

JONATHAN SINCLAIR – APPENDICES TO PROOF OF EVIDENCE

The Network Rail (Old Oak Common Great Western Mainline Track Access) Order

Appendices to Proof of Evidence

CONTENTS

JS1 – Email from Richard Owen of Burges Salmon dated 27 June 2023

JS1

Volodina, Tatiana

From: Richard Owen <Richard.Owen@burges-salmon.com>
Sent: 27 June 2023 14:33
To: Elsenaar, Marnix
Cc: Volodina, Tatiana; Conal McLoughlin; Jane Dagnall (jane.dagnall@thecrownestate.co.uk); Rory McKeever
Subject: RE: Land adjoining 239 Horn Lane, Acton W3 9ED, Crown Estate/Network Rail [ADDGDD-LIVE.FID3983009] [Burges-WORK.FID10683220]

Marnix,

Given the correspondence to date on this matter, which no doubt you will have seen, I thought it simplest to respond to your various points in the body of your email below. I have done this, in orange for ease of reference.

You will see that I have proposed a solution in the final section which I hope you will find of assistance.

Kind regards,

Richard

Richard Owen
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**Burges
Salmon**



From: Elsenaar, Marnix <marnix.elsenaar@addleshawgoddard.com>
Sent: Monday, June 19, 2023 5:29 PM
To: Richard Owen <Richard.Owen@burges-salmon.com>; Conal McLoughlin <Conal.McLoughlin@burges-salmon.com>
Cc: Volodina, Tatiana <Tatiana.Volodina@addleshawgoddard.com>
Subject: Land adjoining 239 Horn Lane, Acton W3 9ED, Crown Estate/Network Rail [ADDGDD-LIVE.FID3983009]

Caution: External Email

Dear Richard/Conal

Your reference: CM08/RO01/31932.10005/MCLOU

We act for Network Rail Infrastructure Limited in connection with their application for a Transport and Works Act Order in respect of land at 239 Horn Lane, Acton, London. Network Rail have forwarded a copy of your letter dated 31 May to Jonathan Sinclair. As you know, Network Rail wishes to acquire land adjoining 239 Horn Lane (title number AGL51330) (**Crown Land**) for the purposes of the scheme to which the TWA order application relates; namely:

- (a) a temporary road rail vehicle access point (**RRAP**) onto the Great Western Mainline to enable rail enhancement works to be carried out which are required in connection with the High Speed Two rail project; and
- (b) a permanent RRAP to enable reliable future maintenance to the southern side of the main railway lines.

The scheme includes the Crown Land on which Network Rail proposes to construct a permanent RRAP in reliance on its Permitted Development Rights (under the Town and Country Planning (General Permitted Development) (England) Order 2015). Network Rail has not included the Crown Land within the land in respect of which it seeks compulsory powers under its TWAO application because crown land may not be acquired compulsorily. Accordingly, Network Rail has corresponded with you about acquiring the land from the Crown Estate to enable its scheme to proceed.

Your 31 May letter

Your 31 May letter states that "In situations where an appropriate authority is in place to determine an application, such as the Secretary of State in relation to a compulsory purchase order or a local planning authority in relation to a planning application, then we would normally await the outcome of any application before proceeding with any disposal".

However, this approach doesn't align with the facts that apply to this matter for two reasons:

1. For Network Rail to secure the TWAO, it must persuade the Inspector and Secretary of State that there are no impediments to the implementation of its scheme. Because crown land cannot be compulsorily purchased, Network Rail wants to be able to explain to the Secretary of State that it has made good progress in relation to the acquisition of the Crown Land otherwise its inability to tell a convincing story about how it will acquire the Crown Land will be an impediment to implementation and undermine Network Rail's case for the TWAO; and
2. Network Rail is not seeking new powers in relation to the Crown Land because it cannot obtain compulsory land powers in respect of it and because planning permission is provided by its permitted development rights. Accordingly, there will be no decision in respect of the Crown Land to assist your client in reaching a decision about whether or not to sell the land to Network Rail.

I recognise that you will want to put your best foot forward with the Inspector, which is entirely understandable, and also that you are not seeking any new powers in relation to the land in question for the reasons you have given.

However, the escheat process is entirely independent of the mechanics of the Transport and Works Act Order to which you refer. In the context of escheat, all is very much aligned; the land is subject to escheat to the Crown, and there are two parties who have expressed an interest in purchasing it.

Bellaview Properties Limited

We are unclear to what extent the Crown Estate's position has been influenced by correspondence from Norton Rose Fulbright on behalf of Bellaview Properties Limited who own land adjoining the Crown Land and over whose land Network Rail seeks powers for the purposes of its scheme. Your firm advised Network Rail that it needed to consult adjoining landowners on its proposal to acquire the Crown Land. It duly did so and Bellaview objected to the acquisition by Network Rail, and stated that it wishes "to participate in a purchase of the [Crown Land]". Bellaview's solicitors also wrote to Network Rail by letter dated 6 February 2023, and copied Mr Owen, indicating that, if

Bellaview could acquire the Crown Land, it could incorporate it into the redevelopment scheme that it proposes on its land by "providing valuable amenity space for residents".

Bellaview have also objected to the TWAO application. Their objection refers to the Crown Land as "the Triangle Site" and they state "*The Triangle Site represents another or additional site suitable for the purpose of providing (among other things) a temporary construction compound in connection with the Project as well as a temporary RRAP. Like the Property, the Triangle Site is located immediately adjacent to the GWML railway and includes adequate space for car parking, as well as temporary office and other accommodation (if such elements can be demonstrated as necessary). Given the Triangle Site is presently unoccupied and held by the Crown Estate bona vacantia, it has not been shown that NR has fully explored temporary use of the Triangle Site, and from BPL's perspective there are no apparent barriers which would prevent NR from ultimately securing that land for the purposes of the Project*".

Accordingly, on the one hand Bellaview appear to be expressing an interest in acquiring the Crown Land, on the other they suggest that Network Rail acquires it, at least temporarily, for its scheme. It is clear, therefore, that Bellaview's expression of interest in acquiring the Crown Land is merely a tactical device to advance its negotiating position. We also note that Bellaview have not included the Crown Land in the planning application for the development of their site which adds further weight to our view that their expression of interest in acquiring the Crown Land is not a serious request.

Your view of the position is noted, but you will appreciate that this alone cannot determine The Crown Estate's decision whether to create a new freehold interest in the land, and if so to whom it will be transferred.

I do not mean to be difficult, but Bellaview could equally argue that a transfer of the land to Network Rail would be premature given the Inspector has yet to opine on whether or not the TWAO will be granted, and if the TWAO were to be refused then any earlier transfer of the land to Network Rail could be a significant detriment to Bellaview.

Scheme of public importance

Finally, your client appears to be treating Network Rail in the same way as it would any commercial developer expressing an interest in acquiring the Crown Land. Network Rail is a public body and its scheme at Old Oak Common is being promoted in order to facilitate the delivery of a section of the HS2 railway which has the strong support of the Secretary of State and the benefit of an Act of Parliament. **Again, in the context of escheat we have two interested parties wishing to purchase the land. The fact that one of them is Network Rail and one of them a commercial developer does not of itself determine to whom a transfer might be made in due course.** While we may be dealing with different emanations of government, one part of government is asking the other to convey to it a parcel of land needed for a scheme of public importance. **This is not correct; The Crown Estate is an independent body established by Act of Parliament in 1961 and so is not an emanation or part of government as you suggest.** Please would you:

1. Ask your client to reconsider their position; and

In very simple terms, we have two parties interested in acquiring the land subject to escheat. This is not at all uncommon.

It is often the case that one party's interest is dependent upon securing a planning consent, to which the other party is objecting, and in those circumstances my client will normally await the outcome of the planning process before deciding who would be the more appropriate purchaser. The planning process is designed to weigh up competing interests and reach an independent decision, and a local planning authority has all the necessary resources, the statutory framework and caselaw to enable it to do so. I am sure that you will appreciate that a decision by my client before the outcome of that process could be very detrimental to it. Please note that in these circumstances, my client will not allow itself to become a second tier of planning control and so where a planning consent has been secured it would in the normal course then effect a transfer of the land to facilitate the consented development.

By analogy here, you will appreciate that a decision by my client before the outcome of your client's application for the TWAO could be detrimental to that process and it will not be made.

In the circumstances, I would be prepared to write to the Inspector to explain my client's position and to confirm what normally happens in analogous cases which would I hope be helpful in persuading the Inspector that there would be no impediments to the implementation of the scheme should a TWAO be secured. There is a fixed fee of £750 plus VAT for such a letter to be written.

You will have gathered from earlier correspondence that my client is unable to undertake acts of management in relation to properties which are subject to escheat, and so would not be able to grant an option over the land or enter into anything more binding.

2. Let us know from whom at the Crown Estate you are taking instructions so that our client can engage with them directly.

I have discussed this matter with Jane Dagnall, Senior Legal Counsel at The Crown Estate to whom I have copied this response.

Kind regards

Marnix

Marnix Elsenaar

Partner, Head of Planning & Infrastructure Consenting

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