

## TRANSPORT AND WORKS ACT 1992

## TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004

## THE NETWORK RAIL (OLD OAK COMMON GREAT WESTERN MAINLINE TRACK ACCESS) ORDER

## REBUTTAL EVIDENCE OF COLIN FIELD

2 NOVEMBER 2023

1. My name is Colin Field. This rebuttal has been prepared on the same terms as my proof of October 2023 and it remains that the opinions expressed are my true and professional opinions.
2. This rebuttal proof has been prepared in response to the evidence of Mark Connell submitted on behalf of Bellaview Properties Limited, as well as evidence of Mrs Kuszta, and to address certain matters raised in that evidence.
3. This rebuttal is not intended to be an exhaustive response on all matters and deals only with certain points where it is considered appropriate or helpful to respond in writing at this stage. Where a specific point has not been dealt with, this does not mean that the point is accepted, and it may be addressed further at the Inquiry.

Proof of Evidence of Mark Connell

Reference	Bellaview's position	Network Rail's comments
Para 2.6	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.	<p>I presume that this is a reference to conditions which will be imposed on the deemed permission. It is my view that the proposed conditions are adequate, and Ealing Council have now confirmed their approval of the proposed conditions in an email dated 26 October 2023 List of agreed conditions has been shared with the Inspector, as well as Bellaview.</p> <p>I dispute that Network Rail's works would jeopardise the delivery of BPL's proposed development, but accept that they would delay the full implementation. As per my Proof of Evidence, Network Rail is keen to ensure that Bellaview are in a position to implement their planning</p>

		permission. With a view to enabling that, Network Rail agreed the wording of a condition, which enables Bellaview to undertake works on footprint of the existing warehouse. Further works may be undertaken, provided that they do not impede the Project and/or the GWML Rail Systems Project. As such, whilst Bellaview's development is likely to be delayed, it will not be prevented.
Para 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.	The paragraph refers to table 10.1 of the London Plan and states that HS2 is listed. However, it should be noted that the exact wording of the policy and the associated policy refers to "HS2 and <b>Associated National Rail Changes</b> ".
Para 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.	A permanent RRAP on Plot 1 is a post HS2 rail systems work to enable NR to maintain the mainline railway. As discussed by other witnesses, Network Rail is proposing an amendment to the permanent easement sought over Plot 3, to ensure that it does not cross the footprint of the proposed BPL development.
Para 4.29 and 4.30	"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, <b>including the relocation of the builders yard from south of the railway</b> . Proposals should contribute to improved site	<p>The design principles of the allocation actually states that the builders merchant should be relocated from the south of the railway to the north but the land to the north is not available for redevelopment. As part of the consultation in the new local plan Network Rail has objected to the emerging local plan Policy AC12 which deals with site.</p> <p>We do not disagree with the policy allocation to the south of the railway subject to appropriate mitigation for noise and vibration designed into the new flats and are working to make sure the site is developed in</p>

	<p>operation and reduction of the environmental impact of these industrial activities on the surrounding residential areas.</p> <p>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.”</p>	<p>accordance with the approved planning permission albeit the full implementation will be delayed.</p> <p>Network Rail’s proposals are of a temporary nature and just delay the implementation of Bellaview’s works and by the fact that the deemed planning consent subject to the Order is temporary in nature and does not seek to introduce a permanent change of use.</p>
Para 4.35	<p>The supporting text is unequivocal that ‘All forms of development are potential sources of operational emissions that may erode the amenity of surrounding uses’. 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’.</p>	<p>Issues of residential amenity can be controlled through the suggested planning condition requiring a CEMP and CTMP prior to the start of work.</p>
Para 4.41	<p>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.</p>	<p>We accept that completion of the housing development would be delayed. However, as explained in my Proof of Evidence, the permission can be lawfully implemented before the expiry of 5 years from the decision notice (if and when the approval is issued) and careful phasing of the development will enable significant construction progress to be made.</p>

Para 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.	As noted above, the exact route of the permanent access through the Bellaview site post construction of their project can be amended to take account of this and NR has written to their legal team on 25 October to that effect.
Para 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.	The land to the north of the railway line by definition does not give access to the south of the railway which is needed by this Order to work on the southern railway tracks without closing all four running lines.
Para 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.	See comment on para 4.29 as the policy actually states the builder's merchant should be relocated.  In addition, it is not Bellaview's intention to reaccommodate Jewson and they will have to close anyway.
Para 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	Bellaview did not at any time between the submission of the application for the Order in April 2023 and the submission of their evidence for this Inquiry (including the period during which Bellaview were negotiating the wording of planning conditions for their planning application with Network Rail) point out this conflict.  NR has written to Bellaview on 25 October to suggest a revision to this plan to revise the route of the easement.

	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.	
Para 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.	These conditions were discussed and agreed with me to ensure the Bellaview planning application could be substantially implemented within 5 years of their planning approval. We did not discuss that their development needed to be completed within 5 years. The intention was to ensure their planning permission did not lapse without implementation having occurred.
Para 5.11	<p>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:</p> <p><u>Amendment to condition 28 – Network Rail – Phasing Plan</u></p> <p>The developer shall not commence construction of the development (which excludes demolition, site clearance, site investigation, site remediation, and ground works) unless either:</p> <p><i>(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</i></p>	<p>The footprint of Bellaview's development is larger than the footprint of the existing warehouse. If Bellaview's intention is to build the first phase of their proposed development, they should have sought that the condition state accordingly and referred to <i>"works phased on the footprint of the proposed building"</i>.</p> <p><i>This has also been complicated further as Bellaview have also stated not only do they require a larger footprint of development they also need a larger area to include a hoarding around the footprint that would reduce further the space available to NR for its scheme.</i></p>

	<p>use of a temporary Road Rail Vehicle Access Point (RRAP) on the site are not impeded; <b>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.</b> 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</p> <p>(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.</p> <p>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</p>	
--	---	--

	<i>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.</i> [text in bold is Sphere25 emphasis]	
Para 5.12	<p>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.</p> <p>c) The period of temporary possession sought in the Draft Order will exceed the lifetime of the Permission.</p>	<p>At the time the condition was agreed (mid July 2023), Network Rail's understanding was that they were agreeing to the warehouse footprint, so as to enable Bellaview to start the construction of their proposed development within 5 years of the approval. This is what had been discussed with the council and Bellaview's consultants as Network Rail was keen to try and find a way for both projects to be compatible.</p> <p>Bellaview's planning permission provides for implementation within a 5 year' period. It does not provide for the development to be completed within that period.</p>
Paras 5.13 and 5.14	<p>Network Rail's statement of case also cites the above condition. Indeed, immediately after the quotation, it is stated that;</p> <p>"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."</p> <p>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</p>	<p>Negotiations have been ongoing for months to try and reach an agreement to allow both schemes to proceed in tandem. It now seems likely that it will not prove possible for BPL to substantively build out its scheme of redevelopment until such time as the temporary use of the Order Land (for the RRAP and compound) has ceased.</p> <p>The five year planning condition does not require Bellaview's proposals to be completed within 5 years.</p>

	<p>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. Beyond the extended permission date for the mixed use development.</p>	
Para 5.18	<p>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].</p>	<p>Network Rail consider that any potential planning issues in relation to amenity and highways can be managed by the council through the suggested planning conditions – which have been agreed with the council. It should also be noted that the deemed permission only relates to a temporary use to support a construction activity on the Mainline Railway at the approaches to Old Oak Common.</p> <p>Network Rail have now also submitted a transport statement that demonstrates there is little impact on the road network from their proposals.</p> <p>Where temporary works are being delivered as permitted development, rather than discharging of planning conditions, it is quite common for Network Rail to enter into a Section 61 agreement with the Local Authority Environmental Protection Team to ensure best practice in construction implementation to limit disturbance to local residents and businesses. This is what is anticipated to be done in this case.</p>
Para 5.20	<p>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.</p>	<p>The application was not submitted to the London Borough of Ealing, but the Secretary of State for Transport. As the project is essentially a supporting compound to help deliver a construction project (Rail Systems on GWML) the usual way in controlling/ managing a temporary compound is through a CEMP and CTMP planning condition and that mechanism will provide the local planning authority with adequate controls to ensure that the activities are properly controlled and impacts minimised and mitigated where necessary. There are similar</p>



		construction traffic and CEMP conditions on the Bellaview planning application that also need to be discharged.
Para 5.25	<p>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.</p>	These can be agreed through the CEMP.
Para 5.30	<p>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]</p>	<p>It is correct to note that the Order Land was chosen for engineering/construction reasons (on the basis that no other sites were suitable for the purposes of the temporary RRAP to the south of the mainline, as further described in Mr Ford's evidence). The need for compliance with planning policy was secondary as the Project will support a development approved by HS2 Act, which is nationally significant. However, notwithstanding this, our planning permission is temporary in nature and ultimately doesn't prevent long term</p>

		compliance with local planning policy as the redevelopment for mixed use can be fully implemented once our temporary use has ceased.
Para 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.	The technical reasons why the Order Land has been selected are outlined in Mr Ford and Mr Fleming's PoE, with the project site being used in combination with other sites to deliver the Rail Systems works.
Para 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.	<p>The wording of condition 5 has now been agreed with the LPA.</p> <p>Condition 5: No part of the Development shall commence until the details of the reinstatement of the site have been submitted to and approved in writing by the local planning authority. The decommissioning plan shall cover the removal of all temporary infrastructure from the site and should show how and when the site will be returned to its current use and shall include a restoration programme. The development shall thereafter be carried out in accordance with the approved details, including any variations to the decommissioning plan as may be approved by the Local Planning Authority from time to time.</p> <p>Reason: To allow return of part of the application site to the owner to commence residential development of the site.</p>
Para 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.	There is no construction of permanent buildings.

Para 5.50	<p>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 "<i>delayed but not fully prevented</i>".</p>	<p>Network Rail agreed that Bellaview's works could start on the footprint of the warehouse, not the footprint of Bellaview's proposed building (and Bellaview are now even seeking a larger footprint for a hoarded area). If Bellaview's intention was different, it should have been made clear when this was discussed with the council and Network Rail before agreeing revised planning conditions shortly before planning committee. Any permission ultimately granted can be implemented within the footprint of the warehouse, prior to its expiry. Further works can be undertaken, provided they are carefully phased and do not impede the Project and/or the GWML Rail Systems Project.</p>
Para 6.5	<p>There are no outstanding objections from Network Rail to the planning application. Network Rail believe that "<i>the proposed residential development of the Order land is likely to be delayed, but not fully prevented</i>". 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.</p>	<p>Network Rail did not object to Bellaview's planning application as I considered that the parties would have negotiated an agreement before it came to an Inquiry and in the interests of trying to act reasonably believed there was a way forward for both to co-exist and the Order could be amended accordingly. Had I known that agreement was unlikely to be reached I may have decided to maintain an objection to the BPL scheme.</p>
Para 6.8	<p>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</p>	<p>This is irrelevant if they do not work technically. Network Rail has to use a site which technically works to the south of the mainline to support the delivery of HS2 at Old Oak Common.</p>

	Ealing, where it is conceded that NR were not aware that the site was allocated in the local plan.	
--	--	--

Proof of Evidence of Mrs Kuszta

Reference	Bellaview's position	Network Rail's comments
8	<p>When raising concerns to Network Rail regarding the local environmental and ecological impacts of the Scheme, the following reply did not offer any clarity. In fact, I would suggest that omission of this information suggests that relevant decision making cannot be comprehensive without it.</p> <p>Network Rail has undertaken an environmental survey of the area and is awaiting the final report.</p> <p>The environmental surveys are not yet complete. Any requests for documents can be made under the Freedom of Information Act (FOI) by emailing FOI@Networkrail.co.uk As the surveys may inform further work is needed, these may not be available straight away after completion.</p> <p>We take the importance of the environment very seriously and follows all legislation that is in place as well as guidance from ecologists.</p>	<p>Network Rail have not been able to access plot 1 to undertake full environmental and ecological surveys. Once the Crown Land is available (and in any event before mobilising the site), the appropriate ecology surveys/walkover will be carried out. Network Rail will also have ecologists on site to supervise the clearance of vegetation.</p>

	<p>The draft report hasn't identified deer using this area as habitation. However, we will follow the correct legislation when occupying areas with wildlife.</p> <p>I have failed to see any reference to the environmental survey in Network Rail's Statement of Case. Therefore, this demonstrates Network Rail's lack of care and consideration to the changes of local biodiversity that the Scheme will inflict.</p>	
--	--	--

Dated: 2 November 2023