

**STATEMENT IN SUPPORT OF APPLICATION FOR LAWFUL DEVELOPMENT
CERTIFICATE FOR PROPOSED USE OR DEVELOPMENT IN RELATION TO THE
DUAL TRACKING OF THE METRO RAILWAY BETWEEN PELAW AND JARROW
STATIONS**

1. This Statement sets out the statutory basis for Nexus' reliance upon permitted development rights ("PDR") under Part 18 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("Part 18 Class A") to support its application for Lawful Development Certificates for Proposed Use or Development ("CLOPUD") from South Tyneside Council and Gateshead Metropolitan Borough Council in respect of specified works (the "Proposed Development") required as part of a project to extend the capacity of the Metro (the "Project").

RELEVANT BACKGROUND

2. Nexus is the network operator of the Tyne & Wear Metro ("Metro") which utilises much of the former railway infrastructure constructed in the 19th and early 20th Century by North Eastern Railway ("NER") Company, as well as operating on Network Rail network on its Sunderland branch. The Metro comprises an electrified rapid transit system which was authorised by the Tyneside Metropolitan Railway Act 1973 ("1973 Act")¹.
3. As part of its operation, Nexus owns and operates the Metro stations at Pelaw, Hebburn and Jarrow together with the Metro railway lines between the Pelaw and Jarrow stations. Further information regarding the existing operations can be found in the Supporting Technical Note supporting the Application.
4. The majority of the above infrastructure was acquired by Nexus from the British Railways Board pursuant to conveyances dated 6 September 1985, 4 January 1991 and 30 September 1992 and is registered at the Land Registry with freehold title under title numbers TY256428, TY256433, TY252804, TY167744, TY256434, TY256435, TY256437, TY256438 and TY278374².
5. The remainder of the land within the control of Nexus not acquired from the British Railways Board comprises of areas purchased to facilitate the construction of the reconfiguration and extension of the junction at Pelaw carried out by Nexus under and within the limits of deviation to the 1998 Order (see further below) being:

¹ Enclosure 1

² Title information provided at Enclosure 2

- a. registered at the Land Registry with freehold title under title number TY62141, acquired on 23 November 1978 from the Church Commissioners³;
 - b. registered at the Land Registry with freehold title under Title TY67424 on 3 May 1979 - the transferor is unknown⁴; and
 - c. a parcel of unregistered land outside of Pelaw station⁵ under the control and operation of Nexus as part of the Metro acquired by Nexus prior to construction, which is yet to subject to first registration.
6. The balance of the land within the red line boundary to this CLOPUD application is within the ownership of Network Rail. Network Rail's land is unregistered but all is currently operational. This land will be transferred] to Nexus by Network Rail following the first registration of the land at the Land Registry. This land is shown edged blue on the plans appended with correspondence from Network Rail dated 5 June 2020 which confirms this position⁶.
 7. Publications confirm that Hebburn Station and the railway line⁷ opened on 1 March 1872 and Ordnance Survey map extracts 25 Inch 1892 – 1914 show Hebburn Station in its present location confirming its construction at that time⁸. The railway line together with Hebburn Station remained operational until 1 June 1981 at which time it was closed for conversion for use as part of the Metro, reopening for such use on 24 March 1984⁹. Photographs showing the construction of Hebburn station have been provided for background information¹⁰.
 8. The branch line and stations the subject of the Proposed Development has been in unrestricted rail use for about 150 years by Network Rail, Nexus and their predecessors. The reconfigured section of the line at Pelaw junction has been in operation for 20-30 years.

³ Enclosure 2

⁴ Enclosure 3

⁵ Enclosure 4

⁶ Enclosure 5

⁷ M.E. QUICK. *Railway Passenger Stations in Great Britain – A Chronology* (5th Edition) [2019, 209] at Enclosure 6
WILLIAM WEAVER TOMLINSON. *The North Eastern Railway: its Rise and Development* 1915, page 659 at Enclosure 7

⁸ Enclosure 8

⁹ Enclosure 6

¹⁰ Enclosure 9

TYNESIDE METROPOLITAN RAILWAY ACT 1973

9. The 1973 Act authorises Nexus to be empowered to operate existing railway and link, alter and extend the railway¹¹ to form its metro system as a "rapid transit railway" including the part of the branch line between Pelaw and Jarrow as defined in Section 3(1) of this Act:

"means the system of railways comprising –

(d) all or part of the existing railway of the railways board between Old Fold in Gateshead and Tyne Dock in South Shields and the railway (Work No. 8) authorised by this Act;

...and includes all works and conveniences provided in connection with the said railways, as existing, altered or constructed (as the case may be) from time to time"¹².

"Existing" for the purposes of the 1973 Act means "existing at the commencement of this [1973] Act".

10. The 1973 Act contains a series of powers and rights in respect of parts of the Metro created by this Act. Sections 6 and 13 of the 1973 Act set out powers for the making and maintenance of specified works with corresponding powers in Sections 14, 15, 18, 20 and 22 which deal with other corresponding provisions in respect of "authorised works". Section 3(1) of the 1973 Act defines authorised works as "the works authorised by this Act" and references those works specifically authorised under Sections 6 and 13 of this Act.

11. From a review of the deposited lands plans to the 1973 Act¹³ a section of the line comprising part of the Proposed Development was authorised as part of Work No. 8, described as:

"a railway (1,061 metres in length), including a viaduct, commencing by a junction with the railway between Felling and Hebburn at a point 78 metres west of Green Land Bridge and terminating by a junction with the said railway at a point 113 metres south of the junction of Hartforth Crescent with Richmond Road, the said viaduct passing over the railway between Central Station, Newcastle, and Sunderland".

Work No. 8 does not cover all of the line which will be the subject of the Proposed Development, namely, the balance of the existing branch line at Pelaw from a point north of the point which the line runs parallel to Richmond Avenue.

¹¹ See Recitals to 1973 Act at Enclosure 1

¹² Enclosure 1

12. The design for this junction was subsequently reconfigured pursuant to works carried out under The Tyne and Wear Passenger Transport (Sunderland) Order 1998¹⁴ (“1998 Order”) which extended the Metro line to Sunderland. These works are described in Schedule 1 to the 1998 Order as follows:

“Work No. 1 – A railway interchange (the Pelaw interchange), including alterations to the existing Pelaw junction, comprising –

Work No. 1A - a railway (755 metres in length) commencing by a junction with the Newcastle-bound track of the Newcastle to South Shields railway of the Metro at a point 60 metres east of the bridge (number 297) carrying the footpath from Shields Road (A 185), Pelaw, to Manor Gardens, Wardley, over that railway, passing eastwards then northwards and terminating by a junction with the Newcastle-bound track of the said.”

and are shown on the deposited plans to the 1998 Order¹⁵.

13. Save for the works carried out pursuant to the 1973 Act and the 1998 Order, the remainder of the Pelaw to Jarrow line was constructed much earlier and opened in 1872 (see further below). As such, the majority of the branch line is an “existing railway” for the purposes of the 1973 Act.

THE RAILWAYS CLAUSES CONSOLIDATION ACT 1845

14. The Railways Clauses Consolidation Act 1845 (“RCCA”)¹⁶ contains provisions usually 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”*.
15. Section 4 of the 1973 Act incorporates Section 16 of the RCCA. Section 3 of the RCCA defines the “railway” to which the powers in Section 16 of the RCCA apply as: *“the railway and works by the special Act authorised to be constructed”*. In the case of the 1973 Act that would include the “authorised works” (those created under Sections 6 and 13 of the 1973 Act) but is not considered to include the section of pre-existing railway described in Section 3 of the 1973 Act. In summary, Section 16 of the RCCA applies to that part of the Proposed Development falling

¹³ Enclosure 1

¹⁴ Enclosure 10

¹⁵ Enclosure 10

¹⁶ Enclosure 11

within Work No.8 by virtue of Section 4 of the 1973 Act. The balance of pre-existing railway does not unless such powers or similar powers are contained elsewhere.

16. As set out above, Work No. 8 was subsequently reconfigured pursuant to the 1998 Order. The 1998 Order does not incorporate the RCCA, however contains its own separate powers in Section 5 for the benefit of Nexus as follows:

“5.—(1) The undertaker may construct and maintain the scheduled works....

(3) The undertaker may, within the limits of deviation, or within the further limits, carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

(a) works to alter the position of apparatus, including mains, sewers, drains and cables;

(b) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

(c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;

(d) works for the benefit or protection of premises affected by the authorised works;

(e) works for the alteration or demolition of any building or structure; and

(f) works to alter the position of any street furniture.”

“Maintain” is defined in Section 2 of the 1998 Order as “includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly”.

17. There are no provisions in the 1998 Order which limit, either directly or indirectly, the applicability of the powers in Section 5. The powers contained in Section 5 are considered to be similar in effect to those in Section 16 of the RCCA, enabling Nexus to carry out a broad range of works to the part of the existing line reconfigured pursuant to the 1998 Order.

18. RCCA powers relating to the on-going making, maintaining, altering, substitution and/or repairing of railway also arise by virtue of the transfer of any line pursuant to Section 23 of the 1973 Act.
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19. Section 23 of the 1973 Act enables the 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. Section 23 provides as follows:

"(1) Subject as may be agreed in writing between (Nexus) and the railways board -

(a) the alteration or conversion of any part of any existing railways of the railways board to form part of the rapid transit railway and the maintenance, use and operation of the rapid transit railway shall, as between (Nexus) and the railways board, be carried out and regulated in accordance with such terms and conditions as may be agreed between (Nexus) and the railways board, and any such agreement may relate to the whole or any part or parts of the rapid transit railway and may contain such incidental, consequential or supplementary provisions as may be so agreed including provisions with respect to the defraying of, or the making of contributions towards, the cost of the matters aforesaid by (Nexus), or the railways board, or by (Nexus) and the railways board jointly, and, without prejudice to the generality of the foregoing, any such agreement may provide for the exercise by the railways board or (Nexus), or by (Nexus) and the railways board jointly, of all or any of the powers of (Nexus) or the railways board (as the case may be) in respect of any part of such railways or of the rapid transit railway;

(b) the exercise by the railways board or by (Nexus), or by (Nexus) and the railways board jointly, of the powers of any enactment in pursuance of any such agreement shall be subject to the like provisions in relation thereto as would apply if those powers were exercised by (Nexus) or the railways board (as the case may be) alone, and accordingly those provisions, with any modifications, shall apply to the exercise of such powers by the railways board or by (Nexus) or by (Nexus) and the railways board jointly, as the case may be.

(2) (Nexus) and the railways board may enter into, and carry into effect, agreements for the transfer to, and vesting in, the railways board or (Nexus), or (Nexus) and the railways board jointly, of any part of the rapid transit railway together with the rights and obligations of (Nexus) or the railways board (as the case may be) in relation thereto."

20. Section 23 therefore provides for the passing down of powers relating to any existing railways held by the Railways Board that are transferred to Nexus to form part of the "rapid transit railway". In this case, the balance of the railway between Pelaw and Jarrow forming the Proposed Development has been transferred to Nexus from the Railways Board.

21. The majority of the line already owned by Nexus comprising the Proposed Development was transferred pursuant to a conveyance dated 4 January 1991, however the Land Registry does not hold a copy of this conveyance in its records. There are no known limitations on the passing down of powers from the Railways Board to Nexus.
22. Part of the line was transferred to Nexus from the Railways Board pursuant to a conveyance dated 6 September 1985, a copy of which has been obtained from the Land Registry¹⁷. A further part of the line was transferred to Nexus from the Railways Board pursuant to a conveyance dated 30 September 1992¹⁸. Both conveyances contain provisions which confirm that Nexus shall to the exclusion of the Board “(a) be entitled to the benefit of and to the exercise of all rights powers and privileges and (b) subject to all obligations: of the Board whether statutory or otherwise for the time being in force in respect of the Property”. The transfers do not contain any limitation on the use of any statutory powers existing in any special Act(s) giving rise to the original construction of the railways transferred from the Railways Board.
23. As set out above, the balance of the land currently within the ownership of Network Rail will be transferred to Nexus, such that Nexus will in turn benefit from the existing rights, powers and privileges enjoyed by Network Rail in relation to that part of the existing line. Such rights are otherwise enjoyed by Network Rail as present owner.

NORTH-EASTERN RAILWAY COMPANY’S (PELAW AND OTHER BRANCHES) ACT 1865 (“1865 ACT”)

24. Records and all information publicly available to Nexus indicate that the operational railway line between Pelaw to Jarrow line together with Hebburn Station were originally constructed pursuant to the powers contained in a Special Act, namely, the North-eastern Railway Company's (Pelaw and other Branches) Act 1865 (1865 Act)¹⁹. Section 15 of the 1865 Act contains a description of the line as set out below and the route of the line shown in the plans to the 1865 Act²⁰ mirrors the route of the existing lines:

"Subject to the Provisions in this Act and the Acts and Parts of Acts incorporated herewith contained, the Company may make and maintain, in the Lines delineated on the said Plans and according to the Levels shown by the said Sections, and in and upon the Lands acquired by them

¹⁷ Enclosure 12

¹⁸ Enclosure 13

¹⁹ Enclosure 14

²⁰ Enclosure 14

under this Act, the Railways following, and all proper Stations, Works and Conveniences connected therewith; (that is to say,)

First, a Railway commencing in the Township of Heworth, otherwise Nether Heworth and Parish of Jarrow in the County of Durham by a Junction with the Brandling Junction Railway of the Company near their Pelaw Station, and terminating in the Township of Westoe and Parish of Jarrow in the said County near the Company's Tyne Docks Station by a Junction with the South Shields Branch of the said Brandling Junction Railway:.....

And the said intended Railways and the Works connected therewith respectively, shall for all Purposes become and be Part of the Undertaking of the Company."

25. The 1865 Act does not specify the number of lines to be constructed under these powers, nor does it contain definitions of the terms "Railway", "Station", "Works" or "Conveniences" and therefore does not seek to limit these terms beyond their natural meaning. There is no limitation on the location of these works along the lines of the railway as shown on the reference plans provided that they are within the lateral boundary (limits of deviation) shown in those plans²¹.
26. Section 2 of the 1865 Act incorporates the RCCA meaning that the provisions of the RCCA apply to the Railways, Stations, Works and Conveniences within the area of lands authorised on the lands plans in the 1865 Act, so far as not expressly altered or otherwise provided for elsewhere in the 1865 Act. For the purposes of Section 16 of the RCCA, the "Railways" are essentially the Railways and any associated operations (Stations, Works and Conveniences) defined in Section 15 of the 1865 Act which includes the Pelaw to Jarrow line and Hebburn and Jarrow Stations.
27. Section 27 of the 1865 Act contains a limitation on the application of its powers and provides:

"the Railways by this Act authorized shall be completed within Five Years from the passing thereof, and on the Expiration of that Period the Powers by this Act or the Acts incorporated herewith granted for executing the same, or otherwise in relation thereto, shall cease to be exercised, except as to so much of those Railways as shall then have been completed, and also except those Powers which are by the same Acts or any of the declared to be continued, or which may lawfully be exercised for a longer Period."

28. Section 28 of the 1865 Act however provides that:

²¹ Enclosure 14

“If the Railways by this Act authorized shall not be completed and open for public Traffic within the Period limited by this Act, the Company shall be liable to a Penalty of Fifty Pounds per Day, to be recoverable as a Debt due to the Crown, for every Day after the Period so limited until the Railways shall be completed and opened for public Traffic; but no Penalty shall accrue in respect of any Time during which it shall appear, by a Certificate to be obtained from the Board of Trade, that the Company was prevented from completing and opening the Railways by unforeseen Accident or Circumstances beyond their Control, but the Want of sufficient Funds shall not be held to be a Circumstance beyond their Control.”

29. As set out above, publications confirm that Hebburn Station and the railway line opened on 1 March 1872. Reading Section 27 alongside Section 28 it is clear that any failure to construct works in accordance with the five year period set out in Section 27 was intended to give rise to a financial penalty rather than having an effect on the lawfulness of the railway which had been constructed on the expiry of the five year period.
30. The 1865 Act therefore contains all necessary powers to construct the railway between Pelaw and Jarrow subject only to the Order limits and the application of Section 15.

SUMMARY

31. By way of summary, Section 5 of the 1998 Order provides Nexus with the power to repair, adjust, alter, remove, reconstruct and repair any of the existing line which was reconfigured pursuant to the 1998 Order. Section 16 RCCA is otherwise available for that part of the Proposed Development falling within Work No. 8 under the provisions of the 1973 Act.
32. The 1865 Act brings the balance of the railway line and Hebburn and Jarrow Stations within the powers of the RCCA via Section 23 of the 1973 Act as this land was transferred from the Railway Board. Section 16 of the RCCA is therefore incorporated into and available in respect of the Proposed Development without modification or limitation.

PROPOSED DEVELOPMENT

33. The Supporting Technical Note to the CLOPUD application contains a full description of the proposed scope of works with appropriate reference to the pre-existing development and operations on the railway lines and associated infrastructure within a set of red line boundary plans.
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34. The pre-existing development comprises of two lines which are independently owned, operated and maintained infrastructure by Nexus and Network Rail - further details are set out in the Supporting Technical Note.
35. The branch line and stations the subject of the Proposed Development have been in unrestricted rail use for about 150 years, as reconfigured in the last 20-30 years at the Pelaw junction. Use by Nexus in conjunction with the Proposed Works would not result in a material change of the use of the Metro line or Hebburn and Jarrow Stations. Consequently, the Proposed Development is limited to operational development.
36. Full details of the Proposed Development are set out in the Supporting Technical Note which provides explanations and details (for information only) of:
- a. anticipated construction methodology (and corresponding approximations of quantum of materials/waste);
 - b. the intended corresponding use of existing accesses;
 - c. the likely requirement for contractor compounds to support its construction activity (see also further below); and
 - d. estimated numbers/frequency of construction vehicle movements.
37. In summary, the Proposed Development can be summarised as follows:
- a. Demolition and removal of materials, waste and apparatus;
 - b. Site clearance including removal of trees and vegetation;
 - c. Use of areas for laydown/compound/temporary storage of materials/waste;
 - d. Track realignment;
 - e. Track lowers;
 - f. Platform extension(s) at Hebburn Station;
 - g. Platform reduction works at Jarrow Station;
 - h. All associated earthworks;
 - i. All associated track drainage;
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- j. Installation of new and replacement signalling;
- k. Installation of new and replacement Overhead Line Equipment (OLE);
- l. All associated electrical connections;
- m. Boundary treatment including temporary removal and replacement of fencing and gates;
- n. Replacement landscaping;
- o. Bridge strengthening repairs; and
- p. All associated enabling and other engineering works.

38. As set out in the Supporting Technical Note, Nexus will tender the Proposed Development as a Design and Build contract. The appointed contractor will act as agent for Nexus with reliance upon its permitted development rights (or those of Network Rail). At a stage where the design is sufficiently advanced as part of that contract process, either the contractor or Nexus will seek any prior approval (see further below) required in furtherance of reliance on its permitted development rights outlined in this CLOPUD application, prior to commencement of any such relevant works. Nexus considers that the current scope of works requiring prior approval is limited to works to construct an extended platform and associated infrastructure at Hebburn Station. The final option and precise location of any platform alterations will be determined by the contractor and an application for prior approval will at that time, or before such development commences, provide details of the requirements and issues that have informed Nexus's determination of suitable and feasible options.

Compounds

39. Part of the existing operational boundary includes two areas that will be used as laydown areas for the temporary storage of materials and waste as well as assembly of apparatus and works to be installed as part of the Proposed Development. A small area at Jarrow Station within the existing operational boundary may also be used for laydown/welfare and is included within the red line boundary. These areas are included in the description of Proposed Development.
40. The Proposed Development is expected to be supported by other laydown areas/compounds during the construction phase which are not within the operational boundary of the railway and do not form part of the CLOPUD application. An assessment of compound options does not
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accompany the CLOPUD application which will be the subject of later applications, as are necessary/relevant.

41. It is however noted that given the extent of pre-existing developed land surrounding existing operational lines, there are no pre-existing storage or operational compounds in existence or in all appropriate locations or of sufficient capacity to serve the whole of the Project. Given the extended linear nature of the Project, a number of smaller compounds are expected to be utilised or to supplement a small number of main compound sites. Options utilising the existing operational lines has been explored and hence use of two pre-existing sidings have been identified (see above) and are promoted as part of the CLOPUD.
 42. All other laydown areas/compounds will be the subject of separate applications for planning permission or reliance on other permitted development rights, as appropriate/necessary. The identification, securing and promotion of such compound(s) will primarily be the responsibility of the appointed contractor, albeit Nexus may also promote one or more compounds in advance of or alongside the contractor's appointment and involvement.
 43. The final determination of compound options is invariably a product of availability of land that is suitable for temporary adaption and sufficiently proximate to the development to be afford direct track access or is adequately serviced by road access to carry materials track side via one or more track accesses. Compounds will need to be sufficiently accessible and will be subject to a suitable Construction Transport Management Plan to manage the classes and routeing of vehicles to and from the compounds to track accesses. New or improvement accesses to public highways from proposed compounds will be promoted at the same time including off-site highway improvements, if any are necessary.
 44. Where possible, Nexus will look to contractors to utilise available parts of its operational car parks and other land at Hebburn Station and Jarrow Station for laydown/compounds, which also afford opportunities for direct track access. At this stage, these facilities are not included as part of the Proposed Development. If utilised by the appointed contractor, they will be the subject of separate applications for consent, as is necessary prior to their use in conjunction with the Proposed Development.
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APPLICATION OF PART 18 CLASS A OF SCHEDULE 2 OF THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015 (“GPDO”)

45. Subject to specified limitations, 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*" (emphasis added).
46. To demonstrate that Part 18 Class A applies requires an understanding of:
- a. the authorisation of works under one or more local or private Act;
 - b. whether the relevant Act designates specifically the nature of the development authorised; and
 - c. whether the relevant Act designates specifically the land on which the development may be carried out.

Local or private Act of Parliament

47. Relevant private Acts of Parliament are identified in the previous Sections of this Statement.
48. Reliance on 19th, 20th and 21st century Railway Acts providing authority for later development under the terms of Part 18 Class A is unexceptional, and is the main means by which most of the existing railway network was created and is still maintained by network operators, such as Network Rail. There are more modern examples of statutes incorporating the RCCA or its own equivalent wording for this very purpose including the British Railways (Stansted) Act 1987 and the Channel Tunnel Rail Link Act 1996. The Court of Appeal in *Emsley v North Eastern Railway Company* [1896] No. 1 Ch. 418²² held that Section 16 RCCA embraces not only works contemplated at that 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. It is considered, therefore, that Section 16 RCCA contemplates changes being made over time to the pre-existing structures on the site and as to the substitution by more modern structures, machinery and apparatus in order to facilitate the continuing modernisation and efficient operation of the railway.

Designates specifically the nature of development authorised

²² Enclosure 15

49. The words "*designate specifically the nature of the development authorised*" are not further defined in the GPDO. However, they only require that the "nature of the development" is allowed for under the private Act that gives rise to it. The 1973 and 1865 Acts do not limit the application of the powers in Section 16 RCCA to any greater extent than the railway undertaker deems is necessary to be used for the purpose of its undertaking. Section 16 RCCA expressly provides for the alteration and substitution from time to time of works and the power is expressed in wide terms, not limited by particular or original design. Consequently this wording has no particular limiting effect on the application of the wide rights in Section 16 RCCA. In relation to the part of the existing line reconfigured pursuant to the 1998 Order, Section 5 of the 1998 Order applies to provide in essence the same rights as in Section 16 RCCA and is afforded the same interpretation with reference to this requirement of the GPDO.

Designate specifically the land upon which development may be carried out

50. The requirement that the private Act shall "*designate specifically... the land upon which the development may be carried out*" was considered in the Secretary of State's ("SoS") appeal decision involving the carrying out of rail works at Euston Station²³. In that 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*".

51. The 1973 and 1865 Acts and the 1998 Order do not specify where the railway line or any stations are to be located, provided that they are within the lateral boundary (limits of deviation) shown in the reference plans. All Proposed Development is within the confines of these limits of deviation and essentially within the current operational boundary of the railway.

52. In conclusion, the particular limitations/conditions associated with limbs (b) and (c) in Paragraph 46 above as they relate to the test in Part 18 Class A of the GPDO do not further constrain a particular type of development from being carried out beyond the relevant powers as expressed in the Special Acts and more specifically, the powers in Section 16 RCCA and Section 5 of the 1998 Order.

CONCLUSION

53. For all of the above reasons, the Proposed Development is permitted by the above mentioned private Acts of Parliament and falls within the terms of Part 18 Class A of the GPDO

²³ Appeal reference APP/98/X5210/003059 – Enclosure 16

EIA & PRIOR APPROVAL

54. Article 3(10) of the GPDO provides that Schedule 1 development or Schedule 2 development within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“Regulations”) is not permitted by the GPDO unless the local planning authority has adopted a screening opinion under Regulation 6 of the Regulations that the development is not EIA development. The Proposed Development (in itself or as part of the Project) is considered by Nexus to be capable of falling within Schedule 2 (1) (d) development (*Construction of railways (unless included in Schedule 1) where the area of the works exceeds 1 hectare*).

55. This provision is subject to Article 3(12) of the GPDO which states:

“(12) Paragraph (10) does not apply to –

(b) development for which permission is granted by...Class A of Part 18 of Schedule 2”

56. In the Euston case referred to above reference was made²⁴ to Article 1(5) of the Directive 85/337/EEC (the "Directive") which 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."

57. In the present case, that section of the railway with reliance on the 1998 Order has been subject to the application of the Directive as part of its determination, where the matter of EIA will have been assessed both in relation to the construction, operation and maintenance of the authorised works - which includes powers of alteration. The 1998 Order places no limitation or restriction on the application of its powers of maintenance (i.e. including alteration) beyond those set out in the GPDO itself. Article 3(12) is clear and unequivocal and has the effect nullifying the application of Article 3(10) such that no limitation is placed on the application of Part 18 Class A.

58. The Euston case also dealt with the situation where reliance is placed on local and private Acts or Orders that pre-date the coming into force of the Directive. In that case, reliance was placed by Network Rail on Part 18 Class A of the GPDO²⁵. Both the Inspector and the Secretary of State

²⁴ Para 147

²⁵ Then Part 11 Class A pursuant to the Town and Country Planning (General Permitted Development) Order 1995

held that the disapplication of the need for consideration to be given to environmental assessment of the proposed railway works applied. In the Secretary of State's decision, he held that:

“the Directive²⁶ 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.”²⁷”

59. As was the case in Euston, part of the railway the subject of the Proposed Development precedes the Directive having been authorised by the North-eastern Railway Company's (Pelaw and other Branches) Act 1865 and the Tyneside Metropolitan Railway Act 1973 and benefits from on-going powers in Section 16 RCCA to carry out further works from time to time under Part 18 Class A. As this authorisation was given before the coming into effect of the Directive, the same conclusion as in Euston can be arrived at in law, namely that the proposed works are not required to be the subject of environmental assessment.

60. Article 3(12) of the GDPO has the effect of disapplying the requirement for environmental assessment of the Proposed Development. In turn there is therefore no requirement for screening of the Proposed Development as Schedule 1 or 2 EIA development.

61. Part 18 Class A.1 contains a condition requiring prior approval of the appropriate authority in relation to specified types of development before such development is permitted under the GPDO, namely works that consist of or include:

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

62. Article 2 of the GPDO defines “building” as:

²⁶ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

²⁷ At paragraph 11 of the Secretary of State's Decision Letter

- a. *includes any structure or erection and, except in Class F of Part 2, [Classes P and PA of Part 3,] Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16 and Class T of Part 19, of Schedule 2, includes any part of a building; and*
- b. *does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure;*

63. Part 18 Class A.2 then provides 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 or 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.”*

64. Article 3(6) of the GPDO confirms that:

“The permission granted by Schedule 2 does not, except in relation to development permitted by Classes A, B, D and E of Part 9 and Class A of Part 18 of that Schedule, authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road, or creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons.”

65. The Proposed Development may contain limited elements which fall within the definition of works requiring approval under Part 18 Class A.1, namely construction of an extended platform and associated infrastructure at Hebburn Station.

66. The compounds / laydown areas off Glen Street and at Bede station (included within this CLOPUD application as part of the Proposed Development) utilise existing laydown / sidings and require minimal further operational development for the purposes of their use as part of the project. Some structures may be brought onto site (such as cabins, machinery and apparatus) which are of a temporary nature only and will not constitute operational development. Therefore Nexus does not anticipate any requirement for prior approval in relation to such temporary structures. Existing accesses are proposed to be used with the Proposed Development.

67. In relation to any works requiring prior approval, such development is a single stage of development, with planning permission only being granted at the point of prior approval of detailed plans and specification. On this basis, the ruling in R. (Barker) v Bromley LBC [2007] 1 A.C. 470²⁸ does not apply and there is no requirement for the prior approval application to be subjected to environmental assessment by reason of Article 3(12) of the GPDO.
68. Regulation 3 of the Regulations has the effect of prohibiting the grant of planning permission for EIA development unless an EIA has been carried out in respect of that development. As a CLOPUD is not a grant of planning permission, Regulation 3 does not apply. Furthermore, Regulation 8, which empowers local planning authorities to screen developments of their own accord, only relates to applications for planning permission.
69. The proposals are not expected to give rise to effects on integrity of European sites for the protection of designated habitats and protected species²⁹. See the Supporting Technical Note for further information.
70. In summary, for the above reasons, Nexus considers that the Proposed Development (which is in any event substantively on the line of the pre-existing infrastructure subject to modifications and improvements) do not amount to EIA development. In the case of Part 18 Class A, the GDPO³⁰ does not require Nexus to seek a screening opinion from the Council and the absence of this requirement in the GPDO is not inconsistent with the EU EIA Directive³¹.

²⁸ Enclosure 17

²⁹ Article 3(1) of Schedule 2 GPDO

³⁰ Article 3(1)

³¹ APP/X/98/X5210/003059 at paragraphs 429 - 436
