

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

BELLAVIEW PROPERTIES LIMITED

NOTE ON UNDERTAKINGS GIVEN TO AGILITY TRAINS BY HS2

2 February 2024

1 Introduction

- 1.1 On 17 April 2023 Network Rail Infrastructure Limited (**NR**) submitted an application to the Secretary of State for Transport to make the Network Rail (Old Oak Common Great Western Mainline Track Access) Order (Order).
- 1.2 On 23 June 2023 the Secretary of State made a decision to hold an inquiry into the Application. The Inquiry was subsequently opened on 14 November 2023 and continued on the 15th, 16th, 21st and 22nd November 2023 (the **Inquiry**).
- 1.3 During the course of the Inquiry, a set of three risk assessment documents were described in the oral evidence of Mr Fleming for NR and made available to NRF on behalf of BPL on 21 November 2023.
- 1.4 On 5 January 2024, Norton Rose Fulbright (**NRF**) instructed on behalf of Bellaview Properties Limited (**BPL**) sent a document to NR entitled "Commentary on Network Rail's Risk Assessments" (**BPL's Commentary**). A copy of this document was shared with the Inspector.
- 1.5 On 10 January 2024, NRF received a document from Addleshaw Goddard (**AG**), instructed of behalf of NR, entitled "Note Responding to Bellaview's Commentary on Network Rail's Risk Assessments (Undated)" (**NR's Response**). A copy of this document was shared with the Inspector.
- 1.6 NR's Response contains statements pertaining to the access of the North Pole Depot (**NPD**) from Wormwood Scrubs/Old Oak Common Lane (**OOCL**), as well as planned closures of the NPD emergency exit road, and related arrangements with Hitachi/Agility Trains. These statements are addressed at paragraphs 3. and 4. below.

2 Correspondence with HS2

- 2.1 On 20 November 2023, NRF contacted HS2's enquiries service to clarify why an undertaking given to Agility Trains West Limited (**Agility**) (the **Undertaking**) had been struck out from the Register of Undertakings and Assurances published for Phase 1 of the HS2 project.
- 2.2 On 21 November 2023 BPL submitted to the Inquiry a note prepared by NRF entitled "Note on the High-Speed Rail (London - West Midlands) Act 2017 and works at Old Oak Common Lane" which comprised factual extracts from the High Speed Rail (London - West Midlands) Act 2017, Ealing Council's notices of scheduled Highways Works, HS2's deposited plans, and HS2's Phase 1 Register of Undertakings and Assurances (the **HS2 Note**). The HS2 Note was discussed in

evidence by the parties at the Inquiry. The HS2 Note included undertakings and assurances that had been given to Agility by HS2, as well the text of the Undertaking.

2.3 Between 24 December 2023 and 24 January 2024 HS2 provided responses both to NRF's initial query, and to follow up questions from NRF. These responses are appended to this note and discussed below.

2.4 In an email of 24 December 2023 (**Appendix 1**) HS2 confirmed that

"any U&A which has been published on the public Register but at a later date become no longer current (e.g. they are superseded by another U&A, or there was an administrative error such as a duplication) should be struck through and the reasons should be detailed on the accompanying Change Log. If there is a particular U&A which you are querying, please do let us know and we will be able to provide more specific information as to why the U&A was struck through."

2.5 NRF responded and requested information as to why the Undertaking (as set out in the HS2 Note) had been struck out. In HS2's response of 11 January 2024 (**Appendix 2**) they explained that

"HS2 Ltd. will continue to work with Agility, and sub-contractor Hitachi, in relation to the interface with the IEP project depot at Old Oak Common [the NPD] in order to minimize potential disruption to the IEP depot operations during the construction of the HS2 project. HS2 will work with Agility during the detailed design period to optimize the scheme design as shown on the enclosed drawings and in the following areas:

1) the alignment of the proposed amended IEP depot access road off Old Oak Common Lane; 2) the solution for the proposed sewer realignment at the eastern end of the proposed HS2 station at Old Oak Common (Scheduled Work No. 1/39). In this regard, a number of outline Options have been identified which will form the basis for design development with an order of preference as set out below:

a. First - Option 4 - including a short length of replacement sewer running approximately east-west, situated between the re-aligned NR relief lines on the GWML;

b. Then - Option 5 - including a short length of replacement sewer running approximately east-west, situated on NR land immediately to the south of the re-aligned NR main lines on the GWML (subject to detailed design and subject to HS2 providing a suitable alternative access road on adjacent Network Rail land while sewer works are undertaken).

In the event that neither Option 4 nor Option 5 proves to be feasible, HS2 agrees to reimburse Agility for all reasonable additional costs and expenses that it incurs as a result of Agility's works on an alternative Option within 30 days of presentation of an invoice from Agility, with reasonable details of costs and expenses that have been incurred. HS2 will work with Agility during the detailed design period to optimize the scheme design as shown on the enclosed drawings and in the following areas:

3) the solution for the proposed new sewer crossing the GWML to the west of the IEP shed - as illustrated in Option 8."

2.6 Following this response, NRF requested copies of the drawings referenced, and made three further queries (included in HS2's response at **Appendix 3**).

2.7 On 18 January 2024, HS2 responded (**Appendix 3**) and informed NRF that the drawings of the revised NPD access road were undergoing design development, and therefore unavailable at this stage. HS2 also provided answers to NRF's additional queries (in bold) as follows:

"1. You say that there will be an amended IEP depot access off Old Oak Common Lane, please can you advise when these works will take place, and the duration of these works.

Temporary realignment of the IEP depot access off Old Common Lane is currently planned to be undertaken in circa. Q2 to Q3 2026 to facilitate temporary access through the IEP depot to

undertake HS2 construction works on the Great Western Main Lines. A permanent realignment of the access is currently planned to be undertaken in late-2028 for circa. 3 months as part of the final realignment and lowering of Old Oak Common Lane.

2. Will it still be possible to access the IEP depot from Old Oak Common Lane whilst these works are being undertaken?

During the temporary realignment, there may be a short period (i.e. small number of weeks) whilst the access is being realigned when vehicles cannot access the IEP depot from Old Oak Common. During the permanent realignment, there will likely be a longer duration (possibly in excess of 3-4 weeks) where vehicles cannot access the IEP depot from the Old Oak Common Lane due to more significant alterations to the alignment and gradient of the current access road.

3. If no, will the IEP depot maintain a secondary access (if so where), or will they only have the single access off Mitre Way?

Access to the IEP depot will be via Mitre Way whilst the access from Old Oak Common Lane is being realigned.”

- 2.8 On 24 January 2024, HS2 responded to further queries from NRF (in bold) (**Appendix 4**) as follows:

“Will the utilities programme of works to lower OOCL prevent vehicular access to the IEP depot from Old Oak Common Lane, and if so for how long? Or is this query already answered by your response to us relating to the permanent realignment works?”

There may be periods of time that vehicular access to the IEP depot from Old Oak Common Lane will be prevented whilst utilities are being installed directly outside the IEP depot entrance. These periods/durations are still being determined as the exact sequencing of utility works is being finalised, however, it is likely to be limited to days or small number of weeks. The majority of utility works and their diversion connection points within Old Oak Common Lane occur south of the IEP depot access point, thereby enabling access to the IEP depot to be more easily maintained.

It is correct that a new retaining wall (as part of the ground lowering works) will involve closure of the IEP depot access from Old Oak Common Lane for a prolonged period of time?

The current planned construction period for the new retaining wall is between Q1–Q3 2028. The construction methodology and sequencing are still being determined by HS2’s contractor and thus we cannot be specific with any required closures of the IEP depot access at this time. However, initial views are that access to the IEP depot from Old Oak Common Lane will be maintained for the majority of the construction duration, with relatively short durations (i.e. small number of weeks) when access will be prevented.”

3 Access from Wormwood Scrubs/OOCL

- 3.1 In NR’s Response, it is stated that:

“Access from Wormwood Scrubs/OOC Lane remains wholly uncertain due to the HS2 utilities programme of work to lower OOC Lane, and also HS2’s construction of the reconfigured access road.”

- 3.2 The level of detail provided by HS2 in Appendix 3 relating to the “reconfigured access” clearly indicates that access from Wormwood Scrubs/OOCL is not “wholly uncertain”. Specific planned timescales for the closure of the IEP depot access are provided relating to the temporary realignment of the IEP depot access (“a small number of weeks”), and the permanent realignment (“possibly in excess of 3-4 weeks”). The “small number of weeks” is presumably less than 3-4 weeks given the phraseology used.

- 3.3 The additional responses provided by HS2 at Appendix 4 further demonstrate that there is a significant degree of certainty in the access to NPD that will be available during the utilities works

being carried out to OOCL. Although there *“may be periods of time that vehicular access to the IEP depot from Old Oak Common Lane will be prevented”* these periods are likely to be very limited, only causing disruption to the access to NPD for *“days or small number of weeks”*.

4 Closure of the NPD emergency exit road

4.1 In NR's Response, it is stated that:

“Having checked with the BBVS Methods Manager (subcontractor responsible for the HS2 works), Network Rail is advised that the HS2 proposal for a new retaining wall (as part of the ground lowering works) and reconfigured North Pole Depot access road does involve closure of the North Pole emergency exit road for prolonged period of time. Network Rail is further advised that this has been confirmed in conversations with the HS2 team responsible for the delivery of the works. The exact agreements of this have not yet been finalised with Hitachi, but would prevent access to any RRAP from OOC Lane.”

4.2 We can conclude that of the two options available, the Undertaking was struck out because it was *“superseded”*, it was superseded by HS2 continuing *“to work with Agility, and sub-contractor Hitachi”* to agree alternative arrangements. It appears that HS2, Agility and Hitachi are still working on drawings which are *“undergoing design development”*, that they are seeking to *“optimize the scheme design”* and that there are at least 3 Options being considered. The aim would appear to be for parties to reach agreement to *“minimize potential disruption to the IEP depot operations”*. Whilst some finer details are still being worked through, it seems abundantly clear that agreement in principle has been reached with Agility/Hitachi, and that HS2/Agility/Hitachi working together is an iterative process as *“HS2 will work with Agility during the detailed design period to optimize the scheme design”*. The NR statement that *“the exact agreements of this have not yet been finalised with Hitachi”* would appear to be correct, but it is also clear that HS2 is seeking to *“minimize potential disruption to the IEP depot operations”*, including minimising disruption to the OOCL access.

4.3 What is not correct, however, is that *“the reconfigured North Pole Depot access road does involve closure of the North Pole emergency exit road for prolonged period of time.”* It is clear that there temporary and permanent realignment works will take respectively *“a small number of weeks”*, and *“possibly in excess of 3-4 weeks”*.

4.4 Appendix 4 sets out that during the periods of utilities works to OOCL and the period of construction of the new retaining wall, complete closure of the NPD emergency access route will only be for very limited periods of time.

4.5 Potential closure of the NPD access via OOCL due to utilities works is limited, due to the majority of the works being positioned south of the access point, *“enabling access [...] to be more easily maintained”* via that route.

4.6 The works to construct a new retaining wall, which according to HS2 are scheduled between Q1-Q3 2028 (**Appendix 4**) will lead to similarly brief periods of disruption to the NPD access route off OOCL, which will be *“maintained for the majority of the construction duration”*.

4.7 Additionally, HS2 confirm in **Appendix 3** that access to the NPD will be via Mitre Way for the duration of realignment works to OOCL. This is a clear confirmation of the sufficiency of the Mitre Way access point, on its own as a single access.

5 Conclusion

5.1 It would appear that NR were misinformed as to the duration of works that would close the NPD access from OOCL. The accurate position advised directly by HS2 is that there will be limited disruption to the NPD access from OOCL, this will span a few days to a few weeks. Moreover, the closure will not be a single block of time, but spread across a number of years principally in Q2-Q3 2026, Q1-Q3 and Q4 in 2028. It is, however, incorrect to say that access to the NPD from

OOCL is “*wholly uncertain*”, it is also incorrect to say that closure of that access will be for a “*prolonged period of time*”.

- 5.2 Access to and from the NPD via OOCL therefore largely remains available for the duration of the time that NR need a RRAP to undertake their GWML works. For the short periods of time that the OOCL access is unavailable access to the NPD is retained via Mitre Way. The HS2 related works to OOCL, including utilities works, retaining wall works, and the realignment of the NPD access road are not therefore insuperable impediments to NR operating a RRAP from the NPD.

Norton Rose Fulbright

2 February 2024