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From: TownPlanning LNW <TownPlanningLNW@networkrail.co.uk>
Sent: 15 September 2014 11:16
To: planning
Subject: Ribble Valley ref 3-2014-0776 - 9 Fox St Clitheroe new dwelling

3/2014/0776

9 Fox Street Clitheroe Lancashire BB7 2AQ

Erection of detached two storey dwelling with accommodation in the roof space within the side garden of No.9 Fox Street

374437 / 442374

This proposal is being constructed adjacent to the operational railway.

We would draw the councils attention to the following Rail Accident Investigation Branch report into 'Penetration and obstruction of a tunnel between Old Street and Essex Road stations, London 8 March 2013', which concluded:
5 The intent of this recommendation is to ensure that the planning approval process reduces the risk to railway infrastructure due to adjacent developments.

The Department for Communities and Local Government should introduce a process to ensure that Railway Infrastructure Managers are made aware of all planning applications in the vicinity of railway infrastructure. This process should at least meet the intent of the statutory consultation process (paragraphs 97f and 101).

We would request that the developer abide by the following comments in order to ensure the safety, operation, performance and integrity of the railway is not impacted by the proposal.

Network Rail requests that the developer submit a risk assessment and method statement (RAMS) for the proposal to Network Rail Asset Protection, once the proposal has entered the development and construction phase. The RAMS should consider all works to be undertaken within 10m of the operational railway. We require reviewing the RAMS to ensure that works on site follow safe methods of working and have taken into consideration any potential impact on Network Rail land and the operational railway. The developer should contact Network Rail Asset Protection prior to works commencing at AssetProtectionLNWNorth@networkrail.co.uk to discuss the proposal and RAMS requirements in more detail. A BAPA may be required for the works on site.

(b) Any scaffold which is to be constructed within 10 metres of the Network Rail / railway boundary fence must be erected in such a manner that at no time will any poles over-sail the railway and protective netting around such scaffold must be installed. The applicant / applicant's contractor must consider if they can undertake the works and associated scaffold / access for working at height within the footprint of their property boundary. The applicant is reminded that when pole(s) are erected for construction or maintenance works, should they topple over in the direction of the railway then there must be at least a 3m failsafe zone between the maximum height of the pole(s) and the railway boundary.

This is to ensure that the safety of the railway is preserved and that scaffolding does not:

- Fall into the path of on-coming trains
- Fall onto and damage critical and safety related lineside equipment
- Fall onto overhead lines bringing them down, resulting in serious safety issues (this is applicable if the proposal is above the railway and where the line is electrified).

The applicant is requested to submit details of proposed scaffolding works to the Network Rail Asset Protection Engineer for review and approval.

(c) The developer/applicant must ensure that their proposal, both during construction, and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail land and its infrastructure or undermine or damage or adversely affect any railway land and structures.

- There must be no physical encroachment of the proposal onto Network Rail land, no over-sailing into Network Rail air-space and no encroachment of foundations onto Network Rail land and soil.
- Any future maintenance must be conducted solely within the applicant's land ownership.
- Should the applicant require access to Network Rail land to facilitate their proposal they would need to approach the Network Rail Asset Protection Team at least 20 weeks before any works are due to commence on site. The applicant would be liable for all costs incurred in facilitating the proposal and an asset protection agreement may be necessary to undertake works. Network Rail reserves the right to refuse any works by a third party that may adversely impact its land and infrastructure.
- Any unauthorised access to Network Rail air-space or land will be deemed an act of trespass.

(d) If the developer and the LPA insists on a sustainable drainage (SUDs) and flooding system then the issue and responsibility of flooding and water saturation should not be passed onto Network Rail and our land. The NPPF states that, “103. *When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere,*” We recognise that councils are looking to proposals that are sustainable, however, we would remind the council in regards to this proposal in relation to the flooding, drainage, surface and foul water management risk that it should not increase the risk of flooding, water saturation, pollution and drainage issues ‘elsewhere’, i.e. on to Network Rail land.

Therefore we would required the applicant to provide details of the drainage to our asset protection engineer for review and approval to ensure that the proposal does not export any issues of water saturation onto Network Rail land.

We would request that a condition is included in the planning consent as follows:

Condition:

“Prior to the commencement of the development details of the disposal of both surface water and foul water drainage directed away from the railway shall be submitted to, and approved in writing by the Local Planning Authority and Network Rail.”

Reason: To protect the adjacent railway from the risk of flooding and pollution.

No infiltration of surface water drainage into the ground is permitted other than where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.

(e) Network Rail will need to review all excavation works to determine if they impact upon the support zone of our land and infrastructure as well as determining relative levels in relation to the railway including any embankments.

We would request a condition is included in the planning consent as follows:

Condition:

“Prior to the commencement of the development full details of ground levels, earthworks and excavations to be carried out near to the railway boundary shall be submitted to and approved in writing by the Local Planning Authority and Network Rail.”

Reason: To protect the adjacent railway.

The NPPF states:

120. To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

(f) Network Rail requests that the developer ensures there is a minimum 2 metres gap between the **buildings and structures on site** and our boundary fencing.

- To allow for all construction works on site and any future maintenance to be carried out wholly within the applicant's own land ownership and without encroachment onto Network Rail land and air-space. Any unauthorised access to Network Rail land or air-space is an act of trespass and we would remind the council that this is a criminal offence (**s55 British Transport Commission Act 1949**).
- To ensure that should the **buildings and structures on site** fail or collapse that it will do so without damaging Network Rail's boundary treatment or causing damage to the railway (e.g. any embankments, cuttings, any lineside equipment, signals, overhead lines) and to prevent the materials from the **buildings and structures on site** falling into the path of trains.
- To ensure that the **buildings and structures on site** cannot be scaled and thus used as a means of accessing Network Rail land without authorisation.
- To ensure that Network Rail can maintain and renew its boundary treatment, fencing, walls.
- There are no Party Wall issues for which the applicant would be liable for all costs.
- To ensure that the applicant does not construct their proposal so that any foundations (for walls, buildings etc) do not end up encroaching onto Network Rail land. Any foundations that encroach onto Network Rail land could undermine, de-stabilise or other impact upon the operational railway land, including embankments, cuttings etc. Under Building Regulations the depth and width of foundations will be dependant upon the size of the structure; therefore foundations may impact upon Network Rail land by undermining or de-stabilising soil or boundary treatments.

The NPPF at Section 17, bullet 4 states:

“Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings”

We believe this comment supports our position on the location of buildings close to the railway boundary.

(g) We would remind the council and the applicant of the potential for any noise/ vibration impacts caused by the proximity between the proposed development and the existing railway, which must be assessed in the context of the

National Planning Policy Framework (NPPF) and the local planning authority should then use conditions as necessary.

- The current level of railway usage may be subject to change at any time without prior notification including increased frequency of trains, night time train running and heavy freight trains.
- There is also the potential for maintenance works to be carried out on trains, which is undertaken at night and means leaving the trains' motors running which can lead to increased levels of noise.
- Network Rail also often carry out works at night on the operational railway when normal rail traffic is suspended and often these works can be noisy and cause vibration.
- Network Rail may need to conduct emergency works on the railway line and equipment and these would not be notified to residents in advance due to their safety critical nature.
- The proposal should not prevent Network Rail from its statutory undertaking

(h) If not already in place, the Developer must provide, at their own expense, a suitable trespass proof steel palisade fence **of at least 1.8m in height** adjacent to Network Rail's boundary and make provision for its future maintenance and renewal without encroachment upon or over-sailing of Network Rail land. Network Rail's existing fencing / wall must not be removed or damaged and at no point either during construction or after works are completed on site should the foundations of the fencing or wall or any embankment therein be damaged, undermined or compromised in any way. Any vegetation on Network Rail land and within Network Rail's boundary must not be disturbed. Any fencing installed by the applicant must not prevent Network Rail from maintaining its own fencing/boundary treatment.

Any existing Network Rail fencing at the site has been erected to take account of the risk posed at the time the fencing was erected and not to take into account any presumed future use of the site, where increased numbers of people and minors may be using the areas adjacent to the operational railway. Therefore, any proposed residential development imports a risk of trespass onto the railway, which we would remind the council, is a criminal offence (**s55 British Transport Commission Act 1949**). As the applicant has chosen to develop a proposal next to the railway, they are requested to provide a suitable trespass proof fence to mitigate any risks imported by the proposal.

Network Rail is a publicly funded organisation with a regulated remit; it would not be reasonable to require Network Rail to fund boundary works, fencing and boundary enhancements necessitated by third party commercial development adjacent to the railway.

Network Rail's Asset Protection Engineer will need to review the fencing to ensure that no works to the foundations undermine or destabilise Network Rail land, or encroach onto Network Rail land.

The applicant is reminded that any works close to the Network Rail boundary, and any excavation works are also covered by the Party Wall Act of 1996. Should any foundations, any excavations or any part of the building encroach onto Network Rail land then the applicant would need to serve notice on Network Rail and they would be liable for costs. An applicant cannot access Network Rail land without permission (via the Asset Protection Team) and in addition to any costs under the Party Wall Act, the applicant would also be liable for all Network Rail site supervision costs whilst works are undertaken. No works in these circumstances are to commence without the approval of the Network Rail Asset Protection Engineer.

We would request a condition is included in the planning consent as follows:

"Prior to occupation of the dwellings the developer is to provide a suitable trespass proof fence adjacent to the boundary with the railway. Details of the fencing to be approved by the LPA and Network Rail."

Reason: To protect the adjacent railway from unauthorised access

Should the council obviate the need for the trespass proof fencing then we would need to be assured that any acoustic fencing construction and future maintenance would not impact our boundary.

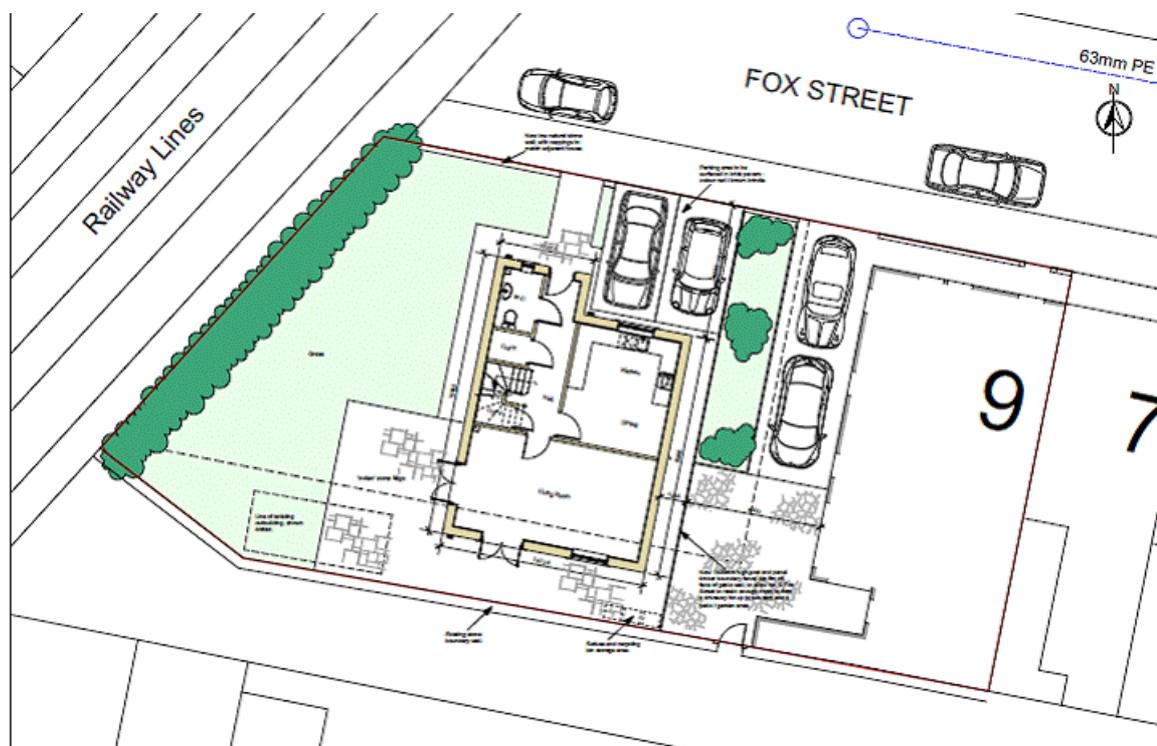
(l) We would draw the council's attention to the Department of Transport's 'Transport Resilience Review: A Review of the Resilience of the Transport Network to Extreme Weather Events' July 2014, which states, "*On the railways, trees blown over in the storms caused severe disruption and damage on a number of routes and a number of days, particularly after the St Jude's storm on 28th October, and embankment slips triggered by the intense rainfall resulted in several lines being closed or disrupted for many days..... 6.29 Finally the problem of trees being blown over onto the railway is not confined to those on Network Rail land. Network Rail estimate that over 60% of the trees blown over last winter were from outside Network Rail's boundary. This is a much bigger problem for railways than it is for the strategic highway network, because most railway lines have a narrow footprint as a result of the original constructors wishing to minimise land take and keep the costs of land acquisition at a minimum.*"

In light of the above, Network Rail would request that no trees are planted next to the boundary with our land and the operational railway. Network Rail would request that only evergreen shrubs are planted and we would request that they should be planted a minimum distance from the Network Rail boundary that is equal to their expected mature growth height.

- Trees can be blown over in high winds resulting in damage to Network Rail's boundary treatments / fencing as well as any lineside equipment (e.g. telecoms cabinets, signals) which has both safety and performance issues.
- Trees toppling over onto the operational railway could also bring down 25kv overhead lines, resulting in serious safety issues for any lineside workers or trains.
- Trees toppling over can also destabilise soil on Network Rail land and the applicant's land which could result in landslides or slippage of soil onto the operational railway.
- Deciduous trees shed their leaves which fall onto the rail track, any passing train therefore loses its grip on the rails due to leaf fall adhering to the rails, and there are issues with trains being unable to break correctly for signals set at danger.

Network Rail has a duty to provide, as far as is reasonably practical, a railway free from danger or obstruction from fallen trees. Trees growing within the railway corridor (i.e. between the railway boundary fences) are the responsibility of Network Rail. Trees growing alongside the railway boundary on adjacent land are the primary responsibility of the adjoining landowner or occupier.

All owners of trees have an obligation in law to manage trees on their property so that they do not cause a danger or a nuisance to their neighbours. This Duty of Care arises from the Occupiers Liability Acts of 1957 and 1984. A landowner or occupier must make sure that their trees are in a safe condition and mitigate any risk to a third party. Larger landowners should also have a tree policy to assess and manage the risk and to mitigate their liability.



Regards

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