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Mr C Gomm
Bath & North East Somerset Council
Planning Services
PO Box 5006
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Dear Mr Gomm

Parcel 0062, Tynning Road, Bathampton, Bath

“Change of use of the land to operational railway, incorporating creation of a railway maintenance yard and new highway access”

Planning Application 17/06128/FUL

1. Introduction

I write on behalf of the Bathampton Meadows Alliance (the “BMA”) a not for profit community organisation formed to campaign for the preservation of Bathampton Meadows from inappropriate development. The BMA opposes this planning application, and asks that:

- (i) the application be rejected; and
- (ii) Network Rail, as owners of the site, be directed by the Council to restore the land to meadow land, befitting its current planning appellation as land in use for agricultural purposes.

The application site is:

- (i) Within the Green Belt;
- (ii) Within the Cotswold Area of Outstanding Natural Beauty (AONB);
- (iii) Within the Setting of the World Heritage City of Bath;
- (iv) Within the setting of the Bathampton Conservation Area;
- (v) Adjacent to the Hampton Rocks Cutting SSSI;
- (vi) A Site of Nature Conservation Interest.

Any one of these planning appellations affords the application Site significant protection from inappropriate development under national and local planning policy. The confluence of all 6 combines to afford the highest level of protection. There is a strong legal presumption in favour of preservation of the site’s rural, agricultural status, and against its change of use. The application makes no sufficient case for overturning this presumption. This letter of objection does not seek to catalogue the entirety of the legal tests which must be met for development bearing one or more of the above planning protections to be permitted but sets out below how the proposal fails to meet the threshold for permission to proceed under key national and local planning policy.

In the following paragraphs we highlight the following:

- The Application fails to meet the threshold tests in both paragraphs 90 and 88 of the NPPF;
 - The need to preserve and enhance the World Heritage City of Bath and its Setting has led to the creation of additional planning hurdles under the Adopted Core Strategy and Placemaking Plans, and these also have not been met;
 - The application fails to address the very real concerns for the negative impact of the proposal on the endangered, protected horseshoe bat populations of the Brown's Folly SSSI;
 - The application has given no consideration to the very real traffic and air pollution impacts on the village of this land becoming Operational Railway land; and
 - The dangers of the site being subjected to more extensive development if the designation is changed, entitling Network Rail to make use of Permitted Development powers under Part 8 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

2. *Green Belt- National Planning Considerations*

The Planning Authority will well know that, in accordance with the NPPF, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (para 87 NPPF). These very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (para 88 NPPF).

Network Rail appears to believe this application falls within the exceptions to the general prohibition on inappropriate development contained within paragraph 90 of the NPPF. This provides that local transport infrastructure which can demonstrate a requirement for a Green Belt location need not be inappropriate development, provided that it preserves the openness of the Green Belt and does not conflict with the purposes of including land in the Green Belt.

It is by no means clear that "local transport infrastructure", which is not defined in NPPF, is intended to include development of the nature proposed in this application. A reasonable interpretation might be that the term encompasses those physical assets which enable people and goods to move about efficiently. Is the creation of a large, fenced area of hard standing facilitating access to the adjacent railway "local transport infrastructure"? It is by no means an obvious fit, and we suspect it is unlikely that Paragraph 90 was intended to encompass this kind of development. Rather, we believe that Network Rail seeks to shoehorn its proposals into Paragraph 90 in order to avoid the more stringent planning restrictions contained in paragraph 88.

Irrespective of this, Network Rail's application fails the tests in both paragraphs 90 and 88 of the NPPF, as explained below.

The Paragraph 90 Test

The Application fails all three limbs of the exception test in paragraph 90 of the NPPF:

- (i) **Network Rail has not demonstrated a requirement for a Green Belt location.** A *desire* to build in this location does not equate to a *requirement*, and Network Rail has conducted no options appraisals for other locations. Indeed it argues that this site has the advantage of "*further reducing use of other sites elsewhere*" (para 3.2 Planning, Design & Access Statement). This merely highlights the fact that Network Rail does indeed have the option to use other, suitable sites; the Application site may be a convenient, and even a cheaper solution, but neither of these are material planning considerations.

Network Rail wants a site which can be accessed by a Road to Rail Vehicle, and admits (paragraph 5.5 of the Planning, Design & Access Statement) that railhead land at Westmoreland Station Road is suitable for this purpose. The Westmoreland Road site is safeguarded by Policy ST4 of the B&NES Adopted Placemaking Plan for use as a rail freight facility and interchange; Network Rail clearly harbours development ambitions for the site, but it is dismissed in a sentence in this scant application.

Network Rail also records in its application a disinclination to rent land from other landowners, and to incurring the costs of doing so (para 5.9). This is not a material consideration when determining whether there is a need for this development to have a Green Belt location; once again, to the contrary, it suggests that other, unexplored, options are available and that a need for this site over all other feasible sites has not been demonstrated.

Finally with regard to location, Network Rail observes, in para 5.22 of its statement, that *“the use of this site, on land of low agricultural value, has been chosen in preference to land of higher agricultural value”*. The competing land is not identified for comparison, and it is astonishing that Network Rail’s application would be so cavalier in its approach to site selection, given the environmental significance of the site it has selected. Network Rail’s application concentrates on what it would like, without any attempt to satisfy the legal test of showing that what it would like must be located in this green belt location as opposed to suitable land elsewhere. The evidence from the application is in fact that the development is not essential, that Network Rail could make use of other sites it already owns, or look to lease another more suitable location for its railway access.

- (ii) **A change of use at the application site would destroy, rather than preserve, the openness of the Green Belt at this location.** High security fencing, compacted aggregate surfacing and the comings and goings of heavy railway equipment will all be highly visible from the hillside that surrounds the site, including from the Grade II Listed Tower of Brown’s Folly (designated in part because of the fine views over Bath and the Avon Valley which it commands). Residents of Tynning Road have complained of bright night time lighting at the site during Network Rail’s temporary tenure, and this presumably would continue or intensify if the land was reclassified as operational railway. The visual intrusion of the light pollution caused by Network Rail’s operations in particular will detract from the openness of the Green Belt.¹ It is also likely to have a detrimental impact on adjacent protected bat populations. This is discussed further at Section 4 below.
- (iii) **Development of the Application Site would most definitely conflict with the purposes of including land in the Green Belt,** which, within B&NES Adopted Core Strategy are listed as including the following:
- To assist in safeguarding the countryside from encroachment.
 - To preserve the setting and special character of Bath.
 - To preserve the individual character, identity and setting of Keynsham and the villages and hamlets within the Green Belt.

¹ The Court of Appeal decision in *Turner v Secretary of State for Communities and Local Government* shows that the concept of ‘openness of the green belt’ is not narrowly limited to an approach based on a measurement of volume of the development; the word ‘openness’ was open-textured and many factors were capable of being relevant including the difference in the visual intrusion on the openness of the green belt.

The destructive impact of the change of use of this Meadow to Operational Railway upon the character of the village of Bathampton cannot be overstated. During Network Rail's temporary occupation of the Site for electrification works, the following negative impacts have been experienced by the community:

- Increased traffic volumes on an already over congested, narrow village High Street, in particular of large vehicles, creating congestion, and traffic chaos as large vehicles get stuck in the face of oncoming vehicles and experience difficulty navigating the Bathampton Canal Bridge;
- Traffic noise, vibration and emissions through the village generated by Network Rail vehicles. Network Rail's Planning, Design & Access Statement suggests (para 2.14) that there are no Listed Buildings considered to be within proximity to the site. This fails to acknowledge the impact of Network Rail traffic on the very many listed buildings in Bathampton High Street, the listed canal bridge and the listed church.
- noise pollution, particularly at night, when much of Network Rail's activity takes place;
- light pollution impacting upon an otherwise intrinsically dark landscape within the Avon Valley;
- Risks to safety, particularly to children at the local school, at the top of Tynning Road. Roads are narrow, there are no pedestrian crossings, and the location is entirely unsuited to regular heavy goods traffic.
- Poor Air Quality. NO₂ emissions in Bathampton High Street have been monitored by the Council since the beginning of 2016 and, whilst not yet at illegal levels, emissions are nonetheless at levels which are of concern to public health. We cannot factually attribute this solely to the increased traffic generated by Network Rail's temporary occupation and use of the Application Site, but this additional traffic burden will not have helped.

An annual average figure of 31 is recorded in the 2017 Annual Status Report, against a legal limit of 40, for NO₂ emissions on Bathampton High Street. It is widely acknowledged that there are no "safe" limits for NO₂ exposure, and Bathampton's high reading should focus attention on the existing traffic crisis in the village high street, and measures be put in place to mitigate against any further deterioration. Bath has been identified as one of the 29 most polluting cities in the country, and has been in effect "put into special measures", with a strict deadline for devising and implementing a programme of reform to reduce illegal levels of pollution across the City. The poor air quality experienced by village residents risks further deterioration if Network Rail is permitted to designate the Site as Operational Railway and begin to use the High Street indiscriminately as its main access route for railway operations located at the site.

Before turning to the planning tests provided by paragraph 88 of the NPPF it is worth noting that if indeed the proposed development is transport infrastructure as Network Rail contends, Policy ST6 within the Adopted Placemaking Plan provides that the development of transport infrastructure will only be permitted if there is no unacceptable impact on heritage and environmental assets and amenity including the World Heritage Site and its setting, Areas of Outstanding Natural Beauty and Natura 2000 sites (SACs/SPA). We do not believe that the proposed development can meet this very high threshold test.

The Paragraph 88 Test

If the application does not fall to be considered within paragraph 90 of the NPPF, then paragraph 88 will apply. Substantial weight must be given to the harm to the Green Belt that will be caused by this development, and the potential harm to the Green Belt by reason of inappropriateness, and any other harm, must be clearly outweighed by other considerations.

The harm to the Green Belt identified in the discussion above is equally relevant here. In addition should be added the degrading of the view from Brown's Folly, a Grade II Listed monument, surrounded by an SSSI. Brown's Folly is identified in the City of Bath World Heritage Site Setting Supplementary Planning Document (SPD)² as a green hillside forming a prominent feature of the landscape setting. The SPD observes that:

"There are very few views to the city from the open countryside outside the city", before listing just 3, one of which is Brown's Folly. Brown's Folly overlooks the application site: **See photographs at Appendix 1.**

Network Rail makes limited effort to explain why the harm to the Green Belt is justified by other considerations. It does not even pretend that there are no other sites available to it, but merely seeks to showcase the relative convenience and financial economy of this site over others. Cost savings to be enjoyed by using a site Network Rail owns, rather than rents are not a planning consideration at all, but this does indicate that there are other sites which would be suitable for Network Rail's purposes.

3. Green Belt - Local Planning Considerations

In the Adopted Cores Strategy for B&NES, Policy CP 8 Green Belt confirms that the openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy and also recognises that within B&NES the green belt additionally plays a vital role in maintaining the setting of the World Heritage Site of Bath and the surrounding villages. It is important to remember that respecting the setting and the surrounding villages, and complying with the other requirements of Core Strategy Policy CP8 are *additional hurdles* that must be met by this application.

In addition to the purposes of including land within the Green Belt set out above, Core Strategy Policy CP8 includes the following as **Objectives** for the use of land in the Green Belt:

- To retain attractive landscapes and enhance landscapes.
- To secure nature conservation interests.
- To retain land in agricultural, forestry and related uses.

4. Impact of Proposal on Important Bat Habitat

In 2016 B&NES Council initiated the River Avon Bat Project, in recognition of the fact that Bath and its environs provide a unique habitat for a number of internationally important bat species, including the rare and endangered greater and lesser horseshoe bats. B&NES acknowledges on its website that *"because of the way bats tend to use the river corridor we will need to plan and*

² see map at:

<http://www.bathnes.gov.uk/sites/default/files/sitedocuments/Environment/Landscape/WHS/WHS%20Map%2007.pdf>

manage change carefully". The Council's website observes that horseshoe bats are not tolerant of high levels of light, and that maintaining dark corridors at dusk and dawn is an important part of the strategy for making sure new developments are Bat friendly. Council engaged ecologists helping with the River Avon Horseshoe Bats Study have recommended that a range of night lighting restrictions should be applicable year-round within the operation of all proposed developments in proximity to the River Avon corridor, of which the Application Site forms an intrinsic part.

Brown's Folly, in addition to its Grade II listed status is home to a nationally important Site of Special Scientific Interest (SSSI), used by lesser and greater horseshoe bats (as well as other bat species) for hibernation, breeding, mating and as a staging post prior to dispersal. The grassland, watercourses, scrub and woodland surrounding the site are used by bats for feeding and commuting. These species are highly mobile throughout the year.

Horseshoe Bats are fully protected under UK Law, and Policy NE3 of the Placemaking Plan provides that development that would adversely affect, directly or indirectly, internationally or nationally protected species and/or their habitats will not be permitted.

In addition Policy D8 of the Placemaking Plan has this to say about artificial lighting:

" 1. Proposals for artificial lighting will only be permitted where:

- a. they would not give rise to an unacceptable level of illumination into the sky, open countryside, urban areas or villages;*
- b. it can be demonstrated that additional lighting on site will have no detrimental impact on visual and residential amenity, the historic environment or local ecology;*
- c. any adverse impact of lighting proposals in all new development, including light spill and energy use, is minimised through design or technological solutions (including the use of SMART lighting techniques) or by controlling the hours of use;*

...

2. Development will be expected to reduce or at best maintain existing light levels to protect or improve the darkness of rivers, watercourse or other ecological corridors in particular to protect or provide a functional dark route for European protected species. New lighting facilities with light spill to these features must be dimmable.

3. Lighting in public areas should be designed to a suitable level of illumination in accordance with BS 5489-1 2013 and where appropriate, ensure consistency with Bath Lighting Strategy and other relevant guidance and where necessary the hours of operation will be controlled by the use of conditions."

Network Rail's consideration of Bat habitat is limited to a single sentence (para 5.24) in which it dismisses concerns on the basis that there will be *"only minor alterations to the existing hedgerows"*. The impact of light pollution generated by the development on the bat population of the Brown's Folly SSSI has not be considered by Network Rail, nor has it given any reassurance with regard to levels of lighting, by day or night, which will intrude into the landscape. A picture paints a thousand words however, and the photographs, taken by Bathampton residents, at **Appendix 1**, illustrate the intrusive impact of lighting used by Network Rail at the site.

5. *Traffic Implications*

Network Rail cites paragraph 34 of the NPPF in its favour. This paragraph requires that planning decisions should ensure that developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable modes can be maximised. Presumably Network Rail considers that the proximity of the proposed yard to the Railway Line dovetails with this requirement, somewhat redundantly. The application however completely ignores the extensive road traffic movements generated by the development. Tynning Road is a narrow, single lane rural road, with limited passing opportunities, terminating at a railway crossing, and with a busy primary school at its head. Network Rail traffic (much of it large and heavy) must negotiate either the toll bridge from Batheaston, or navigate the narrow, congested, residential High Street in Bathampton, and the blind bend of the narrow grade II listed canal bridge. Network Rail's temporary use of the Application Site for electrification works caused traffic chaos in the village. Please see the photographs at **Appendix 1** for an illustration of the type of heavy equipment brought through the village by Network Rail to the application Site.

Network Rail has "identified" (para 3.6 of the Planning, Design & Access Statement) that deliveries should be made "outside of school drop-off, and pick up times". It also asserts (para 5.4) that the existing access point to the west of the site between Church Lane and Tynning Road is too small and limits the units which Network Rail could get onto the railway line for maintenance requirements. This is the extent of the information revealed to the Planning Authority with regard to intended traffic movements. Beyond an apparent offer to avoid a half hour period in morning and mid-afternoon during school term times, there is no indication of the anticipated volume of traffic, type of vehicles or routes to be taken to access Tynning Road. We must assume from the complaint that the existing access point is too small, that Network Rail intend to deploy larger vehicles, on a regular basis were permission to be granted. These must pass through the narrow, already congested lanes of Bathampton village, at all times of the day and night. Network Rail notes (para 5.4), in relation to the Church Lane access, the "*inconvenience this can cause to existing residents and the school within the vicinity of this access*". The proposed development would represent more than an inconvenience. Indeed the current levels of inconvenience will be eclipsed by the damaging impact of the proposed development on the residents of Tynning Road, the school and the wider community of Bathampton High Street caused by the additional traffic burden from large vehicles regularly travelling down a village high street and a rural lane both entirely unsuited to this kind of traffic.

6. *The Long Term Implications of designating the Site as Operational Railway*

It will not be lost on the Planning Authority that there are planning consequences of designating the land as Operational Railway. Of these the Permitted Development Rights that this will give to Network Rail is of most concern. We understand that Network Rail has flouted, for over 12 months, the terms of its temporary permission from Natural England to use the Site for railway purposes and failed to restore the site to meadow land as required. There is little confidence from the community that Network Rail's activities on this site, were it to become Operational Railway, would remain limited in the way delineated by this application. We would urge the Planning Authority to be most circumspect in granting a permission which will in effect give Network Rail a legal smokescreen behind which to inflict further damage to the landscape, and in particular to the Setting of the World Heritage Site.

Yours sincerely

Annie Kilvington
Solicitor
On Behalf of Bathampton Meadows Alliance

Appendix 1

A. Photographs of the Application Site as viewed from the Grade II Listed site of Brown's Folly



2. Photographs of the Application Site in use by Network Rail

These photographs were taken by Bathampton Residents, and show the light pollution created by night working operations, as well as illustrating some of the heavy equipment brought through the village onto the Site.









