



## Planning Proof of Evidence

Mark Connell

Transport and Works Act 1992

Transport and Works (Inquiries Procedures) Rules 2004

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

Department of Transport References TWA/21/APP/01/OBJ/8; TWA  
23/APP/02

On behalf of Bellaview Properties Limited

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# 1. Qualifications & Experience

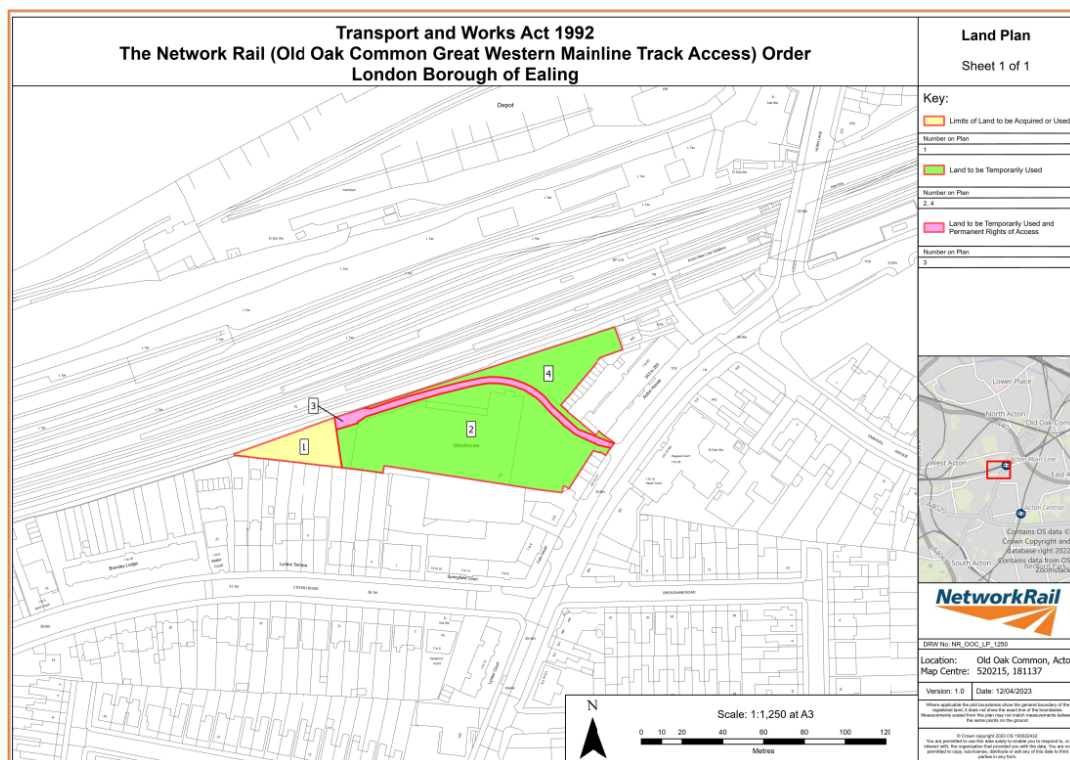
- 1.1 Mark Connell will say;
- 1.2 I hold a Bachelor's of Science (with Honours) in City and Regional Planning and a Diploma (Distinction) in Town Planning from Cardiff University. I am a chartered member of the Royal Town Planning Institute (RTPI).
- 1.3 I have over 20 years of experience working in the field of Planning and have specialised in high density residential-led schemes in London. I am the joint Managing Director of Sphere25, a specialist planning consultancy established in 2019. Prior to this, I was a National Director at JLL, a global property consultancy.
- 1.4 During my career I have been involved with a variety of complex urban development projects across London and the South-East. This has included notable experience in West London and Ealing in particular.
- 1.5 Projects include the Women's Pioneer Housing development opposite Acton Station, The Rectory Park regeneration in Northolt. I have also been involved with a number of schemes next to rail infrastructure, including the Brook Avenue development in Wembley, College Road in Harrow and Station Road in New Southgate amongst others.
- 1.6 I can confirm that my evidence to this inquiry is provided in accordance with the guidance of my professional institution. The opinions expressed are my true and professional opinions.

## 2. Introduction

- 2.1 Network Rail Infrastructure Limited submitted an application to the Secretary of State for Transport on the 17 April 2023 to make the Network Rail (Old Oak Common Great Western Mainline Track Access) Order under the Transport and Works Act 1992. The Draft Order **[CD01]** seeks to compulsorily acquire rights over land and possess land on a temporary basis at Horn Lane, Acton, London.
- 2.2 The explanatory memorandum **[CD02]** describes the affect of the Order as;

*“The Order would confer powers to compulsorily acquire rights in land and take temporary possession of land, as well as to undertake certain ancillary works, all in connection with the development of a temporary road rail vehicle access onto the Great Western Main Line railway to enable delivery of the Old Oak Common station and provision of a permanent maintenance access point for road rail vehicles onto the Great Western Mainline, including any other works and operations incidental to or ancillary to such development (the "Development").”*

- 2.3 The Draft Order is accompanied by a Land Plan **[CD08]**. The Land Plan includes four distinct plots. For ease of reference, this is replicated below.



**Figure 1** : Excerpt from Land Plan, DRW No: NR\_OOC\_LP\_1250

- 2.4 Network Rail are seeking to acquire Plot 1 land from the Crown Estate. Network Rail have identified the Crown Estate Land for a permanent “Road Rail Vehicle” Access Point (RRAP). Bellaview Properties Limited are the freeholder of Plots 2, 3 and 4. A permanent easement is sought over the Plot 3 land to achieve access to the Plot 1 site. Meanwhile, Plots 2 and 4 are identified for temporary possession.
- 2.5 Bellaview Properties Limited objected to the Draft Order **[OBJ/08]**. Network Rail requests<sup>1</sup> a direction from the Secretary of State for deemed planning permission<sup>2</sup> for the development sought in the Draft Order.

### **Outline of BPLs Case**

- 2.6 My evidence will focus on matters of planning practice and policy. My evidence will explain how the planning application for deemed permission is deficient in detail to allow a proper consideration of what is being proposed. It will show that Network Rail have not demonstrated that all of the land and rights sought are needed for the project. My evidence will also show that the proposed conditions are inadequate, and that the current proposals will jeopardise delivery of the recent resolution to grant planning permission for a mixed use development of the site. Both in terms of timing and land sought.

### **Structure of my Evidence**

- 2.7 My evidence is ordered in sections and structured as follows:
- Section 1: Qualifications and & Experience
  - Section 2: Introduction
  - Section 3 : Context
  - Section 4 : National Policy & Relevant Guidance
  - Section 5 : Statement of Matters
  - Section 6 : Conclusion
- 2.8 My evidence refers to and should be read alongside the other expert proofs and statements of;
- Chris Gent, Velocity (Traffic and Transport)
  - Nick Gallop, Intermodality (Railway Matters)
  - Adam Rhead, Gerald Eve, (Funding and Deliverability)
  - Michael Aaronson (Bellaview Properties Ltd)

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<sup>1</sup>Pursuant to rule 10(6) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (2006 Rules),

<sup>2</sup> Under section 90(2A) of the Town and Country Planning Act 1990

## 3. Context

### Introduction

- 3.1 This section will explain the relevant site context pertaining to the Draft Order. For brevity it does not seek to address the context beyond the site and its immediate surroundings. Instead, this section focusses on planning designations, site allocation and the resolution to grant permission for the site.

### Preamble

- 3.2 For the purposes of my evidence “The site” shall refer to the land identified in **CD08**, and comprising Plots 2, 3 and 4 shown in Figure 1. For the avoidance of doubt, this does not include the Triangle land (Plot 1) that is held Bona Vacantia by the Crown Estate. Which, although fundamental to the delivery of the project, is not the subject of the Transport and Works Act Order. It is also to be noted that the Draft Order does not include the vacant frontage buildings of 227-237 Horn Lane. These properties are included in the recent resolution to grant planning permission, but are not within the Draft Order.

### The Site

- 3.3 The site is located on the western side of Horn Lane in Acton, within the London Borough of Ealing. The site is bounded by railway lines to the north, commercial and residential properties to the south-west and north-east and Horn Lane (A4000) to the south-east.
- 3.4 The site measures approximately 0.64ha in area. The principle occupier of the site is a builders’ merchant, Jewson. The Jewson store has a floorspace of approximately 2,600m<sup>2</sup> (GEA) and sells timber and building materials for trade or DIY purposes alongside tool hire. In planning terms, it is classed as *Sui Generis* by Ealing Council **[CD36]**. Jewson’s is open from 0630 to 1700 Monday to Friday. On Saturday it is open from 0800 to midday. The store is closed on Sunday and bank holidays. (except Good Friday).

### Surroundings

- 3.5 Acton House, a 7-storey residential building with ground floor retail is located adjacent to the northeast of the site. Residential buildings are also located to the east of Horn Lane. The buildings range in height from 3-4 storeys. Lynton Road is a residential street comprising 2-3 storey houses to the south of the site. Immediately west of the site, to the rear of the builders’ merchants, is a redundant parcel of land that has become overgrown (this is Plot 1, the Triangle land).

- 3.6 The railway line directly north of the site is designated as a Site of Importance for Nature Conservation (SINC) and a 'Green Corridor'. This designation does not extend into the site itself. It is understood that there is a collective Tree Preservation Order on the boundary<sup>3</sup>.
- 3.7 The site is in close proximity to the Acton Mainline Station, which has recently been upgraded with a new entrance and public realm, and now includes Elizabeth Line services. The station is in the Transport for London (TfL) Zone 3 Charging area. There are also a number of bus services<sup>4</sup> in the immediate vicinity of the site.

### **Planning History**

- 3.8 The site benefits from a resolution to grant planning permission under reference 225069FUL. The proposal is for:

*“Construction of a building ranging in height from 6 to 15 storeys, to provide builders merchants (Use Class Sui Generis) at ground floor level, and 185 self-contained residential units (Use Class C3) and associated amenity space at first floor level and above; hard and soft landscaping works; provision of car and cycle parking; works to provide means of access for both pedestrians and vehicles from Horn Lane and all other works incidental to the development. (Following demolition of existing builders merchants)”*

- 3.9 The application was recommended for approval by officers, and the planning committee resolved to grant planning permission, subject to completion of the section 106 agreement and Stage II referral to the Mayor of London. The planning committee took place on the 19<sup>th</sup> of July 2023 [CD36]. It is understood that the section 106 agreement is at an advanced stage, and that permission is likely to be issued in or around the time of the public inquiry (mid to late November 2023).
- 3.10 Section 5 of my evidence will address the relevant draft conditions, accepted by Network Rail, to help facilitate the delivery of the permission.

### **Summary**

- 3.11 The site is currently in operation as a builders' merchants. It is located next to residential homes and is accessed from Horn Lane (A4000); the northern boundary of the site borders Network Rail land, and the Great West Mainline. The site is in close proximity to the new Acton Mainline Station and public realm.
- 3.12 Redevelopment of the site for a mixed use scheme including new housing has been a longstanding ambition of the Council, and the site is allocated in the adopted development plan (policy ACT6 in the Development Sites DPD December 2013). The Council has recently

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<sup>3</sup> Tree Preservation Order LBE TPO 749

<sup>4</sup> Bus Stop H has services to Chiswick of Hammersmith, with services 266, 440 and N266. Bus Stop J has services towards Harlesden or Park Royal, with services 260, 266, 440 and N266.

resolved to grant planning permission for a development that includes 185 homes and a builders' merchant.



## 4. Planning Policy Framework

### Introduction

- 4.1 The main transport policy documents are covered in Mr Gent's Proof of Evidence. Similarly, legislation and guidance specific to the railways are considered in Mr Gallop's evidence. My evidence will consider National Planning Policy, regional and local planning policy, and relevant guidance.

### National Planning Policy Framework (NPPF) 2023

- 4.2 The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. The NPPF purposefully does not contain specific policies for Nationally Significant Infrastructure Projects (NSIPs). All parties agree that the individual project falls below the relevant threshold for NSIPs<sup>5</sup>.
- 4.3 Although the NPPF has been subject to a number of notable revisions since its original version released in 2012, the principle of the "*presumption in favour of sustainable development*" remains<sup>6</sup>. In introducing the framework, the document reminds readers that Planning Law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise<sup>7</sup>.
- 4.4 The document further elucidates the primacy of the development plan by stating "*The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.*"<sup>8</sup>
- 4.5 Chapter 5 of the NPPF is entitled "Delivering a sufficient supply of new homes". Of notable relevance to the site is paragraph 60 which states;

*"To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed **and that land with permission is developed without unnecessary delay.**"* [Sphere25 emphasis in bold]

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<sup>5</sup> The thresholds for Nationally Significant Infrastructure Projects as set out in sections 15 to 30 of the Planning Act 2008.

<sup>6</sup> Paragraph 10.

<sup>7</sup> Paragraph 2, citing Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

<sup>8</sup> Paragraph 12

4.6 For the reasons set out in section 5 of my evidence, deemed permission for the project would fetter and unnecessarily delay development of the land for new homes, of which 35% would be affordable (the resolution to grant permission pursuant to application reference 225069FUL includes 35% affordable homes)<sup>9</sup>.

4.7 Chapter 9 of the NPPF considers promoting sustainable transport. Paragraph 110 seeks out four criteria against which specific applications should be considered. Amongst the criteria are ensuring that appropriate opportunities to promote sustainable transport modes are taken up<sup>10</sup>, safe and suitable access to the site can be achieved for all users<sup>11</sup>, and impacts on the network or highway safety are taken into account<sup>12</sup>. The chapter concludes by stating that:

*“All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed”<sup>13</sup>.*”

4.8 The application is not accompanied with a travel plan, travel statement or transport assessment. It is not possible to assess the likely transport impacts of the proposals. This is not a simple case of just calculating the number of vehicle movements, but also the access and egress times of vehicles, together with the types of vehicles, and the manoeuvring requirements of the vehicles for the works.

4.9 The NPPF also seeks to protect neighbouring amenity, including the amenity of nearby residents. Paragraph 130(f) states that planning decisions “*should ensure that developments “create spaces ... with a high standard of amenity for existing and future users.”*” Further, paragraph 185 provides as follows:

*“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:*

*a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;*

*b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and*

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<sup>9</sup> by habitable room.

<sup>10</sup> Criterion a)

<sup>11</sup> Criterion b)

<sup>12</sup> Criterion d)

<sup>13</sup> Paragraph 113

*c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”*

- 4.10 The applicant has provided no details of its proposal relating to artificial lighting (during the temporary possession or use of the proposed permanent RRAP on Plot 1), although it is understood that night time working and external lighting is proposed in relation to the temporary possession, no assessment has been provided of the impact of any such proposals on neighbouring residents (temporary or permanent), and no mitigation measures have been offered to “*limit the impact of light pollution from artificial lighting on local amenity*”. Furthermore, no noise assessment has been provided (temporary or permanent), and no conditions proposed, for example, relating to the use of reversing alarms during night time hours.

### **National Planning Practice Guidance (NPPG)**

- 4.11 The National Planning Practice Guidance is an online reference tool for planning practitioners, organised by category, which is updated and can respond to the interpretation of National Policy.
- 4.12 The applicant’s planning statement is dismissive of the NPPG, reasoning that it has limited relevance due to the temporary nature<sup>14</sup> of the project, however it should be remembered that permanent rights are also sought that it is proposed would facilitate use of Plot 1 on a permanent basis. Moreover, the NPPG does include reference to temporary activities<sup>15</sup> and sections relating to Noise, and Light Pollution are relevant to the proposal. In relation to Noise, see paragraphs:

- Paragraph: 001 Reference ID: 30-001-20190722
- Paragraph: 002 Reference ID: 30-002-20190722
- Paragraph: 003 Reference ID: 30-003-20190722
- Paragraph: 004 Reference ID: 30-004-20190722
- Paragraph: 005 Reference ID: 30-005-20190722
- Paragraph: 006 Reference ID: 30-006-20190722
- Paragraph: 007 Reference ID: 30-007-20190722
- Paragraph: 008 Reference ID: 30-008-20190722
- Paragraph: 009 Reference ID: 30-009-20190722
- Paragraph: 010 Reference ID: 30-010-20190722
- Paragraph: 011 Reference ID: 30-011-20190722
- Paragraph: 012 Reference ID: 30-012-20190722
- Paragraph: 013 Reference ID: 30-013-20190722

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<sup>14</sup> See Paragraphs 5.9 and 5.10.

<sup>15</sup> See Temporary conditions [Paragraph: 014 Reference ID: 21a-014-20140306] and best use of under-utilised land for example [Paragraph: 003 Reference ID: 66-003-20190722]

- Paragraph: 014 Reference ID: 30-014-20190722
- Paragraph: 015 Reference ID: 30-015-20190722
- Paragraph: 016 Reference ID: 30-016-20190722
- Paragraph: 017 Reference ID: 30-017-20190722

4.13 The NPPG makes it clear that *“noise needs to be considered when development may create additional noise”*<sup>16</sup>. The Jewson’s store is closed during night time hours, whereas it is understood that the works requiring the temporary possession and permanent RRAP will operate during night time hours. It therefore seems possible that the applicant’s proposals *“may create additional noise”*. No assessment of noise has been undertaken by the applicant, and nor does it appear that *“good acoustic design”* has been *“considered early in the planning process.”*<sup>17</sup> The NPPG goes on to state that *“decision making needs to take account of the acoustic environment and in doing so consider:*

- *whether or not a significant adverse effect is occurring or likely to occur;*
- *whether or not an adverse effect is occurring or likely to occur; and*
- *whether or not a good standard of amenity can be achieved.”*<sup>18</sup>

4.14 The NPPG is also clear that it needs to be established if noise is likely to be a concern (a significant observed adverse effect), and if so, *“the planning process should be used to stop this effect occurring, for example through the choice of sites at the plan-making stage, or by use of appropriate mitigation such as by altering the design and layout.”*<sup>19</sup> Clearly this cannot be considered if noise associated with the project has not been assessed.

4.15 Importantly, the NPPG identifies that night-time noise can be a problem, it states:

*“Some types and level of noise will cause a greater adverse effect at night than if they occurred during the day – this is because people tend to be more sensitive to noise at night as they are trying to sleep. The adverse effect can also be greater simply because there is less background noise at night.”*<sup>20</sup>

4.16 The NPPG includes further considerations relating to residential developments<sup>21</sup>, where noise impacts may be partially offset if residents have access to relatively quiet facades or amenity space. It is unclear if the applicant has considered any of these matters.

4.17 In relation to Light Pollution see the following NPPG paragraphs:

- Paragraph: 001 Reference ID: 31-001-20191101

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<sup>16</sup> Paragraph: 001 Reference ID: 30-001-20190722

<sup>17</sup> Ibid

<sup>18</sup> Paragraph: 003 Reference ID: 30-003-20190722

<sup>19</sup> Paragraph: 005 Reference ID: 30-005-20190722

<sup>20</sup> Paragraph: 006 Reference ID: 30-006-20190722

<sup>21</sup> Paragraph: 011 Reference ID: 30-011-20190722

- Paragraph: 002 Reference ID: 31-002-20191101
- Paragraph: 003 Reference ID: 31-003-20191101
- Paragraph: 004 Reference ID: 31-004-20191101
- Paragraph: 005 Reference ID: 31-005-20191101
- Paragraph: 006 Reference ID: 31-006-20191101
- Paragraph: 007 Reference ID: 31-007-20191101

4.18 The NPPG puts an emphasis on the need for artificial lighting to be considered, and on getting the right light, in the right place, at the right time. It is acknowledged that artificial lighting can be a source of annoyance to people. The need to set appropriate conditions at the planning stage is identified as “important”. Certainly, they are matters upon which the Secretary of State has sought evidence on in considering the Draft Order.

4.19 It is known that the application will require specialist lighting, although no details are provided. No noise assessment has been carried out on the proposed activities. The hours of activity are not committed to. However, it is understood that the hours of operation are likely to be overnight on weekends and public holidays. The absence of information, and associated conditions to mitigate impact is a subject that I will return to in section 5 of my evidence.

### **The Development Plan**

4.20 The Development Plan for the site comprises of the London Plan (2021)<sup>22</sup>, the Ealing Core Strategy (2012)<sup>23</sup>, the Development Management DPD (2013), and the Development Sites DPD (2013)<sup>24</sup>.

### **The London Plan (2021)**

4.21 The London Plan is the Spatial Development Strategy for the Capital. The plan identifies a number of ‘Opportunity Areas’. Such areas are considered capable of accommodating significant new homes and jobs<sup>25</sup>. The Old Oak Common Station that connects HS2, the Elizabeth Line and National Rail is cited to open ‘by the late 2020s<sup>26</sup>. The London Plan considers that there are significant opportunities to bring forward regeneration in advance of this date around the existing and potential new stations in the area<sup>27</sup>.

4.22 The London Plan seeks to increase housing supply and sets ten year housing targets for each Borough. For Ealing, the ten year housing target is 21,570 homes<sup>28</sup>. To achieve this target, boroughs are encouraged to optimise the potential for housing delivery on all suitable and

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<sup>22</sup> CD30

<sup>23</sup> CD31

<sup>24</sup> CD32

<sup>25</sup> Policy SD1

<sup>26</sup> See Paragraph 2.1.60

<sup>27</sup> Paragraph 2.1.60

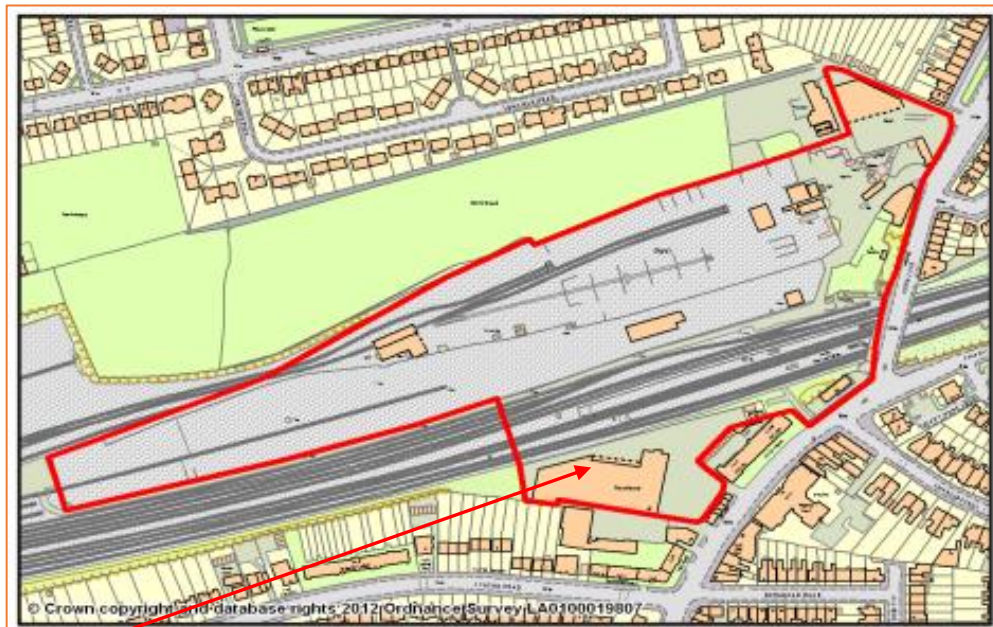
<sup>28</sup> Table 4.1

available brownfield sites. Specific reference is also made to sites with existing or planned public transport access levels (PTALs) 3-6 or which are located within an 80m distance of a station.

- 4.23 Like the NPPF, the London Plan also reiterates the need to avoid delay in the delivery of permitted homes. It is stated that *“In order to effectively contribute towards meeting London’s housing needs, it is essential that all permitted homes are built out in a timely manner<sup>29</sup>”*.
- 4.24 Policy T1 relates to a Strategic approach to Transport. The policy seeks to facilitate the delivery of the Mayor’s target of 80% of all trips in London to be made by foot, cycle, or public transport by 2041. Development proposals should also facilitate proposed transport schemes. Table 10.1 of the plan includes an indicative list of transport schemes. HS2 is listed.
- 4.25 The resolution to grant planning permission seeks to meet both the housing and transport strategic objectives of the London Plan. Namely, delivering much needed housing in close proximity to a station, whilst also providing an access route to allow a RRAP for HS2 on the Triangle land (Plot 1). However, for the reasons set out in Section 5 of my evidence, the ability to do so is compromised by the draft Order.

#### **Site Planning Policy Context**

- 4.26 There are longstanding aspirations from the Council to see the land developed. The site is included as part of a wider allocation (ACT6) in the Development Sites DPD (2013). The allocated site is shown below, with the Jewson’s store indicated.



Jewson’s store

**Figure 2:** Jewsons store within Site Allocation (ACT6)

<sup>29</sup> Paragraph 4.1.10



- 4.27 The allocation states, *“Consolidation of industrial, aggregates and waste facilities to the north of railway, safeguarding of the rail sidings, and introduction of commercial and residential (potential for student accommodation) uses south of the railway, compatible with the functioning of the station.”*
- 4.28 The allocation identifies that for the part of the allocation located to the south of the railway line that proposals will be, *“...expected to contribute to an improved sense of place around the redeveloped station through delivery of a high density, high quality mixed use development, including commercial and residential uses, that optimises the development potential of the site. This is considered a suitable location for student accommodation, with Crossrail providing quick access west to the University of West London campus and east to central London campuses.”*
- 4.29 The distinction of uses between the north and south of the railway is notable. The Design Principles section of the allocation provides further detail.

*“Design Principles: North of the railway will continue to be safeguarded for essential aggregates/waste functions and related B1(c), B2, and B8 industrial uses, including the consolidation and maximization of existing freight operations at the railways sidings. Reorganisation of the site is encouraged to allow the accommodation of additional complementary uses on the site, including the relocation of the builders yard from south of the railway. Proposals should contribute to improved site operation and reduction of the environmental impact of these industrial activities on the surrounding residential areas.*

*South of the railway, proposals will be expected to contribute to an improved sense of place around the redeveloped station through delivery of a high density, high quality mixed use development, including commercial and residential uses, that optimises the development potential of the site. This is considered a suitable location for student accommodation, with Crossrail providing quick access west to the University of West London campus and east to central London campuses.”*

- 4.30 The Network Rail proposals do not accord with the development plan. Policy ACT6 envisages that maximisation of freight and use of the railway sidings will take place to the north of the railway, this includes Acton Goods Yard. It encourages more efficient use of the land to the north of the railway and also encourages complementary uses to the north. A construction compound for undertaking works to the railway would be consistent with this policy. Similarly, it is envisaged that B8 uses (Storage and Distribution) take place on the northern side of the railway, including the relocation of the builders’ merchants (Jewson store), this clearly indicates that the Council envisage the retention of this use, and that its loss would be contrary to policy.

- 4.31 The site is also included in the Council's Brownfield Land Register<sup>30</sup>. This is a register of all brownfield sites that the Council considers to be appropriate for residential development.
- 4.32 The site does not contain any statutorily listed or locally listed buildings. It is not located within a conservation area.

### **Environmental & Amenity Policies**

- 4.33 The site is surrounded by sensitive residential uses to both the east (Acton House) and west (Lynton Road). Development should therefore be cognisant of amenity issues for residents. Local plan policies on noise, pollution, air quality and transport are therefore relevant.
- 4.34 The Development Management Policies Document has a specific policy on amenity (Policy 7A). It states

*"Development which in the course of its operations will cause emissions of any sort must; a) not erode the amenity of surrounding uses or the site itself b) take all reasonable steps to ameliorate these emissions c) provide all necessary evidence of mitigation that is requested by the local planning authority."*

- 4.35 The supporting text<sup>31</sup> is unequivocal that '**All** forms of development are potential sources of operational emissions that may erode the amenity of surrounding uses'. [Sphere25 bold emphasis]. The text goes on to state that "*Types of emissions will typically include, but are not limited to; noise, vibration, particulate matter, odour, light and reflected light*".<sup>32</sup>
- 4.36 That the site is surrounded by sensitive uses is clear. It explains the need for Draft pre-commencement conditions<sup>33</sup> that '*restricts hours of work hours of work and all associated activities audible beyond the site boundary restricted to 0800-1800hrs Mondays to Fridays and 0800 -1300 Saturdays (except no work on public holidays)*' on the resolution to grant planning application.

### **Emerging Planning Policy**

- 4.37 The London Borough of Ealing are preparing a New Local Plan. The Regulation 18 draft consultation took place between November 2022 and February 2023. Given its early stage in the plan-making process, the weight that can be attached to emerging planning policy is therefore limited.
- 4.38 The emerging plan nonetheless continues to identify the land as part of a wider allocation for development under policy AC12. Draft Policy A.4: Acton Main Line station and environs

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<sup>30</sup> Prepared in 2017

<sup>31</sup> E7A.1

<sup>32</sup> E7A.2

<sup>33</sup> Condition 10 of draft permission 225069FUL



further supports development of the land as part of a new neighbourhood centre as part of the wider regeneration of the area.

### **The Importance of Housing Delivery**

- 4.39 Ealing Council have stated that the local authority cannot demonstrate that it has a 5 year supply of housing land at the present time<sup>34</sup>. As an allocated site with a resolution to grant planning permission, Horn Lane would make a meaningful contribution to the supply of homes in the borough. Furthermore, the delivery of 35% affordable housing would exceed the average delivery rates in Ealing, which according to the most recent Authority Monitoring Report for the period 2014-2019, was 17.9%<sup>35</sup>. In the latest Ealing Local Housing Needs Assessment<sup>36</sup>, the authors state “...we can conclude that the potential overall need for affordable housing for Ealing would comprise a total 32,640 households over the 20-year period 2021-2041, equivalent to an average of 1,632 per annum<sup>37</sup>.”
- 4.40 There is a pressing need for housing and particularly affordable housing in Ealing. The chronic need goes beyond the site. The importance of Horn Lane being delivered for housing goes beyond the land in question. The need for the “nice to have” storage, offices and alike on the site is not as important as new homes. Readily available alternatives exist for such activities as described in Section 5.
- 4.41 The Draft Order (if made) would prevent the 185 homes being delivered for at least 6 years based on Network Rail’s current timescales. Horn Lane cannot contribute to the 5 year land supply if the TWAO is approved. And, for reasons explained in Section 5, the permission would expire before Network Rail handed the site back. Even more crucially the TWAO would in fact prevent the 225069FUL scheme from being built at all in accordance with that planning permission.
- 4.42 The chosen Plot 3 permanent access route clashes with the permission. The route physically and materially encroaches on the footprint of the new building thereby preventing its construction, as permitted. This is explained in further detail in section 5.

### **Summary**

- 4.43 National Planning Policy seeks to bring forward sustainable development. This includes new homes in accessible locations. The London Plan similarly advises that sites near stations

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<sup>34</sup> “Because of the non-availability of this information [GLA LDD] from the GLA, in this period of uncertainty, the Council is not able to conclusively demonstrate that it has a 5-year supply of housing land, or what level of shortfall there may be if there is one. Whilst the possibility of a shortfall pertains, the National Planning Policy Framework 2021 (NPPF) presumption in favour of sustainable development – the so-called ‘tilted balance’ – is engaged.” {Page 23 of Planning Committee Report 19 July 2023}.

<sup>35</sup> Table 2.14 – Net Conventional Permissions by tenure category (percentages of total net conventional permissions given in brackets) Authority Monitoring Report 2014-2019 Published October 2021.

<sup>36</sup> Ealing Local Housing Needs Assessment Update, OPS, November 2022.

<sup>37</sup> Paragraph 4.50

should be optimised. The NPPF states that planning permissions for new homes should be delivered without delay. This is echoed by the London Plan.

- 4.44 The site is allocated for a high density, high quality mixed use development, including commercial and residential uses in both the adopted and emerging local plan. The site has a recent resolution to grant planning permission for 185 homes and a builders' merchant in accordance with the development plan.
- 4.45 Unlike the more sensitive location of the site, land to the north of the railway lines is identified for B8 uses and the consolidation and maximisation of existing freight operations and complementary uses at the railways sidings.
- 4.46 Planning Policy at all levels requires decision makers to take into account amenity issues of neighbours that may be impacted by development.

## 5. Statement of Matters

### Introduction

- 5.1 On the 15 September 2023, The Transport Infrastructure Planning Unit issued a “Statement of Matters” setting out eight matters which the Secretary of State wishes to be informed about. The matters relate to the consideration of both the Draft Order and the proposed deemed direction for planning permission.
- 5.2 My evidence focuses on the specific planning issues raised by Matters 3, 4a, 4c and 5.

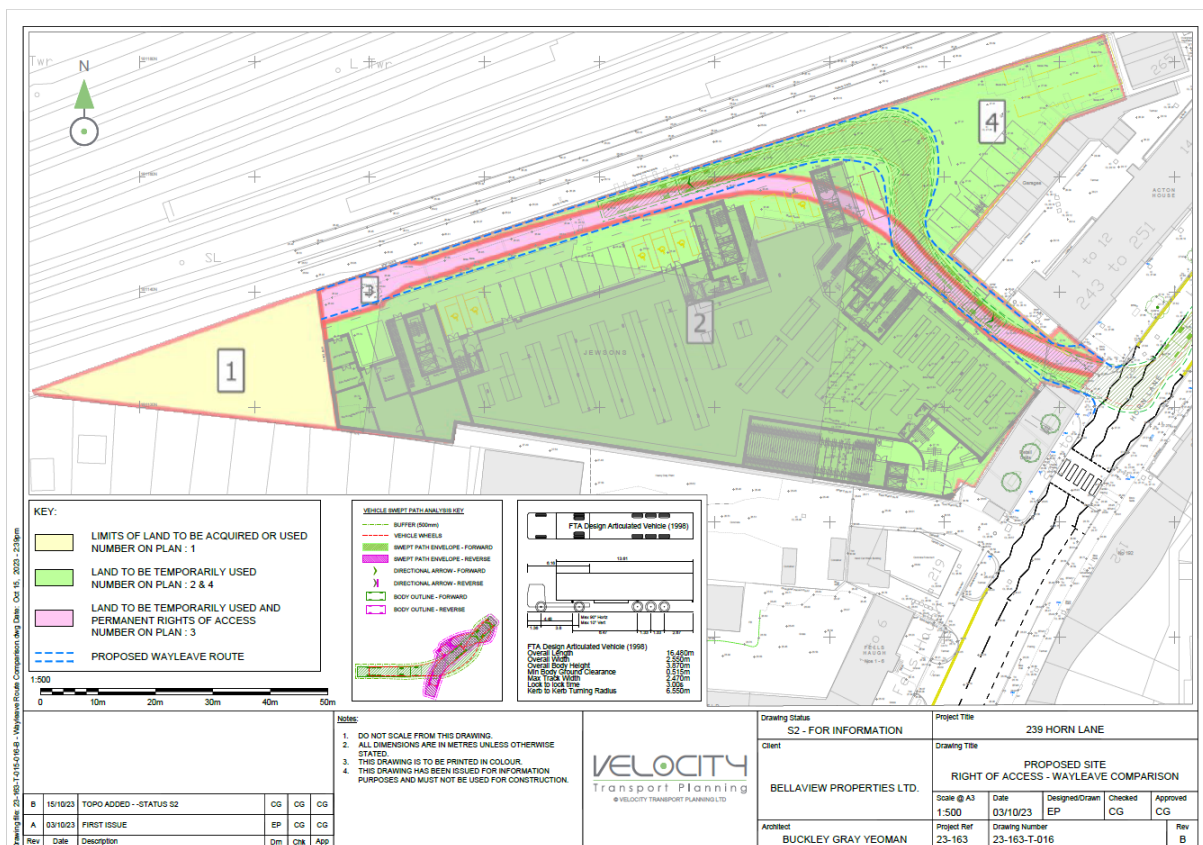
### **Matter 3 – The likely impact of the scheme on local businesses and residents during construction and operation**

- 5.3 There is a paucity of information in respect of generation and impact of Noise and Artificial Light as well as Transport movements and Air Quality data. The planning submission is not accompanied by such assessments. Information relating to the likely impacts of the project (temporary and permanent) on neighbouring residential amenity is entirely absent. As noted in the planning policy section above, decision makers are expected to have such assessments before them, so that they can make informed decisions consistent with planning policy at all levels and planning guidance. In the absence of such assessments it is difficult to see how an assessment of the scheme against plan policy could be undertaken, and an informed decision reached. Nonetheless, the evidence of Mr Gent will explore the potential transport impacts. My evidence focuses upon the impact of the scheme on the delivery of a new builders’ merchant and 185 homes.

### Impact on Businesses and the Delivery of New Homes.

- 5.4 Bellaview Properties Limited have secured a resolution to grant planning permission pursuant to application reference 225069FUL for the redevelopment of the site. At the time of this proof of evidence it is understood that the section 106 agreement is at an advanced stage, and subject to Stage 2 Mayoral approval, full planning permission will be granted this winter.
- 5.5 Should the TWAO be granted the likely outcome is that the new planning permission cannot be implemented and Jewson are forced to close. There would be a loss of a business (which policy seeks to retain) and a loss of jobs. Furthermore, it would prevent the possible opportunity for BPL to relocate from West Hampstead with consequential losses of jobs and impacts on the business.
- 5.6 The mixed use proposals are considered to accord with both adopted and emerging planning policy. The scheme would deliver 185 homes, including 35% affordable homes, and a new builders’ merchant. The scheme is designed to accommodate an easement route, and access to the Triangle land (Plot 1) for Network Rail.
- a) The proposed easement included within the Draft Order (Plot 3) departs from the route shown on the ground floor plan of the resolution to grant scheme 225069FUL

- 5.7 The proposed land for the easement contained in the Draft Order (Plot 3) does not reflect the route to the Triangle land (Plot 1) agreed as part of the planning application. The easement sought would cross through the proposed building. The mis-alignment would prevent the approval being built as it requires a route through one of the cores of the building. It can be assumed that the applicant was satisfied with the access route to the Triangle land (Plot 1) shown on the planning application ground floor plan as the applicant withdrew its objection to the planning application. It is therefore surprising that Network Rail have chosen to identify a route to the Triangle land (Plot 1) that conflicts with what it had previously agreed. Either Plot 3 will need to be varied, or the 224069FUL scheme will need to be varied, to remove the conflict. The Draft Order plan shows the route (Plot 3) to the Triangle land (Plot 1) skirting round the edge of the existing Jewson store (not the proposed building the subject of planning application 224069FUL), this is where the issue lies.
- 5.8 An overlay is provided in Figure 2 below. The dashed blue line is the route of the access to the Triangle land (Plot 1) included in the planning application ground floor plan:



**Figure 2:** Proposed Easement overlaid onto Ground Floor Plan; Velocity 2023

- b) Contradicts agreed conditions.
- 5.9 The draft permission is subject to a number of conditions (set out in the committee report and supplementary report). Of importance to the inquiry is draft Condition 1 (Time Limit) and draft Condition 28 (Network Rail – Phasing Plan). It is understood that both conditions were agreed in consultation with Network Rail.

- 5.10 It should be noted that Condition 28 was amended prior to planning committee but after the officer's report was published. Therefore, CD36 should be read in conjunction with the supplementary report [Appendix 1]. Network Rail removed their objection to the proposals on this basis.
- 5.11 Condition 1 (Time Limit) extends the period to implement the planning permission from the standard of 3 years to 5 years. Amended Condition 28 (Network Rail – Phasing Plan) states the following:

Amendment to condition 28 – Network Rail – Phasing Plan

*The developer shall not commence construction of the development (which excludes demolition, site clearance, site investigation, site remediation, and ground works) unless either:*

*(a) the developer has submitted to the Council for approval a phasing plan which demonstrates the phases of the development, and how the phases can be constructed to ensure that Network Rail's Old Oak Common Station works and its proposed construction and use of a temporary Road Rail Vehicle Access Point (RRAP) on the site are not impeded; **For the avoidance of doubt, works phased on the footprint of the existing warehouse building will be assumed to provide no impediment to Network Rail's works.** The phasing plan will demonstrate, in particular, how Network Rail's access to the site and turning of vehicles, storage requirements, parking requirements for RRVs and track plant, and access to the temporary RRAP will be accommodated and not impeded. Construction management measures may be included in the phasing plan to demonstrate lack of impediment to Network Rail's works. The phasing plan may include an early works phase, that may include setting out, and substructure works; or*

*(b) the Secretary of State has refused to make the proposed Network Rail (Old Oak Common Great Western Mainline Track Access) Order promoted by Network Rail and either Network Rail has confirmed in writing to the Council that it will not seek a statutory review of the refusal to make the Order, or the period of 6 weeks has expired from the Secretary of State's decision without a statutory review having been commenced against the Secretary of State's decision in which case the requirement in (a) shall no longer apply.*

*If a phasing plan is submitted to the Council for approval pursuant to (a) above, the developer will observe the phasing plan throughout the construction of the development. A phasing plan submitted pursuant to (a) above need not cover all phases of the development, and more than one phasing plan can be submitted for approval. Any phases that are planned to follow either the completion of Network Rail's Old Oak Common Station works or follow reinstatement of the land used for the temporary RRAP if earlier need not be the subject of a phasing plan.” [text in bold is Sphere25 emphasis]*

- 5.12 I was not the planning consultant for the above planning application, and therefore not party to the discussions on the precise condition wording. However, on a fair reading of the text, it would seem self-evident that the developer of the residential-led scheme can undertake works on the current warehouse without impeding Network Rail's works. This suggests that the warehouse is not essential to the Network Rail project.

c) The period of temporary possession sought in the Draft Order will exceed the lifetime of the Permission.

- 5.13 Network Rail's statement of case also cites the above condition. Indeed, immediately after the quotation, it is stated that<sup>38</sup>;

*"As a result of the above condition, as well as the proposed 5 years' implementation period (instead of the usual 3 years' implementation period), the proposed residential development of the Order land is likely to be delayed, but not fully prevented, meaning that it can proceed following completion of the Project and Network Rail having vacated the Order Land."*

- 5.14 This is not correct. There are three key issues arising. Firstly, the permanent right across Plot 3 sought in the Draft Order does not reflect that of the resolution to grant scheme. They are incompatible. Secondly, the Draft Order seeks to acquire the entire site for the project on a temporary basis. Thirdly, the submitted timescale [CD13] is stated as finishing on the 21 December 2029. Some 6 years away<sup>39</sup>. Beyond the extended permission date for the mixed use development.
- 5.15 In contrast to Network Rail's assertion - the development of the site is not merely 'delayed' but prevented by the current Draft Order sought by Network Rail.
- 5.16 Combined with the inadequacies of Network Rail conditions on time limits and the absence of expiry dates (see Matter 6 regarding conditions below), this will have a distressing impact on the builders' merchant seeking to relocate to the land (see Mr Aaronson's evidence), the landowner, and will also deprive the Council of the 185 much-needed homes, and affordable homes that it has allocated and resolved to grant planning permission for.

***Matter 4 – Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the Department for Levelling Up, Housing and Communities Guidance on the "Compulsory purchase process and the Crichel Down Rules" published July 2019:***

***a) whether all the land and rights over land which NR has applied for is necessary to implement the Scheme***

***b) whether there are likely to be any impediments to NR implementing the Scheme, particularly including the availability of funding.***

***c) whether there is a compelling case in the public interest to justify conferring on NR the powers to compulsorily acquire and use land for the purposes set out in the Order***

***d) whether the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected (having due regard to Human Rights Act)***

- 5.17 My evidence is concerned with aspects a) and c) of Matter 4. Matters b) and d) are covered in the proof of evidence of Mr Gent., Mr Rhead and Mr Gallop.

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<sup>38</sup> Paragraph 5.38

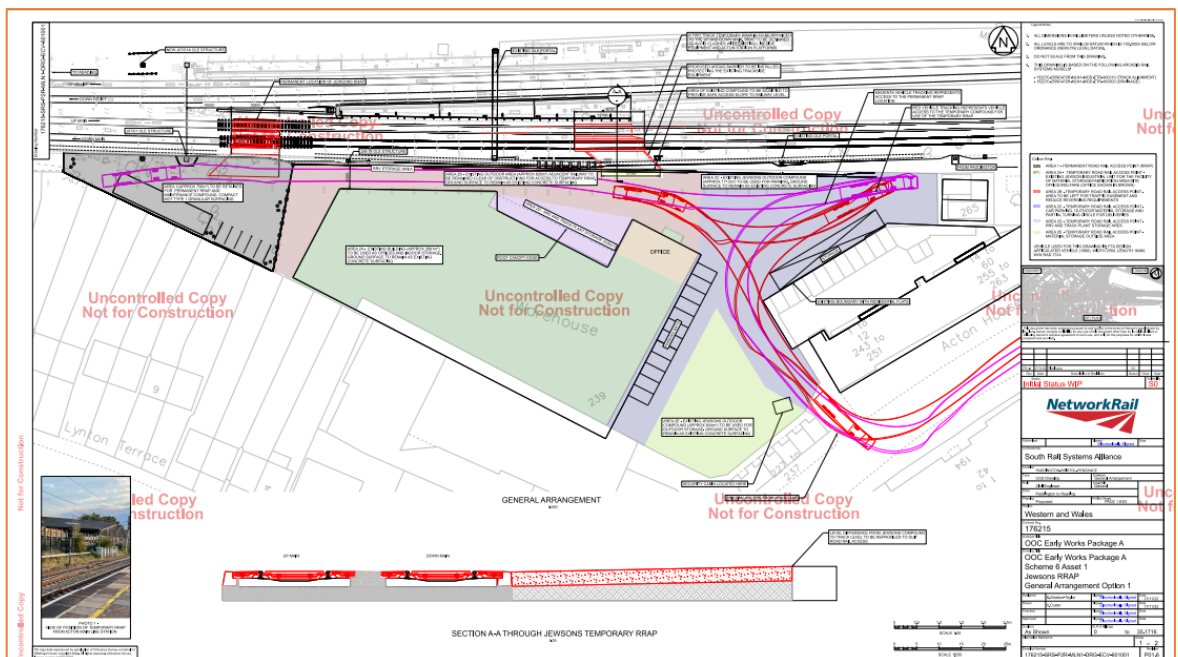
<sup>39</sup> It should be noted that in their letter to Ward Councillors', the temporary period is stated as 8 years [CD06] Appendix 2.



- 5.18 The submitted documentation is very scant in detail. It is my professional opinion, that if submitted directly to the local planning authority, it would be considered an invalid planning application. Appended to this proof is Ealing's validation requirements [Appendix 2].
- 5.19 Amongst the proposals is the temporary change of use of the Jewson store from a *Sui Generis* use to indoor storage and offices, and possibly welfare (it is not clear) in connection with Network Rail's Old Oak Common Station works to the Great Western Mainline (as acknowledged by the applicant in their meeting with Ealing Council (Appendix 3)). The floorspace of the building measures approximately 2,600 square metres. The site area (including Plot 1) covers 0.64 hectares. Permission is sought in detail, not outline.
- 5.20 Ealing Council provides a checklist for full applications. Whilst understanding that the formal planning application forms may not be relevant with a deemed permission from the Secretary of State, there is nonetheless a number of key elements that a decision maker ought to be given detailed information on when reaching a decision on whether or not to grant planning permission.

#### Submitted Plans

- 5.21 The Land Plans [CD 08] consists of a single plan showing the plots of land that are the subject of the Draft Order and deemed application. Reliance on the activities must therefore be placed on plan drawing number 176215-SRS-P2R-MLN1-DRG-ECV-601001 Revision P01.6. [CD11.2]. This is replicated below for ease of reference.



**Figure 3 : OOC Early works package.**

- 5.22 It is a national requirement to include detailed drawings to accompany a detailed planning application. The above drawing relies upon coloured areas to demarcate different activities. There is no corroborating schedule of floor areas. A single section is included on the drawing

showing the need to reprofile the land to accommodate the Temporary Road Rail Access<sup>40</sup>. However, this is at a different scale to the main drawing. Furthermore, no cross section is shown for the permanent Road Rail Access from the Triangle land (Plot 1).

#### Transport Assessment, Travel Plan, Parking Design

- 5.23 From a planning perspective, decision makers should be assured that the appropriate assessments have been carried out. Instead, the planning statement and consultation statement relies upon a number of unsubstantiated statements that lack any technical rigour.
- 5.24 In paragraph 9.7 of the planning statement's conclusion [CD11], it is stated unequivocally - without caveat - that *"The Proposed Development will not generate any additional transport movements compared to the existing uses and movements associated with a builders merchants."* Yet at the same time, the hours of working are to be agreed later via condition. The stated reason being to *"mitigate potential disturbance to local residents"*.
- 5.25 It is accepted that disturbance can go beyond transport movements. However, without the hours of use being specified it cannot be stated with such certainty that additional traffic movements at different times of operation will not result in additional movements compared to those of a builders' merchant. The movements could take place at times of day (or night) when the Jewson store generates no vehicle movements, in which case the movements generated by Network Rail would be "additional" to those movements associated with the Jewson store. Moreover, in addition to timing, the *nature* of the vehicle movements are not referenced. Whilst the types of vehicles accessing the Jewson store are known (customers and store deliveries), there is a lack of clarity on the types of vehicles the applicant will use and when they propose to use these. These are important matters that should be interrogated as part of the determination process. The absence of a Transport Assessment, Travel Plan for staff and understanding of shift worker patterns and their requirements is notable.
- 5.26 Network Rail have advised that the works are likely to take place outside of normal operating hours. This includes working through the night and on weekends and bank holidays. It is understood that the principal time of works is 10pm Saturday to 10am Sunday on a fortnightly basis. Daytime working is proposed over Easter, Christmas and Bank Holidays. These times would largely be different to the hours of use of the existing builders' merchants and those imposed by condition on the construction works for the mixed use development.

#### Community Engagement & Consultation

- 5.27 The Network Rail consultation report [CD06] states that one round of public consultation was undertaken and *"The public consultation was targeted at the community who are affected,*

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<sup>40</sup> It should be noted that in Paragraph 6.15 of the Statement of Case for Network Rail, it is stated Plots 2 and 4 satisfy the stated aims of "they provide a level access to the railway, which complies with Network Rails standards for the approach to a RRAP." Yet, the need to reprofile the land to do so is not referenced. There is understood to be a circa 60cm height difference between the site and the adjoining railway land.



or likely to be affected, by the Project”<sup>41</sup>. This was deemed to include 183 addresses<sup>42</sup>. A significant number of residents<sup>43</sup>. There is a concern about the adequacy of consultation.

- 5.28 The consultation report notes that “...members of the public, although somewhat supportive, raised some concern about noise and light pollution mitigation. Due to the early design phase of the Project, Network Rail are not able to provide a solution at this time. It is however, noted for consideration<sup>44</sup>.”
- 5.29 Having established that a significant number of people are likely to be affected, and despite recognition of valid concerns raised, there appears to be no further consideration of the temporary RRAP location, or the amount of land involved, or operational proposals for the temporary and permanent RRAP to mitigate legitimate neighbour amenity concerns.
- 5.30 The site appears to have been chosen without the consideration of planning policies. A fact borne out by the pre-application meeting with the London Borough of Ealing, where it is conceded that NR were not aware that the site was allocated in the local plan. [Appendix 3]
- 5.31 Network Rail’s statement of case<sup>45</sup>, says that:
- “Plots 2 and 4 provide enough space for plant and materials, welfare facilities and off-street staff parking and enable the temporary construction compound to be located in close proximity to the temporary RRAP.” [Underlining Sphere25 emphasis].*
- 5.32 Unfortunately, whilst there is confidence that the space is “enough” it does not demonstrate that the levels of staff parking, welfare facilities or storage are needed or warranted. Mr Rhead’s evidence considers in the light of this, whether the applicant has demonstrated that there is a compelling case in the public interest.
- 5.33 A number of alternative sites have been identified that could accommodate the works access and RRAP, and works compound. These include the Acton Goods Yard to the North, and the Hitachi Depot (North Pole) to the East amongst other sites considered in Mr Gent’s and Mr Gallop’s evidence.
- 5.34 Both sites would be preferable from a land-use planning perspective. The Acton Goods Yard is specifically referenced in the ACT6 allocation for freight, railway and industrial activities. Meanwhile, the North Pole site is already home to the stabling of trains and has a Road Rail Access Point that could be utilised or a new one that could be created (see Mr Gent’s and Mr Gallop’s evidence). There are clear sensitive receptors and impediments to the Horn Lane site. However, there are none at Acton Goods Yard or the North Pole Site where such activities would be supported by local plan policies. The former is within the London Borough of Ealing, the later is within The Old Oak and Park Royal Development Corporation (OPDC)<sup>46</sup>.
- 5.35 In addition to the above sites, use of the Triangle land (Plot 1) in isolation does not give rise to the same adverse affects. As well as works being accommodated on a more compact area,

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<sup>41</sup> Paragraph 3.1.3

<sup>42</sup> Paragraph 3.2.3

<sup>43</sup> Applying the average Ealing household size of 2.52, this equates to just over 461 people.

<sup>44</sup> Paragraph 5.2.1

<sup>45</sup> Paragraph 6.16

<sup>46</sup> See OPDC Local Plan 2018-2020 June 2022 Proposals Map.

the Triangle land is situated to the rear of the existing warehouse. The existing building would shield the amenity of neighbours. It has been shown by Network Rail that the Triangle land can sustain both the temporary and permanent RRAP (Appendix 4).

- 5.36 It has not been demonstrated why Network Rail require such extensive car parking, welfare facilities and offices (given the size of the overall site, see also Appendix 4). However, even within the immediate environs on the site, there are vacant premises available that would not necessitate the removal of the builders' merchant. The parade of properties fronting Horn Lane at 227-237 Horn Lane can accommodate welfare facilities and offices but is dismissed by Network Rail as unsuitable. This is disputed.
- 5.37 Network Rail have therefore not shown that all the land and rights over land which NR has applied for in the TWAO are necessary to implement their project.

***Matter 6 – the Conditions proposed to be attached to the deemed planning permission and their suitability***

- 5.38 The NPPF [CD26] states that “*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions*”<sup>47</sup>.
- 5.39 Network Rail have proposed that 5 planning conditions are attached to the deemed permission.

Timing

- 5.40 Network Rail have sought a timing condition that reflects the standard period for implementation of three years<sup>48</sup> from the date the order is made. Such a period would not encourage or expedite delivery of the works.
- 5.41 National Planning Practice Guidance advises that “*The local planning authority may wish to consider whether a variation in the time period could assist in the delivery of development. For example, a shorter time period may be appropriate where it would encourage the commencement of development and non-commencement has previously had negative impacts*”<sup>49</sup>.
- 5.42 The stated reason for the condition is to ensure development is ‘*commenced within a reasonable period of time*’. Giving Network Rail extra time to commence development needs to be balanced against an inevitable further delay in the delivery of new market and affordable homes in Ealing.

Absence of an expiry date

- 5.43 It is standard practice for a temporary permission to have an expiry date. Without such a condition the development ceases to be temporary and can persist without the need for a new planning permission. This is important so that the land is handed back to Bellaview Properties Limited with a *sui generis* use for a builders' merchant, in case they need to obtain

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<sup>47</sup> Paragraph 55

<sup>48</sup> See Section 92 of the Town and Country Planning Act

<sup>49</sup> Paragraph: 027 Reference ID: 21a-027-20140306 Revision date: 06 03 2014

a fresh planning permission for the site due to the inability to commence development of the mixed-use scheme with a resolution to grant during Network Rail's occupation.

- 5.44 For the avoidance of all possible doubt, proposed condition 5 does not provide comfort. A requirement to 'submit details of re-instatement for approval' by the Council prior to commencement does not compel Network Rail to return the land within the broad timetable they have identified, nor does it return the site to its previous lawful use. A clear unambiguous expiry date would meet the established tests for conditions. Conversely, the current condition creates uncertainty over timescales, and when the owner may be able to reasonably expect their land back.

#### Absence of Transport Conditions

- 5.45 Paragraph 8.14 of Network Rail's statement of case identifies a need to safely manage access via a construction traffic management plan for residents in Acton House. Network Rail concede that *"No such condition has been proposed by Network Rail at the Application stage"*. The following sentence then acknowledges that Network Rail is content for such a condition to be included on the deemed permission.
- 5.46 It is contended that this is one of a number of transport related conditions which have been omitted from the draft deemed permission.

#### Absence of Permitted Plan Conditions

- 5.47 Planning permission should be carried out in accordance with the approved plans. However, the conditions proposed do not list any plans. This is problematic. Particularly given the opaque description of development included in the Draft Order, and the limited information submitted with the proposals discussed earlier in this section.
- 5.48 It is my professional view that the 5 conditions listed do not make the development acceptable in planning terms.

#### **Summary**

- 5.49 The Draft Order seeks to compulsorily acquire temporary possession of the BPL land ownership. The indicative timetable suggests that the site will be possessed until 21 December 2029. During this period, the existing business cannot continue trading, and a replacement facility and new housing cannot be built.
- 5.50 The duration and extent of the temporary possession exceeds the likely duration of the draft planning permission and prevents the implementation of a phase of development on the site, such as the new builders' merchant. This runs counter to Network Rail's representations to the planning application and their subsequent statement of case that claims the development will be *"delayed but not fully prevented"*.
- 5.51 The case for needing all the land is not substantiated. There is a dearth of information as to why such significant spaces are needed for staff car parking, offices, welfare, and storage. Network Rail acknowledges that the site provides *"enough"* land for the project. What is not referenced is the precise requirements and actual needs to deliver the project. I also refer to Exhibit MA1/2 of Mr Aaronson's evidence which shows a layout of the existing site produced

by Network Rail's contractors Colas Rail that demonstrates that they only require part of the site to undertake works, and that the site is capable of being shared. I also refer to Exhibit MA1/1 of Mr Aaronson's evidence being phasing plans agreed in principle with Colas Rail that show how the site could be developed for the resolution to grant scheme at the same time as Colas Rail undertake the works.

- 5.52 The deemed planning application itself offers little comfort. The information provided is scant in detail and does not address the validation requirements for such a scheme. Issues ranging from Air Quality, Artificial Lighting, Noise, and Transport have not been assessed as part of the planning application. The absence of such information presents a difficult job for the decision maker, and the ability to attach conditions to mitigate impacts is limited. Of the 5 conditions proposed, 4 conditions are pre-commencement, potentially further delaying works on site and extending the timetable. The time limit condition meanwhile allows three years to commence development from the date of the Order. Finally, the absence of an expiry date for the temporary deemed permission creates all the circumstances for delay in returning the site to BPL, and a loss of the current lawful use.
- 5.53 Adding additional concern is that the permanent right sought by Network Rail. It does not reflect the position agreed as part of the planning application for Network Rail's access to the Triangle land (Plot 1). The easement runs through a core of the mixed-use scheme that would prevent it from being built.
- 5.54 Taken together, it is not proven that the public interest is served in approving the Draft Order and granting deemed planning permission.

## 6. Summary & Conclusion

- 6.1 Network Rail Infrastructure Limited submitted an application to the Secretary of State for Transport on the 17 April 2023 to make the Network Rail (Old Oak Common Great Western Mainline Track Access) Order 202[...] under the Transport and Works Act 1992. The Draft Order seeks to temporarily possess and compulsory acquire rights over land at Horn Lane, Acton, London.
- 6.2 The site is currently in active use and abuts neighbouring residential on Lynton Road to the south and Acton House, a 7 storey block of flats to the east. The site is owned by Bellaview Properties Limited (BPL).
- 6.3 The Order would acquire BPL's significant land ownership for a period of at least 6 years from the date of the Order. A builders' merchant is located on the site. This business would be forced to relocate or cease trading, and the building would be appropriated for Network Rail's use. A permanent right is also sought through the site to a triangle of land within Crown Estate ownership.
- 6.4 The site is allocated for a high density, high quality mixed use development, including commercial and residential uses in both the adopted and emerging local plan. The site has a recent resolution to grant planning permission for 185 homes and a builders' merchant.
- 6.5 There are no outstanding objections from Network Rail to the planning application. Network Rail believe that *"the proposed residential development of the Order land is likely to be delayed, but not fully prevented"*. Network Rail expressly agreed a condition stating that the planning application *works that were phased on the footprint of the existing warehouse building will be assumed to provide no impediment to Network Rail's works*. Yet, Network Rail now seek to temporarily possess the warehouse (as well as the rest of the site), which runs counter to the agreed position. Furthermore, despite the agreement of a 5 year lifetime for the planning permission, the programme of works submitted by Network Rail persists for 6 years. Beyond the lifetime of the permission.
- 6.6 This 6 year period is not guaranteed either. Consultation material has referenced 8 years, and Network Rail have sought a planning permission that would allow them up to three years just to implement ( $6+3 = 9$  years or  $8+3 = 11$  years). Whilst being stated as a temporary permission, no condition with an expiry date is proposed. The timetable is indicative, giving no certainty to BPL (or residents). Even if time were not an issue, the permanent right sought runs through the access core of BPL's scheme.
- 6.7 Allied to this is a paucity of information to support the planning application. The concerns of businesses and residents are noted but there is no evidence provided to sustain the case that the land is either the best location for the works or that all the land is needed. Instead, it is stated that the site represents "enough" space.

- 6.8 In planning terms, there are a number of superior sites that would better accord with planning policies. Amongst them, Acton Goods Yard and the North Pole Depot. The site appears to have been chosen without the consideration of planning policies. A fact borne out by the pre-application meeting with the London Borough of Ealing, where it is conceded that NR were not aware that the site was allocated in the local plan.
- 6.9 In conclusion, it is not proven that the public interest is served in approving the Draft Order and granting deemed planning permission.

Mark Connell

Sphere25 LLP

16 October 2023