

TRANSPORT AND WORKS ACT 1992

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

OPENING SUBMISSIONS OF NETWORK RAIL

Preliminary

1. The purpose of this Inquiry is to consider the Network Rail (Old Oak Common Great Western Mainline Track Access) Order ('the **Order**'), made pursuant to the Transport and Works Act 1992 ('the **1992 Act**').
2. The promoting authority is Network Rail Infrastructure Ltd ('**NRIL**').
3. The context in which the Order is promoted, can be briefly summarised in the terms set out in the following paragraphs.

The Proposals

4. Notwithstanding the Inquiry is concerned with the single Order, it is important to understand at the outset that that Order will enable what are, in effect, twin proposals ('the **Proposals**').
 - The '**First Proposal**' relates to the delivery of temporary Road Rail Vehicle ('**RRV**') access point ('**RRAP**') on land at Horn Lane, Acton ('the **Order Land**'). This facility is required in order to effect works to the Great Western Main Line ('the **GWML**') pursuant to a wider scheme of works known as the GWML Rail Systems Project ('the **Systems Project**'). The Systems Project is required in order to deliver changes to the GWML at Old Oak Common, in connection with the Old Oak Common Station ('the **OOC Station**') being constructed as the (temporary) London terminus of the High Speed 2 rail line. The land the subject of the Order ('the **Order Land**') is required not only in connection with the temporary RRAP, but also a compound area to accommodate parking, lay down, welfare and other facilities.

- The '**Second Proposal**' comprises the delivery of a permanent RRAP on land immediately adjacent to the west of the Order Land, known for the purposes of these proceedings as 'Plot 1'. The purpose of the permanent RRAP is to make good an existing deficiency in maintenance provision of the GWML, by providing access for RRVs to the 'southern', main lines of the GWML in this location. Access to the permanent RRAP will require the acquisition of a permanent easement across the Order Land ('the **Easement**'), this being identified as Plot 3 for the purposes of the Order.

5. It is these two Proposals in respect of which the Order is being sought.

Land & Location

6. The Order Land is located immediately to the south of the existing GWML, west of Acton Main Line Station. It is essentially comprised of an existing builders' merchants, operating under the Jewson brand. The site is open, save for a large warehouse which was formerly an NRIL facility, that occupies the central and western areas. To the north lie the existing railway lines (two relief lines to the north, two main lines to the south), beyond which lies Acton Goods Yard, within which are large scale industrial uses including aggregates, cement batching and metal recycling. To the south east sits Acton House, a block of residential flats, with a car wash and a row of single storey commercial premises which are unoccupied sitting to the south west. At the very western end, beyond the Order Land but to the south of Plot 1 sit the gardens of residential properties on Lynton Road.
7. The freehold owner of the Order Land is Bellaview Properties Ltd ('**BPL**'), whilst the tenant which operates the Jewson builder's merchants is STARK Building Materials Ltd ('**STARK**').
8. Plot 1 comprises a heavily vegetated, triangle of land which – as noted above – backs on to the gardens of residential properties to the south, and abuts the GWML to the north. The land is held by the Crown Estate ('the **Estate**') *bona vacantia*, with the former owner that purchased it from NRIL having gone into liquidation.

The Order

9. The Order is essentially what is known as a 'land order', as opposed to a 'works order'. That is, NRIL are primarily promoting the Order with a view to securing powers over land. Given

the nature of the matters likely to be debated by the parties to the Inquiry over the next two weeks, and given how matters are put in evidence by some of the witnesses who will appear before the Inquiry, it is perhaps helpful to clarify matters in this respect.

10. Turning first to the permanent RRAP (the Second Proposal), the position may be summarised as follows:

- NRIL is not seeking any powers over Plot 1 in terms of compulsory acquisition. The Estate is not susceptible to compulsory purchase, and instead NRIL has approached lawyers for the Estate (Borges Salmon) with a view to the land's acquisition. That acquisition has not yet been effected, and other parties have evinced an interest in acquiring Plot 1 also. However, the Estate has indicated that in the event that the Order is granted, it would expect to sell Plot 1 to NRIL; this would of course give effect to the public interest in delivering the permanent RRAP. Notably, BPL itself formerly indicated to Borges Salmon that it was interested in acquiring Plot 1. However, BPL has since withdrawn that expression of interest.
- No planning permission is sought in respect of the permanent RRAP, whether deemed or otherwise. Both the construction of the RRAP, its use, and the use of Plot 1 as a 'compound area' in connection with the RRAP comprise permitted development, by virtue of Class A of Part 18 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the **2015 Order**'). Such rights will be well understood by the Inquiry, and NRIL has relied upon them on countless occasions in similar circumstances.
- In operating the permanent RRAP NRIL will enter into an agreement with the local planning authority, the London Borough of Ealing ('the **Council**'), pursuant to Section 61 of the Control of Pollution Act 1974. Again, such approach is a well trodden path by NRIL in circumstances where the operation of facilities comprises permitted development under the 2015 Order.
- As noted above, in order to access the permanent RRAP NRIL will require the Easement. The route of the Easement is shown as Plot 3 in the Order (although its alignment is a matter that NRIL return to later in these opening submissions). Such permanent easement

will interfere with the existing rights enjoyed by BPL and STARK, but will not interfere with the access rights enjoyed by residents of Acton House.

- Thus the only purpose for which the Order is required in connection with the permanent RRAP is the acquisition of the Easement.

11. Turning next to the temporary RRAP (the First Proposal), the position is as follows:

- NRIL requires temporary possession of land in order to establish and service the temporary RRAP. In this regard temporary possession powers over land are sought as shown in the Order over Plots 2, 3 and 4. Again, such powers will of course interfere with the existing rights which BPL and STARK enjoy over the Order Land (regarding which see further below), but once again, there will be no interference with the access rights enjoyed by residents of Acton House.
- NRIL does not intend to carry out substantive works on the Order Land pursuant to the Order; there is no intention to construct a new railway, or similar. However, there will be some enabling works carried out. A section of the fence along the railway will need to be removed, a new access gate will be installed, and there will be ground lowering works; all these works will take place within NRIL's operational land and thus comprise permitted development for the purposes of Class A of Part 8 of the 2015 Order.
- Further, the engineering works that will be enabled by the temporary RRAP will also be undertaken on existing GWML infrastructure, within the existing limits of the railway, and thus will also comprise permitted development.
- In addition however, there will need to be some ground lowering works on the Order Land to facilitate level access onto the temporary RRAP, cabins will be installed, and thereafter the Order Land will be used for the purposes of compound in connection with the temporary RRAP. Such limited enabling works and use of the Order Land in connection with the temporary RRAP cannot be undertaken by NRIL pursuant to permitted development powers, since such operations relate not just to the GWML but also – in part – to High Speed 2. It is solely this connection with High Speed 2 that results in a requirement for a deemed planning permission pursuant to Section 90(2A) of the Town and Country Planning Act 1990 ('the **1990 Act**'), for this limited category of works.

- The uses of the Order Land in respect of which the deemed permission is sought, comprise *"such works as are required for the purposes of the use of the land as a temporary worksite for the associated development, including laying down and storage of materials, temporary cabins, yards, slab, cranes, plant and machinery, apparatus, fencing and other works and conveniences"*¹.

The Case for NRIL

12. In the following section of submissions, NRIL summarises its position as to why the Order should be granted, by reference to the need for the Proposals and the nature of the activities that it intends to undertake.

Need

13. Both elements of the Order, that is both the First and Second Proposals, are required as matters of vital importance in the public interest. NRIL uses that terminology advisedly.
14. The First Proposal, being the temporary RRAP and its compound, is required as a matter of absolute necessity, in connection with delivery of High Speed 2. That project, perhaps the most important piece of nationally significant transport infrastructure in several decades, simply cannot come forward without delivery of the Systems Project. The Systems Project is a fundamental prerequisite for delivery of the OOC Station, which – as noted above – will serve as the temporary (and potentially permanent) London terminus of the new high speed rail line. The Systems Project itself cannot be delivered on time without the First Proposal, which is necessary to enable the requisite works to the GWML to be undertaken. Without that Proposal, there will be substantial, unacceptable delay to the Systems Project, and in consequence to the completion of High Speed 2. The need for the First Proposal is thus extremely urgent, to enable completion of High Speed 2. This issue will be addressed in evidence during the course of the Inquiry, chiefly by Mr Andrew Fleming.
15. The Second Proposal, being the establishment of the permanent RRAP and compound, whilst less urgent, is no less a matter of public interest. At present, NRIL does not have necessary access to the southern lines of the GWML in this location. Such lacuna in access provision has meant that necessary maintenance and upgrade works to the GWML have been repeatedly

¹ This is the wording with which it is proposed that Article 3 of the Order be modified; see further below.

deferred and postponed. This position is not sustainable, and must be rectified if necessary works are to be undertaken in a manner that avoids closures of the GWML for durations which would be wholly unacceptable both to train operating companies ('TOCs') and also to the public at large. This is a matter that will be addressed in the evidence of Mr Chris Ford.

16. In the evidence of Mr Fleming and Mr Chris Ford, NRIL will set out why it is that these vital, pressing needs must be addressed in this location. That is, on the Order Land and on Plot 1. In this context NRIL notes the matters raised – in particular by BPL – as to the potential availability of other locations to serve NRIL's purposes in meeting the stated needs. As those witnesses will make clear, none of the options identified/suggested would serve to replace the Order Land/Plot 1. All would mean inferior provision, resulting variously in material delay to the Systems Project (and thus High Speed 2), and/or unacceptable interference with the operation of the GWML and activities of the TOCs, and/or safety risks to NRIL personnel.
17. Crucially, there is no other location that affords NRIL the opportunity for extended possessions (of up to 29 hours), which will be vital in order for the Systems Project work to be undertaken on time.

Nature of Activities

18. It is important that the Inquiry has a true understanding of the nature of the activities that, in addressing the need set out above, NRIL will undertake on the Order Land/Plot 1 pursuant to the Order. Again, the position is as summarised in the following paragraphs.
19. As set out in evidence, the First Proposal will entail the use of the Order Land as a compound and temporary RRAP. Utilisation of the RRAP must commence no later than January 2025, if delay to the Systems Project, and thus to completion of High Speed 2, is to be avoided.
20. Mr Fleming will explain to the Inquiry that NRIL is proposing that the Order Land be used in conjunction with a network of other NRIL facilities, so that its use will be minimised. Such use will service primarily weekend, overnight possessions of the southern GWML, over the nights of Saturday/Sunday and/or Sunday/Monday. It is anticipated that possessions will be in the order of two weekends per month. Materials and plant will be delivered to the compound on a 'just in time' basis, with only limited plant/materials being retained at the compound on an ongoing basis. In addition to storage/laydown areas, NRIL will require parking facilities and welfare facilities for staff/contractors.

21. The RRAP and compound will also be required to serve additional, mid-week possessions from time to time (anticipated as being 2 per month). Those possessions will require use of more smaller, more limited plant (owing to the time limited nature of any such possessions) and activities will accordingly be more limited.
22. Thus, whilst the significance of the activities enabled by the temporary RRAP will be crucial, the duration and the impact of the activities be very limited.
23. In terms of the Second Proposal, the use of the permanent RRAP will be less intense than even the limited activities anticipated on the Order Land in connection with the First Proposal.

Objections

24. It is in this context that these submissions turn to consider objections which have been made to the Order. Notwithstanding widespread consultation (more than 180 parties were consulted) 8 objections were originally lodged in respect of the Order. Of these, two have since been withdrawn, so that the Inquiry is concerned only with six objections.

Acton House

25. Two of these objections are made by residents of Acton House (Objections 1 and 2). Those objections raise concerns essentially as to two matters; interference with access rights to the rear of Acton House, and concerns about impact on residential amenity.
26. As regards the former, as has already been stated, NRIL does not seek powers to restrict or interfere with any access rights enjoyed by Acton House residents. Those rights will continue to be enjoyed in the same manner that they are now.
27. In terms of residential amenity, again it is the position of Network Rail that no material impact will result from its activities as enabled by the Order. The first thing to note in this regard is the limited instances/duration of any activity proposed. The second matter to note is the nature of that activity. No substantive 'works' will be undertaken on the land as such; NRIL staff/contractors will make use of the temporary RRAP compound for the laydown of plant/materials (which will be used off site) and as a base for welfare.
28. Again, Mr Fleming will speak to the long experience of NRIL – and himself – in managing the operation of sites in similar locations so as to minimise impacts on residential properties.

There are multiple, well established practices for mitigating impacts. Further, it is proposed that such activities be subject to planning conditions imposed on the deemed planning permission, requiring submission of a CEMP and CTMP to the Council for its approval. Relevant conditions have already been agreed with Council officers. The limited extent of activities, and the protection afforded by those restrictions on practices, will ensure that residential amenity is protected.

29. In this context, NRIL will also respectfully point to the existing environment of Acton House. In this regard, the site visit undertaken by the Inspector will illustrate the extent to which the location is not, even in its existing form, a tranquil area. The property already overlooks the railway, and beyond it the Goods Yard with its various industrial uses.

Mr and Ms Kuszta

30. Two of the remaining objections have been submitted by a Mr and Mrs Kuszta (Objections 4 and 5). These objectors do not live in Acton House, but in residential property backing onto Plot 1. Their concerns appear also to relate to matters of residential amenity, but NRIL and the Inquiry will no doubt hear more in this regard when the objectors attend the Inquiry on Wednesday evening.
31. The matters rehearsed in respect of the Acton House objections will be relevant to amenity considerations raised by these objectors.
32. NRIL also note however, the frustration apparently experienced by the objectors in dealing with a multiplicity of personnel at/working for NRIL in dealing with their objection. NRIL of course regrets and sympathises with these frustrations to some degree, and will seek to explore them in the course of the Inquiry.

STARK

33. NRIL has been engaging with STARK, the occupant/tenant of the Order Land, for a considerable period. Whilst it notes the objection maintained on its behalf by Sanderson Weatherall, NRIL is unclear as to the extent to which this objection is actively maintained. An offer of settlement, which might result in the withdrawal of the objection was made some weeks ago.

BPL

34. The chief party objecting to the Order is BPL. The company has raised various grounds of objection, which it will be necessary to address through evidence. Whilst not seeking to ignore other points raised by BPL, NRIL summarises what it understands to be the chief points of objection to be as follows:

- First, amenity issues relating to the deemed planning permission. Whilst these issues will not affect BPL in any way, BPL raises them as part of its wider case. Such issues have been touched upon already in the context of the observations made by NRIL relating to the Acton House objections.
- Secondly, objections relating to planning policy. Planning matters will be addressed chiefly by Mr Colin Field on behalf of NRIL.
- Thirdly, objections relating to what are said to be alternative locations/sites from which NRIL could deliver the works necessary for the First Proposal. Such arguments will be addressed by Mr Ford on behalf of NRIL. In short, the position is that none of the alternatives posited by BPL, and in particular by Mr Gallop, would meet the case. They are not properly regarded as viable alternatives.
- Fourthly, objections relating to the interference which the Order would result in NRIL causing to BPL's future use of the Order Land. The position here is not, with respect, entirely clear, since a number of different scenarios are posited as to how the Order Land might be used by BPL in the future. However, issues that figure prominently in this regard include the potential use of the existing warehouse by another company within BDL's group – Builder Depot Ltd ('BDL') – and/or redevelopment of the Order Land by BPL in accordance with a scheme of mixed development ('the **Bellaview Proposal**') in respect of which the Council has resolved to grant (but not yet granted) planning permission². In this regard, NRIL's position is that it has sought, over a sustained period, to explore the means by which it could potentially best accommodate use of the Order Land by BDL and/or enable implementation – potentially even the building out – of any planning permission which the Council do ultimately grant, whilst ensuring that delivery of its own objectives – objectives manifestly in the wider public interest – are not put at risk. Evidence on these

² Crucially, such redevelopment would not be frustrated by the Order; rather, it would only be deferred.

matters will be given by Mr Fleming and Mr Ford, and also by Mr Jonathan Sinclair, who has been engaging with BPL and its advisors. This ground of objection is also the subject of comment in the final section of these submissions below.

Proposed Amendments to the Order

35. In promoting the Order, NRIL has at all times had regard to the views of those consulted, and in particular those objecting to the Order (regarding which see further below). NRIL has also of course had regard to the observations of the Inspector, both at the two preliminary inquiry meetings held ('the **PIMs**'), and as helpfully set out in the Note dated 8th November 2023.

36. To this end NRIL commends to the Inspector, and to the Secretary of State, a series of modifications which it is hoped will alleviate a number of the concerns that have been raised in connection with the Order.

Article 3 of the Order

37. Article 3 of the draft Order is proposed to be modified to make it more clear that no substantive works are proposed to be undertaken and remove powers which, on review, are no longer considered to be necessary. In this regard, NRIL notes that in drafting the Order it has – consistent with guidance – sought to adhere closely to model provisions. In fact, in the particular circumstances of this case, it is necessary to depart from those model provisions (both in terms of Article 3 and elsewhere).

Article 6 of the Order

38. Article 6 of the draft Order is proposed to be modified to make sure that NRIL's power to create the Easement over Plot 3 is conditional upon NRIL acquiring an interest in Plot 1.

Article 7 of the Order

39. Article 7 of the draft Order is proposed to be modified to clarify that no buildings will be removed from the Order Land (addressing concerns raised by BPL).

Article 9 of the Order

40. Article 9 of the draft Order is proposed to be modified to make sure that Acton House residents' right of access is not affected by the Order.

The Easement – Plot 3

41. As the Inspector is aware, the Order as submitted provides for the Easement over Plot 3 on an alignment which would conflict materially with the footprint of the Bellaview Proposal. It has never been NR's intention that the Easement/Plot 3 should conflict with the Bellaview Proposal, and the current position is regrettable. NR had not understood that any such conflict existed.
42. The original route of Plot 3 was identified by NRIL at a time prior to the submission of the planning application for the Bellaview Proposal. At this time NRIL sought to engage with BPL, but only received limited engagement. Certainly, no indication was given by BPL that the route of the proposed easement would conflict with any development intentions. BPL subsequently submitted its planning application, but did not notify NRIL of the emerging conflict, and on that basis the application for the Order was made on the basis of the route originally proposed.
43. No party (certainly neither the Council nor BPL) identified the conflict in subsequent discussions, even in circumstances where NRIL was asked to agree to the terms of planning conditions which might be imposed on a permission for the Bellaview Proposal (one of which, Condition 28, provides for BPL to undertake works connected with its proposal within the footprint of the existing warehouse). Further, BPL did not raise the issue in either its Objection or its Statement of Case in respect of the Order. It is only at the point when the parties submitted evidence to the Inquiry that the matter has been identified.
44. Since receipt of BPL's evidence NR's team have worked urgently to identify a revised routeing for Plot 3. That route is now shown on revised plans/CAD drawings which were provided to BPL on 3rd November, in accordance with the indication given by NR at the second PIM. Whilst there would still be some, very limited overlap in terms of the footprint of the Bellaview Proposal, that overlap would be significantly reduced, and BPL personnel have confirmed that the route of the Easement can be accommodated by a chamfer of the north eastern corner of the proposed development.

45. It is as yet unclear whether BPL agrees to this particular modification of the Order that NRIL now propose; it is understood that they do not oppose the principle, but question the necessity. However, NRIL notes that in correspondence dated 10th November BPL indicated that if the Council is amenable to an amendment being made to the Bellaview Proposal, BPL would accept the necessary chamfer.
46. In any event, in due course NRIL will submit that the Secretary of State should exercise his powers under Section 13(4) of the 1992 Act to make the proposed revision. NRIL do not currently see any basis on which BPL can or should object to the proposed revision, in circumstances where it will address the issue it has complained of, and enable the Bellaview Proposal to come forward substantively as proposed.

The Order Land

47. As noted above, NRIL and its advisors have been seeking to understand the requirements of BPL/BDL, and whether it is possible that an accommodation could be reached in respect of site sharing. Whilst some of the statements made in evidence by some of BPL's witnesses have misrepresented, no doubt unintentionally, the extent to which agreement has been reached at various points, NRIL do consider that an accommodation of some sort is possible. It is to that end that NRIL and BPL have been in discussions/negotiations until as recently as yesterday, seeking to establish the terms of such accommodation.
48. On the basis of those discussions, NRIL's position is now as follows:
- First, it should be possible to allow BPL (and/or BDL) to retain possession of the Warehouse;
 - Second, it should be possible to allow for the continuing use of the Warehouse by BDL (or indeed STARK) as a builder's merchant;
 - Third, it should be possible to enable BPL to implement any planning permission granted by the Council in respect of the Bellaview Proposal whilst NRIL is in temporary possession of other parts of the Order Land, so as to ensure that such permission does not expire, and can be fully built out once NRIL's temporary use of the Order Land is over; and
 - Fourth, it should be possible to allow the redevelopment to take place whilst NRIL are in situ and in possession of part of the Order Land, subject to the introduction of a small chamfer.

49. Such arrangement envisages that temporary possession powers would be granted in respect of a reduced area of the Order Land, and that NRIL would undertake to 'share' use of certain identified parts of that land with BPL and its licensees (such as BDL), in order that appropriate access/rights can be exercised by both parties.

50. As noted above, negotiations and discussions have been ongoing right up to the 11th hour. However, it is anticipated that a revised Land Plan, identifying the extent of the relevant areas, will shortly be provided to the Inspector. That plan will indicate the absolute, minimum requirements of possession which NRIL must have, if it is to be able to deliver the First Proposal.

Concluding Remarks

51. It is on this basis that NRIL comes before the Inquiry, seeking that the Order be granted.

52. The two Proposals in respect of which the Order is promoted both comprise vital matters in the public interest. There is minimal public objection to the Order, and whilst if granted it would interfere with the interests/intentions of BPL as the owner of the Order Land, NRIL has bent itself over backwards in order to seek to accommodate those interests/intentions. The absolute minimum of powers are sought.

Alexander Booth KC

14th November 2023

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