

Transport and Works Act 1992

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

OPENING STATEMENT
On behalf of Bellaview Properties Ltd.

1. Network Rail Infrastructure Ltd. (**'NR'**) seeks from the Secretary of State for Transport an order under the Transport and Works Act 1992 (**"the Order"**). By the Order, NR seeks powers of compulsory acquisition and planning permission, amongst other matters.
2. Bellaview Properties Ltd. (**'Bellaview'**) is the freehold owner of the land affected by the Order (Plots 2, 3 and 4). Bellaview's land (known as 239 Horn Lane or Jewson's Yard) comprises a warehouse building, offices, storage yard, parking, hardstanding and access off Horn Lane. The whole property is leased to Saint-Gobain Building Distribution Ltd. (now known as Stark Building Materials UK Limited) (with a contractual term extending until 10 April 2025). It is occupied by Jewson Builders Merchants, which sells building materials to professional builders and tradespersons.
3. By the Order, NR seeks the compulsory acquisition of:
 - a. a right to take temporary possession (for an indeterminate period) of land held by Bellaview at Horn Lane for the purpose of obtaining access to the Great Western Main Line (**'GWML'**) from the south via a temporary Road Rail Access Point (**'RRAP'**) and the use of the warehouse (in its entirety) and outside space in association with the use of that temporary RRAP; and
 - b. a permanent right of way across Bellaview's land to access Plot 1 of the Order land and a permanent RRAP proposed to be introduced on that Plot.

4. NR seeks through the Order extensive powers to use Bellaview's land including to demolish the warehouse and other buildings on the land. It seeks planning permission for the temporary use of Bellaview's land.
5. The temporary possession and the permanent right sought will have a profound and onerous effect on Bellaview and on others. First, the current use of the site as a builders' merchant would be compelled to cease for an indeterminate period. Secondly, Bellaview would be precluded from carrying out the development for which it has sought planning permission and for which the LPA, the London Borough of Ealing ('LBE'), has resolved to grant planning permission. It is expected that planning permission will be issued, pursuant to the LPA's resolution to grant, imminently.
6. In respect of the first of those matters, the current occupier of the warehouse would be dispossessed. Bellaview, as the reversionary freehold owner, would lose its opportunity to retain the existing tenant (by allowing it to hold over or by granting a new lease to it), it would lose the opportunity to secure a new tenant (should the existing tenant vacate) and it would lose the opportunity to grant a lease to another company in the same group as Bellaview, who presently operates a builders depot in West Hampstead and who will need in due course either to relocate temporarily to allow redevelopment of its existing site to be carried out; or, permanently if that site is compulsory acquired, as the London Borough of Camden is threatening to do. NR of course, and as we have noted, seeks powers for itself to demolish the warehouse in its entirety (if it so chooses) thereby terminating the existing and long-established use of the site.
7. In respect of the second of those matters, the powers sought by NR would prevent the completion of the redevelopment of the site as proposed by Bellaview, even if technically the development could be begun by the carrying out of a material operation. The temporary possession sought in practical terms precludes meaningful progress of the development beyond technical implementation. The permanent right sought encroaches materially onto the footprint of the proposed development so as

to preclude its completion in accordance with the details resolved to be approved (as NR now seems to accept). The effect will be significant loss to Bellaview and its aspirations for its site and the foregoing of the benefits of the development to the public, including through the delivery of 185 new homes in a highly sustainable location and in accordance with the policies for the site in the development plan in a Borough with a housing supply deficit. The implications of the extensive powers sought, by compulsion, are substantial and seriously adverse to Bellaview and to others, including the public interest.

8. As a matter of law and of policy, Bellaview is required to show a compelling case in the public interest for the confirmation of the Order and the conferring of the powers sought. An acquiring authority cannot compulsorily acquire land simply for its own convenience and only a compelling case of public interest, of greater force, may override a property interest (see e.g., Chesterfield Properties Plc. v. SoS (1998) 76 P & CR 117). The greater the impact on the party to be dispossessed the more compelling the evidence of the public interest must be.
9. It is the case, and Bellaview accepts, that the delivery of a new station at Old Oak Common ('OOC') and the associated engineering works to the GWML is a project of importance in the national and regional interest. However, Bellaview does not accept that there is a need or therefore a compelling case in the public interest for temporary possession to be taken of any of its land to secure this. Moreover, Bellaview does not accept that any need to secure a new permanent access point onto the GWML from the south requires access over its land.
10. However, if Bellaview is wrong about this and there is a need, in principle, for temporary possession and/or a permanent right to be taken over its land, the extent of those rights sought by NR is wholly excessive and disproportionate and is not supported even by NR's own case.
11. In respect of the first of those matters and whether the taking of any temporary or permanent rights are justified at all over Bellaview's land, NR has not carried out or disclosed in evidence any or any proper objective assessment of alternatives. It is to

be expected that this exercise would have been carried out before resort is had to powers of compulsion. Had such an exercise been carried out, it would and should have properly and fairly identified the opportunities available at North Pole Depot – a large area of railway operational land owned by the Secretary of State for Transport in close and sufficient proximity to OOC Station. Land at North Pole Depot is currently used for railway purposes, it is used for the delivery of wider HS2 works and is to be used, we have been told, for the OOC Station works as the main logistics compound. There is, we say, opportunity for a new temporary RRAP or RRAPs to be introduced within the North Pole Depot site. There is also opportunity for those new RRAP(s) to be used together and conjunction with an existing RRAP at Barlby Road, which itself is located in the wider North Pole Depot site. NR has latterly sought to raise a range of technical objections to recourse to North Pole Depot as an alternative to the Horn Lane site, including in respect of access and in respect of the interface with existing operators and operations taking place on the site. We will answer those objections, such as they are, in full. None, we submit, withstands scrutiny. Land at North Pole Depot is, we say, suitable and is or can be made available to NR to meet the objectives that it seeks to deliver through use of Bellaview's land and thus would overcome the need to take the any rights, temporary or permanent, over that land.

12. We should add, so far as the principle of taking rights over Bellaview's land is concerned, that the permanent right over Plot 3 is to access Plot 1 on the Order plan (or the Triangle land). Plot 1 is not within the Order; it cannot be, as it is Crown land. NR has no agreement in place to acquire that land from the Crown and the Crown has not committed to transferring the land to NR; engagement with the Crown has not progressed beyond a very early stage, it would seem. That NR will acquire the Triangle land and thus will deliver a permanent RRAP is far from assured. In such circumstances, NR cannot logically advance a compelling case in the public interest to acquire a right of way to land it does not own and has not even secured an agreement to acquire. In policy terms, there is a clear impediment to delivery of the "scheme" which the right over Plot 3 is intended to facilitate. We should make clear that we doubt that it is within the powers of the Act to modify the Order to make the right sought over Plot 3 contingent on NR acquiring the Triangle land/Plot 1.

13. On this basis, Bellaview submits there is no case at all for any rights to be sought over its land.
14. As submitted, above, if we are wrong about this, the nature and extent of the rights sought by NR over Bellaview's land are well beyond those that are necessary or reasonable to meet the objective of the Order. Indeed, NR now accepts this but, surprisingly (at least at the point in time that these opening submissions are made), NR has not requested, formally at least, that consideration be given to modification of the Order.
15. It is notable that NR now accepts, contrary to the terms of the Order it is still seeking from the Secretary of State, that (a) demolition of the existing warehouse is not necessary to meet the objective of the Order in any respect, (b) the operation of the temporary RRAP does not require possession to be taken of the warehouse or for its continued operation as a builders' merchants to cease; NR now accepts that it requires only temporary access to the railway across and through the northern boundary of Bellaview's land and external compound space; and (c) the temporary RRAP can be operated with the current or any future occupier of the current warehouse still in place; NR now accepts shared occupation of the site would meet its requirements. As such, to confirm the Order in the terms sought whereby NR takes possession of the whole of Bellaview's land for an indeterminate period, including power to demolish the warehouse, is untenable. NR does make some suggestion about the carrying out in full of the proposed redevelopment impeding the operation of the RRAP but the basis of this remains wholly unexplained in NR's evidence. If, and in so far as, this concern relates to turning manoeuvres at the northeast corner of the proposed development on the site, these concerns are wholly misplaced when considered properly and correctly from a technical perspective. In any event, the conditions proposed by the LBE to be attached to Bellaview's planning permission (see condition 28) would address any such concerns in so far as this concerns the operation of the temporary RAPP. And Bellaview has made it clear to NR that it would be prepared in principle to make a minor modification to introduce a "chamfer" to the north-western

corner of the proposed development to address NR's point in any event (even though the point is a bad one). [The LBE has indicated in correspondence that such a modification could be secured by means of a section 96A non-material amendment to Bellaview's planning permission, once granted].

16. We should add, for completeness, that, if NR is correct, and its capacity to acquire Plot 1 can be relied on (even though it has no agreement in place to do so), Bellaview contends that Plot 1 itself will provide all or at least some of the compound space which may be required for the use of the temporary RRAP, thereby reducing further any basis for the taking temporarily of Bellaview's land.
17. It follows that the powers sought by NR through the Order, in terms of temporary possession, are disproportionate and there is no compelling case in the public interest for the confirmation of the Order in the terms sought.
18. With regard to the permanent right over Plot 3, NR has disavowed any intention to encroach on or to impede delivery of the redevelopment of the site in accordance with Bellaview's proposals and LBE's resolution to approve those proposals. However, the right over Plot 3 encroaches directly and materially onto the footprint of that proposed building. NR now appreciates this but how and why NR prepared the Order in the form it did, given it has had full knowledge of Bellaview's proposals since well before the Order was made, remains unexplained. Be that as it may, NR proposed to modify the Order to resolve this conflict but, as at the time of preparing these submissions, has not formally done so. We have seen a rudimentary plan showing a realignment of Plot 3, but this realignment is inaccurate and not fit for purposes as a substitute Order plan or indeed for the purposes of an Order. We have responded to NR accordingly and suggested some necessary adjustments. We await NR's response.
19. However, and as matters stand, given that NR accepts that the permanent easement which it seeks does not need to encroach onto the footprint of Bellaview's redevelopment proposals, the right presently sought is not necessary and the Order in the form sought cannot sensibly be made.

20. In conclusion, so far as the elements of compulsory acquisition are concerned, NR has not shown a compelling case and the case it has shown (such as it is) demonstrates that the Order, in the terms sought, is flawed.
21. With regard to other matters, we do not accept that NR has shown that it has the resources committed and available to deliver the scheme. This will be explored further in evidence and the examination of it. As will, in so far as is necessary, the extent to which NR has been prepared, until recent days at least, to engage constructively with Bellaview to avoid the need for the powers of compulsory acquisition sought through this Order.
22. With regard to the planning permission which NR seeks, the absence of the usual technical assessments which are to be expected to accompany an application for planning permission for the development sought is notable. The temporary RRAP and associated compound, which NR now accepts can be located and confined to the open areas on the east of Bellaview's land, are located adjacent to residential properties. NR has produced no assessment of the impact of its proposals on the amenity of those residents; it is of course the case that NR expects to be using the temporary RAPP through the night at weekends, over extended periods during the Christmas and New Year holidays and apparently also at times overnight during the working week. Absent such assessments, the Inspector is left without any evidence to understand the effect of the development for which planning permission is sought on residents. We understand, from recent engagement, that concerns about impact on the amenity of residents is shared by officers at LBE, albeit it is acknowledged that LBE is not the planning authority for the determination of the deemed application for planning permission. It is of course the case that the development for which NR seeks planning permission is contrary to the development plan. It is wholly inadequate for these matters of impact to be deferred to the discharge of planning conditions; a planning condition can only be concluded to be effective if the impact which the condition is to address is first understood. We say therefore that the evidence gap is such that the deemed application for planning permission should be refused. If NR wishes to persist

it can make its application for planning permission to the LBE on a proper evidential basis.

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