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Your reference	Our reference
ELSEM/43283-4013	SFIT/1001174320

Attention: Marnix Elsenaar

Dear Sirs,

THE NETWORK RAIL (OLD OAK COMMON GREAT WESTERN MAINLINE TRACK ACCESS) ORDER 202[] (the draft Order)

We write following the Inquiry meeting and discussion that took place today with the Inspector.

In order for Network Rail to fully respond to our letter of 15 January 2024 and for the purpose of assisting the Inspector (and ultimately the Secretary of State) to make a decision in relation to Network Rail's TWAO application, we enclose a list of documents that we believe exist, with reference to the FOIA correspondence and evidence provided to date by Network Rail, and which have not yet been disclosed by Network Rail.

In addition to and as part of the response to be provided by Network Rail to our letter of 15 January 2024 addressing in full the discussion with the Inspector of today, we also ask that Network Rail:

1. Confirm whether each of the documents referred to at Enclosure 1 exist;
2. Disclose the documents referred to at Enclosure 1 (in so far as these documents exist whether with or without redaction. We have provided a response column within Enclosure 1 for Network Rail's ease of reference); and
3. If Network Rail decide not to disclose any of the documents or any part of the documents referred to at Enclosure 1, provide reasons for non-disclosure.

As discussed at today's Inquiry meeting, we understand that Network Rail have provided instructions to yourselves and leading counsel to the effect that there is nothing further to them to disclose because nothing further exists pursuant to the FOIA requests made by Bellaview Properties Limited dated 26 October 2022, 22 December 2022, 31 January 2023, 3 November 2023, 11 December 2023, and 15 December 2023. We would therefore also ask Network Rail to specifically confirm that:

1. There are no letters, correspondence, emails, meeting notes, reports, or documents of a similar nature between Network Rail their contractors or agents (including Colas Rail) and any of Hitachi, Agility or

the DfT that discuss use of the Hitachi North Pole Depot for either the temporary or permanent RRAP (beyond the email chain numbered INQ-04)¹;

2. That there are no internal letters, correspondence, emails, meeting notes, reports or documents of a similar nature (the **documents**) between different members of staff employed by Network Rail, or between staff employed by Network Rail and their contractors or agents (including Colas Rail) in the nature of internal documents that discuss the use of the Hitachi North Pole Depot for either the temporary or permanent RRAP²;
3. That there are no optioneering reports, studies, assessments, and documents that assess alternatives for a new temporary RRAP on the Great Western Mainline, this may include GRIP or PACE reports (beyond those already disclosed);
4. That there are no optioneering reports, studies, assessments, and documents that assess alternatives for a new permanent RRAP on the Great Western Mainline, this may include GRIP or PACE reports (beyond those already disclosed).

Furthermore, from today's discussion with the Inspector, we understand that Network Rail's letter of response will be signed by Mr David Wilson (Network Rail, Head of Consents and Environment for Western and Wales).

We take this opportunity to remind Network Rail of the public duties that apply to Network Rail as an organisation and specifically to Mr Wilson as Network Rail's employee. We refer, for example, to Network Rail's Code of Business Ethics and, in particular, the document titled 'Our Code of Business Ethics'³. The Code applies to all Network Rail employees and requires that Network Rail "*demonstrate to the public that we have ethical principles [...], and that we care about the communities we serve and the environment around us.*" Amongst other requirements, the Code also provides as follows: "*Good record-keeping is key to us being able to work effectively and keep our reputation for openness and honesty*".

It is clear that the accuracy of any response to be provided by Mr Wilson in relation to these public proceedings will inform the determination by the Inspector (and the Secretary of State) as to whether there is a compelling case in the public interest for the TWAO to be made. This is plainly a matter in which there is a clear public interest which goes beyond the effect of the TWAO on BPL. Any incorrect answer given by Mr Wilson could lead him committing an offence of misconduct in public office (as per the three tests identified by Lord Justice Leveson in Mitchell [2014] EWCA Crim 318).

We have copied this letter to the Programme Officer.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sarah Fitzpatrick".

Sarah Fitzpatrick

Enclosure 1 - Summary of documents likely or known to exist and not yet disclosed by Network Rail

¹ BPL is unconcerned with documents of a peripheral nature that have no substantive bearing on the issue for example emails that state "what time would you be free for a meeting".

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³ See <https://www.networkrail.co.uk/wp-content/uploads/2022/01/Code-of-Business-Ethics-2022.pdf>.