

From: [David Wilson \(he/him/his\)](#)
To: [Sarah Fitzpatrick \(Head of Planning\)](#); [Giulia Barbone](#)
Cc: [Pearson, Victoria](#); [Elsenaar, Marnix](#); [Joanna Vincent](#); [Ellie Cooper](#)
Subject: RE: Old Oak Common - NR letter to NRF DW050224-OOC-NRF [NRF_EMEA-UK.FID1533930]
Date: 06 February 2024 10:48:33
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

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Good morning, Ms Fitzpatrick,

Apologies for the link not working, please try this again, I have uploaded the files once again, let me know if you are still having any problems.

I note the content within your email.

The one point I would like to confirm, the fourth report, which you have highlighted below, is an updated version of the report NRF had previously.

Kind regards

David

David Wilson

07803 682336
david.wilson@networkrail.co.uk

From: Sarah Fitzpatrick (Head of Planning) <Sarah.Fitzpatrick@nortonrosefulbright.com>
Sent: 05 February 2024 22:01
To: David Wilson (he/him/his) <David.Wilson@networkrail.co.uk>; Giulia Barbone <Giulia.Barbone@nortonrosefulbright.com>
Cc: Pearson, Victoria <Victoria.Pearson@addleshawgoddard.com>; Elsenaar, Marnix <marnix.elsenaar@addleshawgoddard.com>; Joanna Vincent <Joanna.Vincent@gateleyhamer.com>; Ellie Cooper <Ellie.Cooper@nortonrosefulbright.com>
Subject: RE: Old Oak Common - NR letter to NRF DW050224-OOC-NRF [NRF_EMEA-UK.FID1533930]

You don't often get email from sarah.fitzpatrick@nortonrosefulbright.com. [Learn why this is important](#)

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Mr Wilson

This email covers two separate matters:

1. Inability to access 3 of the 4 reports
2. Response to NR letter 5/2/24

Inability to access 3 of the 4 reports

We can only access one of the four reports. I have highlighted below the one that we can access.

Name	Modified	Modified By	File size	Sharing	Activity
152270-ARC-REP-ECV-000024 A01 Jewso...	22 minutes ago	David Wilson (he/him/)		Shared	
152270-ARC-REP-ECV-000025 A01 North...	22 minutes ago	David Wilson (he/him/)		Shared	
152270-ARC-REP-ECV-000026 A01 Optio...	40 minutes ago	David Wilson (he/him/)		Shared	
152270-ARC-REP-EMF-000005-P05.pdf	About an hour ago	David Wilson (he/him/)	110 MB	Shared	

NRF's IT department have tried and also cannot access the other 3 reports and have confirmed that there is something wrong with your link. Please can you send the link again, or send the documents in a different format, or if you would prefer, My PA Ellie (copied) can send you a file sharing folder that you can upload the docs into if that would be easier. Please can you arrange for these 3 reports to be issued to us asap.

Response to NR letter 5/2/24

Firstly, we note that the one report that we can access is an ADDITIONAL report. Mr Booth KC told the inspector on Friday (on instructions) that there were only 3 reports that had been identified that fitted the description of our / BPL's FOIA /EIR requests, that these would be disclosed, and that categorically nothing else existed that fell within the categories of our / BPL's FOIA /EIR requests. It transpires that this was incorrect. We also note that the document disclosed is the one from which we had previously been provided only pages 27 and 28. The rest of the document it transpires does indeed exist as we had suspected.

Secondly, we note the text of your letter which is not in the terms that were reported to the inspector on Friday. The inspector was advised by Mr Booth KC (on instructions) that nothing else existed, and Mr Booth KC confirmed to the inspector that this is what Network Rail were prepared to confirm in writing. Your letter, however, is NOT in these terms. It states:

"having undertaken a reasonable search of the electronic folders to which I, personally, have access".

There is no indication as to the folders to which you have access, and whether for example, these are the "central folder", project files, of simply your own inbox. We note the deliberate failure to respond in the terms reported to the Inspector on Friday and Network Rail's continued obstinance and obfuscation. We will of course be making appropriate submissions on this.

Thirdly, we note that you state that these four draft reports that you disclose were *"not reviewed or approved by Network Rail"*. If the reports had not been reviewed by Network Rail it is difficult to understand how Network Rail could have isolated pages 27 and 28 that relate to "Jewson's yard" and provide these to BPL. Again, your economy with the truth is noted and submissions will be made on that.

Fourthly, we also note your failure to respond to our letter and enclosure of Friday 2 February 2023, we assume this too is a deliberate omission. In that letter we requested a response to each of the documents we state exist or are likely to exist and Network Rail's response to each. We note that you have failed to provide this. We also asked for the following confirmations, we note that you have failed to provide these:

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);

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).

Fifthly, Mr Edwards KC specifically requested that Network Rail's response covered correspondence, meeting notes etc. not just between Network Rail, the DfT, and Hitachi / Agility, but also internal correspondence between Network Rail personnel, and between Network Rail and its contractors. We note that you have failed to provide any confirmation in relation to this request.

Sixthly, you are reminded that you and Network Rail are bound by the duty of candour before the Inquiry. The Treasury Solicitor's guidance on the duty of candour can be found here:

[D R A F T \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Whilst it was drafted for judicial review proceedings, its relevance is commended to "inquiries". The duty of candour can be summarised as:

"A public authority's objective must not be to win the litigation at all costs but to assist the court in reaching the correct result and thereby to improve standards in public administration." (page 1 of the guidance)

"The effect of this duty is to require the public authority, when presenting its evidence ... to set out fully and fairly all matters that are relevant to the decision that is under challenge, or are otherwise relevant to any issue arising in the proceedings." (page 3 of the guidance)

The point was explained by Lord Donaldson MR in *R v Lancashire County Council ex p. Huddleston* when he said this:

"This development [i.e. the remedy of judicial review and the evolution of a specialist administrative or public law court] has created a new relationship between the courts and those who derive their authority from public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration ... The analogy is not exact, but just as the judges of the inferior courts when challenged on the exercise of their jurisdiction traditionally explain fully what they have done and why they have done it, but are not partisan in their own defence, so should be the public authorities. It is not discreditable to get it wrong. What is discreditable is a reluctance to explain fully what has occurred and why... Certainly it is for the applicant to satisfy the court of his entitlement to judicial review and it is for the respondent to resist his application, if it considers it to be unjustified. But it is a process which falls to be conducted with all the cards face upwards on the table and the vast majority of the cards will start in the authority's hands".

It is also worth you noting page 8 of the guidance:

"Failure properly to discharge the duty of candour or to disclose a relevant document can have serious consequences, including:

- the material if subsequently produced may not be relied on without permission of the court;
- a formal order for disclosure;
- the drawing of adverse evidential inferences;
- an adverse costs order;
- proceedings for contempt of court;
- reputational damage;
- allegations of deliberate concealment affecting the outcome of the litigation."

You should also be aware of this:

"The duty of candour arises from the moment that litigation is anticipated (and so applies before the issue of a judicial review or any other claim)." (see page 22 of "The judge over your shoulder - A guide to good decision making, published by the Government Legal Department. Link is here : [JOYS-OCT-2018.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)).

We assume you are aware of your duty and have chosen to respond in the letter as you have in any event. This is both disappointing and noted, and submissions will be made.

Kind Regards

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Barrister, qualified in England & Wales
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From: David Wilson (he/him/his) <David.Wilson@networkrail.co.uk>

Sent: 05 February 2024 19:05

To: Sarah Fitzpatrick (Head of Planning) <Sarah.Fitzpatrick@nortonrosefulbright.com>; Giulia Barbone <Giulia.Barbone@nortonrosefulbright.com>

Cc: Pearson, Victoria <Victoria.Pearson@addleshawgoddard.com>; Elsenaar, Marnix <marnix.elsenaar@addleshawgoddard.com>; Joanna Vincent <Joanna.Vincent@gateleyhamer.com>

Subject: Old Oak Common - NR letter to NRF DW050224-OOC-NRF

[External Email – Use Caution]

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Dear Norton Rose Fulbright,

Please find attached my letter as promised at our last round table meeting (1st Feb) with the inspector.

I also enclose four reports with the attached letter that can be accessed (hopefully) at the following link: [Files shared with NRF and Joanna Vincent](#)

Joanna, would you be kind enough to share my letter and the associated files with the inspector?

Kind regards

David



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Wales and Western
Investment

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