that are '*necessary for the making, maintaining, altering or repairing and using the railway*'.

As identified above, this application only relates to that land and works proposed within the boundary of South Tyneside MBC and excludes works proposed within the authority boundary of Gateshead, - the junction section at Pelaw, carried out initially within Work No. 8 under the 1973 Act and as subsequently reconfigured under The Tyne and Wear Passenger Transport (Sunderland) (Order) 1998 which extended the Metro line to Sunderland. The 1998 Order was made by the Secretary of State under powers contained in a general Act of Parliament, the Transport and Works Act 1992, which itself replaced the Private Bill procedure under which many transport projects such as railways were previously authorised. For the avoidance of doubt, the details supplied within the application in relation to the 1998 Order and in relation to Work No. 8, because they fall outside South Tyneside's boundary are not considered relevant to South Tyneside Council's determination, and are not considered further.

Finally, as to **c.** above, the GPDO requires that development is 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." The applicant has provided further case history on this point. The Secretary of State (SoS) appeal decision involving the carrying out of rail works at Euston Station considered the requirement that 'the private act shall designate specifically..' the land upon which the development may be carried out'. In this case the SoS accepted the Inspectors report where at paragraph 432 it is said that the terms of Part 18 Class A '*suggest that the authorising Act is not required to specify the precise location of the development within the designated land.*'

Referencing back to the relevant local Acts of Parliament to this case, the 1973 and 1865 Acts do not specify the locations for the railway line or any stations, provided they are located within the boundary shown on the reference plans (limits of deviation) to the Acts. The proposed development, the subject of this LDC application are within the limits of deviation to the Acts and within the operational boundary of the railway.



The authority has no evidence itself, nor any from others, to contradict the above statutory basis for Nexus' reliance upon permitted development rights under Part 18 Class A of the GPDO.

### **Part 18, Class A – conditions.**

Having established the above relevant local or private Acts of parliament...' Part 18 Class A has two conditions. The first condition states:

A.1 Development is not permitted by Class A it is consists of or includes –

- a) The erection, construction, alteration or extension of any building, bridge, aqueduct, pier or dam; or
- b) The formation, laying out or alterations of a means of access to any highway used by vehicular traffic,

Unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained.

A 'building' is defined as 'any structure or erection' and excludes any 'plant and machinery'. The applicant has advised that they consider the only proposed works related to construction of new structures at Hebburn Station to provide a new extended platform is considered to fall within this condition. Reference is also made to the reduction to the existing platform width and height at Jarrow Station, but the applicant does not consider that the anticipated works would meet condition A.1 at this stage, but this would be reviewed at the detailed design phase. Further essential structural repairs are required to existing underbridges, but are not considered to be to such an extent to be classed as 'alteration or extension'. Nexus have advised that existing tracks and accesses to provide pedestrian, machine and vehicle access track side to carry out the proposed development will be used. No alterations or extension to these are proposed beyond normal repair and maintenance and as such no planning permission or prior approval are deemed necessary. It has also been stated that apparatus used in connection with accesses (such as temporary barriers and load support mats) do not require planning permission and would be removed after construction.

On reviewing the proposed development, including the details for options for the platform at Hebburn Station and the works to Jarrow Station, based on the balance of probability the local planning authority agrees that works relating to Hebburn Station currently concern 'the erection, construction, alteration or extension of any building' as detailed in condition A.1 and that currently other operational development does not fall within the scope of the condition. It is however noted that this position will be reviewed at the detailed design stage and any additional works that fall within this condition will be subject to prior approval.

The second condition under Part 18 Class A states;

A.2. The prior approval referred to in paragraph A.1 is not to be refused by the appropriate authority nor are conditions to be imposed unless they are satisfied that –

- a) The development (other than the provision of or works carried out to a dam) ought to be and could reasonably be carried out elsewhere on the land; or
- b) The design, external appearance of any building, bridge, aqueduct, pier or dam would injure the amenity of the neighbourhood and is reasonably capable of modification to avoid such injury.

The applicant has advised that the final options and precise location of the platform alterations at Hebburn Station will be determined by the appointed contractor and an application for prior approval will at that time or before the commencement of development, be made. This will include details of the requirements and issues that have informed determination of suitable and feasible options to determine that the proposed works at Hebburn Station should be reasonably carried out at that location together with an appropriate amenity assessment of those options.

Additional reference has been made to proposed demolition. Part of the proposed development includes the removal of pre-existing materials and parts of existing formations and apparatus. Works are considered to fall within part 18 Class A, however alternative permitted development rights also exist under Part 11 Class B for the demolition of buildings (including structures and fixed objects). It has been stated that where Part 11 Class B will be relied upon, prior notice of demolition will be given to the local planning authority to determine whether the authority will require further details to be submitted as part of a prior approval application (method of construction and restoration of the land).

### **Environmental Impact Assessment (EIA)**

As detailed above, the effect of articles 3(10) and 3(12) of the GPDO is that PD rights under Class A, Part 18 of schedule 2 do not require prior screening out of the development from Environmental Impact Assessment (EIA).

The applicant in their supporting statement have again referred to the Euston Appeal case (ref APP/98/X5210/003059), in which there is consideration of reliance being placed on a local or private Act of Parliament that pre-dates the EU EIA Directive coming into force. Both the Inspector and SoS held that the disapplication of the need for consideration to be given to environmental assessment of the proposed railway works applied. The SoS decision stated;

*'the Directive does not apply to projects which received development consent before the entry into force 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'*

This current LDC application is similar to the Euston case in that part of the railway, the subject of the LDC application, precedes the Directive having been authorised by the 1865 Act, 1973 Act and Section 16 RCCA.

Consequently the effect of articles 3(10) and 3(12) of the GPDO is that PD rights under Class A, Part 18 of schedule 2 (for which it has been established above that the proposed works relate) do not require prior screening out of the development from Environmental Impact Assessment (EIA).

### **Other matters**

The applicant has been advised from the LPA that due to the extent of the works, the timing of the works operating 24/7, and the potential effects of the development to residents and commercial operators through both the construction and post-construction phases, that appropriate public consultation should be undertaken prior to any commencement of works. The Council (both Planning – Development Management and Environmental Health) should be notified prior to the commencement of any public consultation undertaken and be provided with copies of the any notification / publicity and the contact details for any public enquiries / complaints at Nexus.

It is also recognised that consultation with other departments of South Tyneside Council will also need to be undertaken by the applicant, including but not limited to the Council's Highways team and Public Rights of Way Officer (ensuring no impact to the local highway network through increased and unmanaged vehicle movements associated with the development and the need for any temporary road and footway closures and diversions), Environmental Health (in respect of appropriate working practices, construction techniques employed and statutory nuisance), Environmental Protection (in respect of track drainage and contamination) and the Council's Tree Team and Countryside Officer (in respect of preventing and mitigating loss of trees, vegetation and habitats and any relevant and necessary approval for works to trees (including any works to trees or overhanging branches located on land outside the application boundary) – the applicant has advised in the supporting technical note that there will need to be vegetation clearance and tree removal within 2 metres of the tracks to enable safe sighting distances

and to ensure nothing is overhanging the track and overhead lines). Consultation with external agencies, such as Natural England (in respect of HRA) and Northumbrian Water (any drainage utilising local drainage systems) will also be necessary and any separate and relevant consents sought.

Furthermore it is expected that the applicant will need appoint suitably qualified experts, including arboriculturalists and ecologists to address the wider impacts of the development.

### **Conclusions**

It is concluded the evidence supplied in support of the application (with supporting legal argument) confirms the proposed development within the application would be lawful. Therefore, the Lawful Development Certificate must be issued.

In assessing this application due regard has been had to the requirement of section 149 of the Equality Act 2010.

### **Recommendation**

Grant Permission No Conditions

### **List of approved plans for standard note**

#### **Plan Reference**

Drg no. BB025-20201103-001

**Case officer: Helen Lynch**

**Signed:**

**Date: 06/11/2020**

**Authorised Signatory:**

**Date:**

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