
CLOSING SUBMISSIONS OF NETWORK RAIL

PRELIMINARY

1. This Inquiry has been held 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**'). As the Inquiry is aware, the promoting authority is Network Rail Infrastructure Ltd ('**NRIL**').
2. The parties that have actively participated in the Inquiry are few in number. Aside from NRIL, only Bellaview Properties Ltd ('**BPL**') and Ms Kuszta (of Lynton Road) have either called/given evidence. These Closing Submissions do not seek rehearse exhaustively that evidence. Rather, their purpose is to identify the key considerations which should inform the Inspector's (and ultimately the Secretary of State's) deliberations in deciding whether or not to make the Order.
3. In doing so, they first consider various matters of context, before turning to address those issues where the parties are in dispute.

The Proposals enabled by the (Revised) Order

4. As was noted in Opening, the single Order that NRIL is promoting is concerned with not one, but two proposals ('the **Proposals**').
 - As Mr Fleming explained in his evidence, the '**First Proposal**' comprises the delivery of a temporary Road Rail Vehicle ('**RRV**') access point ('the **Temporary RRAP**'), together with an associated access compound, on land at Horn Lane, Acton ('the **Order Land**'), which is currently being used as part of a builder's merchants ('the **Jewsons Depot**'). This RRV/compound 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 to serve trains on the GWML. The OOC Station will sit alongside a further new station ('the **HS2 Station**'), to be constructed as the (temporary) London terminus of the High Speed 2 ('**HS2**') rail line.

- As Mr Fleming also explained, the '**Second Proposal**' comprises the delivery of a permanent RRAP ('the **Permanent RRAP**') on land immediately to the west of the Order Land, referred to during the Inquiry as 'the Triangle'. 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 two '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. These submissions are chiefly directed at the Order insofar as it relates to the First Proposal. The bulk of the text that follows relates to that project, but at the end of these submissions NRIL will turn to consider (far more briefly) the Second Proposal.

Revisions to the Order

6. As the Inquiry is aware, the Order as originally submitted has been the subject of a number of revisions. Some of these were notified shortly prior to (and at the outset of) the Inquiry; others have been confirmed during the course of proceedings. In combination they represent a revised form of the Order ('the **Revised Order**'). In light of concerns raised by the Inspector, the Revised Order has been subject to a further round of consultation (in addition to that originally undertaken in connection with the Order as originally submitted), so that all parties have had the opportunity to comment not only on the 'original' Order but the Revised Order also.
7. It is not necessary to rehearse the detail of the revisions to the Order in these submissions; they have been the subject of exhaustive discussion during the course of the Inquiry. However, what NRIL does seek to note is that insofar as some of the revisions are more substantive (as opposed to being entirely cosmetic), those revisions have been effected with a view to accommodating concerns raised by BPL in respect of the impact of the Order on its use of the

Jewsons Depot. In particular in this regard, the Inquiry is aware that whilst NRIL would have strongly preferred, for operational reasons (Fleming (XC/XX)), to take possession of the entirety of the Jewsons Depot for the purposes of the Temporary RRAP and compound, it has sought to revise the Order in such a way as provides for the absolute minimum of powers/land-take sufficient for NRIL to deliver the First Proposal. In particular, it no longer seeks powers over the footprint of the warehouse within the Jewsons Depot ('the **Warehouse**'), and has identified areas within the depot where it is prepared to 'share' occupation with BPL and/or any party the latter may licence (regarding which matter, see further below).

8. The reason why it is necessary to flag this matter in Closing, is that during the course of the Inquiry NRIL was subject to criticism for the amendments it was proposing to the Order. For the avoidance of doubt, all such criticism is strongly rejected. As Mr Sinclair explained (XX), NRIL has been engaging with BPL for a period of years (since June 2021), and over a period of several months it has been trying to engage with BPL regarding site-sharing and its changing requirements in respect of the Jewsons Depot. Such discussions continued up to the eve of the Inquiry and beyond. It is in that context, and consistent with its responsible attitude in seeking to co-exist with affected landowners, that NRIL has determined to effect revisions, so as to produce the Revised Order.
9. In any event, the Inspector now has before him a suite of documents which together comprise the Revised Order, including the revised Land Plan. Further, the Inspector (and the Secretary of State) can note that all parties potentially affected have had (more than) adequate opportunity to comment upon the revisions and the form of the Revised Order. Comprehensive consultation has taken place (see following section), so that there is no risk of any prejudice to any party, by reason of the Order being ultimately promoted in its revised form.

Objections to the (Revised) Order

10. Some 180 parties were consulted about the Order as originally promoted. Those same parties were also re-consulted regarding the Revised Order. In addition, prior to the Inquiry, at the Inspector's request, other parties were formally consulted pursuant to Schedules 5 and 6 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. These included the Local Highways Authority, the Mayor of London, His Majesty's

Railway Inspectorate and the Fire and Rescue Service. All these parties were also re-consulted in respect of the Revised Order, following completion of the parties' evidence.

11. Such consultation is in addition to the two public events held in the locality to promote public notification and understanding of the project.
12. Notwithstanding those various exercises – the original consultation, the bespoke consultation requested by the Inspector prior to the Inquiry, and also the further consultation requested by the Inspector following the main body of the Inquiry – the number of parties objecting to the Order has, at all times, remained very small. No statutory body – none of those cited above, and in particular neither the local highways authority nor Transport for London – has objected. Instead, the only objectors have been the landlord (BPL) and tenant (STARK Building Materials Ltd – 'Stark') of the Jewsons Depot, together with seven local residents. Of these local resident objections, six were made at the 'original' objection/consultation stage. Two have since withdrawn their objections, so that only four remain live (of these four, one is that of Ms Kuszta, and another is that of Mr Kuszta).
13. The further resident objection was elicited by the most recent consultation; it is from Ms Nadia Thompson, also of Acton House. As is evident from the correspondence generated with Ms Thompson, it is clear that a significant part of her objection is not in fact concerned with NRIL or its proposals, but instead with "*property developers*" such as BPL.
14. The remainder of the submissions will address the substance of the objections still pursued by BPL and others, after first identifying a final contextual issue.

Context for consideration of the (Revised) Order

15. Before turning to the substance of the disputes between NRIL and the other parties, it is first appropriate to identify in these Closing Submissions certain matters which are advanced by NRIL, and which are not disputed by any parties objecting to the Revised Order. These matters, whilst capable of being summarised briefly, are extremely significant. Indeed it is respectfully submitted that such matters provide an agreed context within which the Inspector and the Secretary of State should conduct their deliberations in respect of the Revised Order.

16. In this regard, the unchallenged evidence of Mr Ford and Mr Fleming, as stated in their proofs and in (XC), was to the following effect:

- First, that a new, temporary RRAP is required for the purposes of construction of the OOC Station¹.
- Second, that until the OOC Station is completed, HS2 services cannot run, since otherwise they would terminate at a location (the HS2 Station) which offered no (or alternatively inadequate) options for onward travel.
- Third, and most importantly, that if the Temporary RRAP is not approved pursuant to the Revised Order, that will result in at least a one year delay to commencement of HS2 services².

17. At the outset of any evaluation of the Revised Order, it is appropriate to pause and reflect on these matters. There has been much public debate about the merits of HS2, both in terms of the principle of the scheme, and also in terms of its reduced extent³. However, what is beyond any dispute is that HS2 represents the most significant national transport infrastructure project constructed in this country for several decades; indeed the OOC Station combined with the HS2 Station will comprise the biggest new railway station in more than a century. Further, what is also beyond dispute is that the project has benefitted from cross-party support in Parliament, and that in the course of its construction it has been the subject of massive investment by successive Governments.

18. As has been widely noted in the media, delivery of the project has already been delayed and the cost of delivering the project is already (substantially) over budget. Should the project be further delayed, both the reputational damage to UK plc and the additional financial costs (in terms of overruns and lost/delayed opportunity), will be huge. In these circumstances, it is respectfully submitted that there is a very substantial – indeed overwhelming – public interest in ensuring, so far as it is possible to do so, that:

¹ See further below. This matter was expressly conceded by Mr Gallop in (XX).

² In its written submission dated 5th January 2024, entitled ‘Commentary on Network Rail’s Risk Assessments’, BPL queried whether the Order would be made in time to allow the First Proposal to avoid the one year delay to HS2 services. Notwithstanding that such contention by BPL is entirely rejected, Network Rail notes that BPL did not dispute the fact that failure to make the Order would indeed result in a one year delay to commencement of HS2 as stated by Mr Fleming in evidence.

³ Following the announcements last year that Phase 2B of HS2 would not proceed, and that Old Oak Common would – for the foreseeable future – serve as the London terminus of the line.

- no further delay to HS2 is caused, and that services commence in mid 2030 as anticipated; and that
- no further ‘financial loss’ is incurred in respect of the project.

19. It is in these circumstances, and in this context, that the Revised Order – and the objections to it – fall to be considered.

FIRST PROPOSAL

20. As noted above, the First Proposal comprises the creation of the Temporary RRAP, together with a limited compound (described by Mr Fleming (XC) as an ‘access compound’). In the event that the Revised Order is confirmed the facility will operate from its commencement later this year (with use of the Temporary RRAP from no later than January 2025 being a matter of necessity), until cessation of operations at the end of December 2029, with the site being restored no later than 31st January 2030.

21. This section of these Closing Submissions now considers the various objections to the First Proposal, before turning to summarise its benefits and then concluding with an analysis of the Revised Order and the ‘balancing exercise’ to be undertaken by the Secretary of State in determining whether or not to make it.

Objections

Stark

22. Stark’s objection is set out in a letter from its agents, dated 1st June 2023. It is ‘high level’ in tone, and the substantive content (so far as it can be described as such) is set out in Section 5 of the document. In essence, its position is similar to that of BPL, insofar as it asserts that the Temporary RRAP would have adverse impact on existing employment and amenity, and that “...there are a number of alternative options” for the location of the Temporary RRAP (at Paragraph 5.3). Similarly, like BPL, it too asserts that delivery of the Permanent RRAP on the Triangle may not come forward (i.e. the Second Proposal), having regard to the fact that it is Crown Land (Paragraph 5.8).

23. These points are not evidenced, but they are nevertheless considered in these Closing Submissions in the context of BPL's objection. Other points raised by Stark – such as the assertion that there is no need for a temporary RRAP, or indeed no need for further rail capacity more generally in a 'post pandemic' world, have been addressed in the evidence of Mr Fleming and Mr Ford. The need for a temporary RRAP has been firmly established; notably it is not contested by BPL. Similarly, insofar as Stark query whether the funding is in place to deliver the First Proposal, that issue has been addressed in correspondence⁴. Notably, whilst BPL initially pursued this point, it conceded it during the course of the Inquiry. The funding for the First Proposal is guaranteed by HS2 Ltd. Lastly, to the extent that Stark query the extent of engagement it has had from NRIL, such query is rejected. Mr Sinclair explained (XC) that NRIL has sought to agree compensation and terms with Stark over an extended period; indeed discussions began in 2021 as Stark themselves admit. The position has been complicated by Stark's challenging relationship with its landlord, but an offer to acquire its interest by agreement has been made.

24. In the absence of any evidence from, and any participation by, Stark, it is respectfully submitted that no further discussion of Stark's objection is necessary. Such points as might potentially have had merit are addressed in the remainder of these submissions in the context of BPL's objection.

25. The only further observation NRIL makes in respect of Stark is that their involvement with the Jewsons Depot is due to end shortly irrespective of the Proposals. In this regard BPL's Note, *NRIF Comments on the executed Undertaking*, submitted to the Inspector on 8 February 2024, states, at paragraph 5.1:

" Mr Aaronson has advised that he'd start using the site as a logistics and delivery hub immediately post Stark vacation of the site (lease will be surrendered 1.10.24, agreement for surrender signed 2.2.24)".

Thus there is apparently no need for any concern (such as in the context of the operation of NRIL's unilateral undertaking (regarding which see further below)) regarding the future position of Stark, or the operation of its business at the depot, or the employees of that business, since BPL has agreed a surrender of Stark's lease so that Stark's occupation and that business/those employees will vacate the Property in any event.

⁴ See the letter from HS2 dated 13th October 2023 at Appendix AF1 to Mr Fleming's proof

Shuakat Khan and Brett Coventry

26. This brief objection, dated 23rd May 2023, complains of impact on access rights to the rear of Acton House, the block of flats located to the east of Jewsons Depot. In fact, and as explained to the Inquiry (Fleming XC), there will be no impact on such access rights, which rights will be entirely unaffected. The further point raised in the objection appears to relate to amenity, with the complaint being that HGV traffic will access the proposed compound “...24/7 for 6.5 years”. In fact, and as the Inquiry is aware, activity on/use of the proposed compound will be very significantly restricted, by means of conditions imposed on the deemed planning permission, and thus the complaint raised is predicated on a misconception. Nevertheless, issues of residential amenity are addressed later in these submissions, in the context of the objection advanced by BPL.

Mark Aston

27. Mr Aston’s objection raises the same points as that just considered, namely a perceived impact on access rights to the rear of Acton House, and a concern that activity will take place on the compound “...24/7 over 6.5 years”. As already stated, there will be no impact on access rights, and the extent of activity on the proposed compound will be stringently conditioned.

28. Other matters raised by Mr Aston include a complaint as to impact on the value of his property. Such issues are not relevant to the determination of whether or not to confirm the Order, since any adverse impact on value could be the subject of a claim for compensation (as accepted (XX) by BPL’s witness Mr Rhead), and NRIL does not accept that there will in fact be any impact on property values as Mr Aston suggests.

29. Mr Aston’s only other complaints relate to a concern that PM2.5 levels would increase (which suggestion is unevicenced, and moreover is simply not sustainable given the very limited activity proposed within the compound), and a fear that the proposed use of the Order Land will result in the residential development (and cessation of the builder’s merchant use) being “*delayed or cancelled*”. It appears that Mr Aston is not aware that BPL intend to continue the use of the site as a builder’s yard in addition its residential redevelopment. However, in any event, as the Inquiry is aware, the Order has been revised expressly so as to allow that redevelopment to take place as apparently proposed.

Ms Nadia Thompson

30. Ms Thompson objected to the Revised Order by way of the 'post Inquiry' consultation, in an email dated 29th January 2024. She is another resident of Acton House, and her concerns relate to noise and pollution on the one hand, and loss of light on the other.
31. NRIL has since corresponded with Ms Thompson, and that correspondence is before the Inquiry. In terms of the issue raised as regards noise and pollution, this will, as explained to her, be addressed by way of conditions imposed on the deemed planning permission (discussed at some length later in these submissions). It appears that such explanation has provided some degree of reassurance.
32. The further issue raised, relating to loss of light, is not one which will be in any way consequent on the making of the Order. Rather, to the extent that Ms Thompson ever experiences a loss of light, it will be as a result of BPL's redevelopment of the Warehouse. This is evidently now understood by Ms Thompson, noting her subsequent email of 31st January 2024 to Mr Wilson of NRIL.

Anna and Myron Kuszta

33. Ms Kuszta appeared at the Inquiry and gave oral evidence. It became apparent that her concerns related primarily (if not exclusively) to the Second Proposal, and her objection is considered later in these submissions, in that context.

BPL

Issue 1: Alternative Location for Temporary RRAP

34. The main, substantive ground of objection advanced by BPL is that insofar as NRIL need a temporary RRAP and/or compound (which its witnesses accept that they do), they should use another location in place of the Jewsons Depot.
35. In this context, the Inquiry heard discussion of various different existing facilities, and/or potential new facilities that might be constructed. In particular in this regard, BPL's witnesses (Mr Gent and Mr Gallop) pointed to the following in their evidence:

- The existing RRAP at the eastern end of the North Pole Depot (**‘the Barlby Road RRAP’**);
- The existing Jacob’s Ladder RRAP;
- The existing Southall RRAP;
- The former RRAP at Acton Main Line Station;
- A potential RRAP location at Westcott Park Community Garden;
- A potential RRAP location within the Hitachi Compound at North Pole Depot;
- A potential RRAP location at Westway Estate;
- The existing RRAP at Noel Road;
- A potential RRAP location at Bloomsbury Close;
- The proposed RRAP on the Triangle;
- A potential RRAP location at Acton Goods Yard; and
- Willesden Euroterminal.

36. In this regard, as a preliminary point, the Inquiry can note that part of BPL’s case turned on its suggestion that NRIL had failed to approach matters with the requisite ‘flexibility’. NRIL should, BPL explained, look to operate any temporary RRAP on a ‘just in time’ basis, using storage space at other locations, and then delivering plant, personnel and materials to its RRAP location on the eve of their actually being required. In fact, and as Mr Fleming explained (XC), that is precisely what NRIL have planned. Indeed, the compound at the Jewsons Depot will operate very much on a ‘just in time’ basis, operating as a ‘spoke’ in a ‘hub and spoke’ approach. Full use will be made of the Barlby Road Depot in this regard, to ensure that only when materials/plant/personnel are required at the Temporary RRAP will they be taken to the Jewsons Depot. It is on that basis that NRIL is able to make do with the minimal land take proposed in the Revised Order.

37. Accordingly, all talk/suggestion by BPL in its written evidence that Acton Goods Yard, Barlby Road – or anywhere else – be used in conjunction with the Temporary RRAP has been overtaken. Indeed, Mr Gallop accepted (XX) that NRIL would be using the Temporary RRAP on a ‘just in time’ basis.

38. Turning then to the substance of the ‘alternative location’ argument, and to start from a position of common ground, it was agreed between the parties that in order for the OOC Station to be delivered, a new, temporary RRAP will be required by NRIL. Not only is that the position of Mr Fleming and Mr Ford, but that is also the position of BPL. Notably in this regard,

Mr Gallop conceded (XX) that even utilising the existing, permanent RRAP at Barlby Road, there would be a need for another RRAP in addition (more of this later).

39. In light of how BPL puts its case; that is, not denying the need for a temporary RRAP, but suggesting it be located elsewhere, the question becomes one of where should that alternative RRAP be located?

40. In objecting to the Order in respect of this issue, BPL pointed in different directions. Initially, in the Objection itself, only Acton Goods Yard and the Triangle were identified. Subsequently, in its Statement of Case, BPL pointed not only to Acton Goods Yard and the Triangle, but also to its properties at 227-237 Horn Lane, and to the North Pole Depot. However, it was only at the stage of evidence submission, that the net was cast wider so as to include the myriad different locations identified above (with two potential alternatives being identified within the Hitachi Compound⁵). Both Mr Gent and Mr Gallop purported to assess/identify all these various different locations. The suggestion was, that if only NRIL had cared to look, there were in fact multiple alternatives to the Jewson's Depot site.

41. However, now that the evidence has been scrutinised at the Inquiry, it can be seen that any such suggestion on the part of BPL was misleading. In fact, as was ultimately made clear at the Inquiry, even on BPL's case, there were in fact only two potential options. In this regard, crucially, both Mr Gallop and Mr Gent conceded (XX) that the only potential alternatives to the RRAP at the Jewsons Depot, which they commended to the Inquiry, were the use of either:

- Barlby Road RRAP in combination with what BPL propose as the 'Hitachi West' RRAP;
- or
- Barlby Road RRAP in combination with what BPL propose as the 'Hitachi East' RRAP.

42. All other supposed alternatives, including the Triangle, were expressly disavowed (XX), and on that basis there is no need to consider any of those alternatives further⁶.

⁵ One of these '**Hitachi West**', was located at the western end of the compound close to Old Oak Common Lane. The other, '**Hitachi East**', was located towards the Eastern end of the compound, immediately proximate to the underpass beneath Scrubs Lane.

⁶ In written submissions since the Inquiry, BPL and its solicitor have sought to suggest that the Triangle is a potential alternative to the Temporary RRAP. This is simply not consistent with the evidence. BPL's own witness team have expressly agreed that the Triangle is not a potential alternative location, and thus it is not open to BPL now to contend otherwise.

Analysis

43. Notwithstanding that BPL point to these two concepts as potential alternatives, the fact is that no meaningful alternative has been proposed to the Inquiry, since neither option is tenable. For a location to truly serve as an alternative, that location must be shown to be credible. On the basis of the evidence before the Inquiry, that is manifestly not the case.

- Requirements of the RRAP

44. The first issue for consideration in this context, should be Mr Fleming's evidence as to how 'possessions' are conducted, and thus the basis on which any temporary RRAP would need to operate. In this regard, and importantly, that evidence was entirely unchallenged. The only witness at the Inquiry with direct experience of this issue is Mr Fleming, and given neither BPL nor any other party disputed anything he had to say upon this topic, his evidence should be accorded very significant weight.

45. These submissions do not rehearse Mr Fleming's testimony in detail, but the Inquiry will recall the numerous steps, all of which must be carefully undertaken, before a stretch of railway line can be isolated so that contractors are in fact actually able to carry out works; these various steps serve to significantly 'shrink' the time available for substantive works. In addition, the Inquiry will also recall the extent to which the timings for a possession are vulnerable to erosion by external factors – a late running train, which delays commencement of the possession, for example. All of these matters were addressed by Mr Fleming (XC).

46. Given that the carrying out of works pursuant to a possession is such a complex and problematic exercise in and of itself, it is respectfully submitted that it is simply not credible for any party to the Inquiry to suggest that the Temporary RRAP be sited in a location where other, external factors – conflict with vehicular or rail traffic in a train maintenance depot, for example – add yet further risk and complication to the situation.

- The Hitachi 'Options'

47. Next, turning to the supposed 'Hitachi Options', and taking matters at a high level, the Inquiry can note that no detail has been provided by BPL in respect of either option. As Mr Gent accepted (XX), all that has been done in respect of either Hitachi East or Hitachi West, is "desktop analysis". Not only had neither Mr Gent nor Mr Gallop actually visited the Hitachi Compound, neither of them had even sought permission to carry out such a visit. Indeed,

notwithstanding his evidence was concerned with highways matters, Mr Gent had not even conducted a site view of the local highways network.

48. Further, and significantly, neither one of them had sought to engage with Hitachi (the actual operators of the Hitachi Compound ‘on the ground’) or Agility Trains (the party responsible for maintaining GWR trains, which has sub-contracted to Hitachi), regarding the feasibility of NRIL operating a temporary RRAP in either one of their suggested locations within the Hitachi Compound. Quite simply, there had been no engagement whatsoever. In circumstances where BPL and its team come before the Inquiry advocating that a particular alternative solution is available, in place of that proposed by NRIL in the form of the Revised Order, it is incumbent on BPL to advance a credible case that such alternative is in fact tenable. In the present case, this simply has not been done.
49. Notably, this position can be compared with that of NRIL. In this regard, the Inquiry will of course have noted that much criticism was levelled at Mr Ford/Fleming for failing to provide records of their discussions with Hitachi. However, crucially, there is no suggestion that discussions – a series of meetings on site and Teams meetings – had not been undertaken to discuss feasibility of site sharing between NRIL and its contractors on the one hand, and Hitachi/Agility and their personnel/equipment on the other. Both Mr Fleming and Mr Ford attested to such meetings having been held, and that evidence is unchallenged. Further, (and as noted at greater length below) there is no challenge by BPL regarding Mr Fleming and Mr Ford have explained that Hitachi told them/NRIL regarding the feasibility (or rather lack of feasibility) of such site sharing. That is, that the operation of the Temporary RRAP within the Hitachi Compound would be unacceptable to Hitachi in operational terms, resulting as it would in significant interference with their existing use of the compound.
50. The failure of BPL and its witness team to have undertaken anything more than a desktop analysis (and in particular to engage with the operational realities of the Hitachi Compound) as regards their notional alternative, can usefully be put into a legal context which has regard to recent caselaw relating to ‘alternatives’ considered in the context of infrastructure schemes promoted under the Planning Act 2008. Notably, in R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport, [2022] EWHC 3177 and R (Substation Action Save East Suffolk Limited) v Secretary of State for Business, Energy and Industrial Strategy v East Anglia One North Limited, East Anglia Two Limited [2022] EWHC 3177, Holgate J and Lang J both

relied upon the observation of the Court of Appeal in R (Mount Cook Land Ltd) v Westminster City Council [2004] 2 P&CR 22 that:

“...where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight”⁷.

51. Of course, in so saying, NRIL fully recognises that the consideration of alternatives in the context of a decision whether or not to grant development consent (or planning permission) for development is a different context to that where compulsory purchase powers are under consideration. However, it is respectfully submitted that as regards the feasibility of a proposed alternative, a useful parallel can be drawn.
52. In any event, it is in the context of BPL having failed to make out their proposed ‘alternatives’, that these submissions come to consider the various reasons why neither the Hitachi West nor the Hitachi East potential RRAP location should be regarded as providing a substantive alternative to the Temporary RRAP, as proposed by NRIL at the Jewsons Depot, pursuant to the Revised order.

Hitachi West

53. There are multiple reasons why the Hitachi West proposal would not serve. The position is as summarised in the following paragraphs.
54. In order for this proposed alternative to serve as a RRAP, it would be necessary that NRIL and its contractors be able to gain access from the public highway. Such access would need to be sufficient for low-loaders (of some 18m in length, 3.2m in width) carrying RRVs more than 3m in width⁸ and potentially 8.5m long⁹ in size. Two access points are posited by BPL, a ‘Western Access’ off Old Oak Common Lane and an ‘Eastern Access’ off Mitre Way.

⁷ Paragraph 30 of Mt Cook, as considered at Paragraph 270 of Stonehenge, which analysis in turn is cited at Paragraph 209 of Substation Action.

⁸ The Inquiry was told about the Komatsu Dozer RRV, of width greater than 3m (with blade)

⁹ The example provided was the Doosan Crane RRV, of length 8.5m

Western Access

- *Highways Issues*

55. BPL point to Old Oak Common Lane as providing a potential access route to the Hitachi West, on account of the fact that there is currently an emergency access to the Hitachi Compound at this location. However, the existence of such access does not assist BPL in making out its case; crucially, as Mr Ford explained (XC), that emergency access could not serve low loaders delivering RRVs to a temporary RRV/access compound. Further, quite apart from the access being unsuitable, NRIL could not rely on this access being available to it during the period when the Temporary RRAP will be active. In this regard, Mr Fleming and Mr Ford explained the following matters in evidence (XC/XX), none of which are significantly in dispute.
56. First, it is anticipated that this road will be closed for six months during the period mid 2025-2026 (Fleming and Ford XC/XX). Such closure is necessary to give effect to an interim phase of road lowering works.
57. Second, it is anticipated that there will be a further closure of this road for more substantive road lowering works, which closure will last 12 months. The timeframe for this additional closure is not set, but will be prior to 2030 (again, Fleming and Ford XC/XX).
58. Such closures are planned by HS2 Ltd. The precise timing of such closures is not definitive, since the very nature of the works being undertaken at Old Oak Common means that the position is an evolving one. However, that is the position communicated to Mr Fleming by HS2 Ltd, and there is no basis on which to depart from it. BPL – and in particular Mr Gent – sought to test these matters in evidence, but to no avail. The documentation before the Inquiry – notably the approved plans submitted to the Inquiry by BPL - support the evidence given by Mr Fleming in this regard, and confirm that the extent of the road closure will include the junction of the emergency access with Old Oak Common Lane¹⁰.

¹⁰ In this regard, please see the Note from BPL's solicitors dated 2nd February 2024, entitled '*Note on Undertakings given to Agility Trains by HS2*', and the Appendices to that Note. It is respectfully submitted that substantive content of these documents is entirely consistent with the position as represented to the Inquiry by NRIL; namely, that the works to be undertaken by/at the behest of HS2 will result in significant and material interference with (and closure of) Old Oak Common Lane, during a period that will be critical for use of the Temporary RRAP. This position is definitively clarified in the Note dated 6th February 2024, prepared by NRIL's solicitors, entitled '*Note responding to Bellaview's Note on undertakings given to Agility Trains by HS2*'. To clarify, the question put by BPL to HS2 related only to the closure of the Hitachi Compound access; however that is not the only extent of closure of Old Oak Common Lane which would affect NRIL's ability to get low loaders to the access entrance.

59. Further, the Inquiry can also note that the ‘western access’ will not be available in any event during the period prior to January 2027. As Mr Fleming explained (XC), HS2 Ltd will be rebuilding the access road into the Hitachi Compound from Old Oak Common Lane during this period, in order to facilitate works at their ‘brownfield site’. The rebuilt access must be in place by January 2027, which means that the works will necessarily be undertaken at some point during the period January 2025 – December 2026, which Mr Fleming had already explained as being a critical one for use of the Temporary RRAP. Again, the critical nature of the 24 month period January 2025 to December 2026 – in terms of use of the Temporary RRAP, and the works to be facilitated by it – was not challenged by BPL or any other party to the Inquiry.

60. Mr Gent’s response to these matters was telling; he conceded (XX) that “*Network Rail may well be right*” that the Western Access will be unavailable as Mr Fleming explained. The highest he could put his case was to the effect that he would ‘wish to have seen more’ to confirm the position. That may be Mr Gent’s preference, but that is no basis on which to accept that the Western Access presents as a suitable highways access for the proposed facility. The available evidence before the Inquiry indicates that the Western Access will simply not be available to NRIL when it needs it. There can be no question of assuming that it will be so available. To base a decision whether or not to confirm the Revised Order on the basis of such assumption would be fundamentally misconceived and *Wednesbury* unreasonable.

- *Conflict with Hitachi/Agility*

61. There is then the matter of the extent to which NRIL’s use of the posited RRAP would conflict with the activities of Hitachi/Agility. In this regard, it is important to note that this is not simply a question of ‘whether the position would be acceptable to Hitachi/Agility’. Rather, as Mr Fleming confirmed (XC), the position would need to work satisfactorily *both* for NRIL *and* for Hitachi/Agility.

62. In this location, even if it were possible to make use of the Western Access from Old Oak Common Lane, it would then be necessary for traffic to climb the hill up into the compound, before then negotiating a level crossing under overhead lines providing electricity to the trains in the depot. As Mr Fleming explained (XC), Hitachi had indicated that their train movements would take priority, preventing NRIL/contractors from moving across the level crossing, and thereby ensuring that they would have to operate in a constrained manner, within what are already constrained possession windows. Further, as Mr Fleming explained (XX), the overhead lines beneath which NRIL and its contractors would have to traverse, are not ones that would

be isolated during the course of a possession of the GWML; indeed, for them to be turned off would require a further, bespoke isolation which would turn off the power for much of the depot.

63. In circumstances where passage of low-loaders/RRVs would be in potential conflict with the passage of trains shunting within the depot sidings, and would be passing beneath electric lines – either representing an additional hazard (if live), or a restriction on the operations of Hitachi (if isolated) – there can be no question but that use of the Western Access would represent a very considerable risk/complication to use of the a Temporary RRAP sited at Hitachi West.

Eastern Access

64. In order to access Hitachi West via the Eastern Access, traffic would need to travel north up Mitre Way, before turning westwards at its northern end. Vehicles would then pass through the security gate into the Hitachi Compound, before proceeding to a length of single lane carriageway within the underpass beneath Scrubs Lane. Whilst it may be possible for some low loaders to travel 'laden' through the underpass, it may be necessary for others to unload RRVs first, which would then travel independently as 'wheeled' vehicles. In any event, passage through the underpass by one or more set of RRVs would of course preclude any existing Hitachi Compound traffic heading east. The low-loaders, of course, would travel slowly in this constrained environment, as would the RRVs if 'unloaded' (some of the latter travel at no more than 5mph). This would therefore serve as a bottle neck.
65. The next obstacle to address would be the road/rail crossing point, located immediately to the west of the underpass. There, any traffic would need to give way to trains heading into or out of the sidings. Such traffic would also need to negotiate the overhead electric lines serving those trains. Again, there would be a risk of congestion or delay.
66. Having negotiated both the underpass and the road/rail crossing, low-loaders/RRVs (and of course other RRAP traffic, such as mini-buses carrying staff or the private vehicles of specialist contractors) would then need to travel almost the full length of the Hitachi Compound heading west, before accessing the proposed RRAP. Mr Gent was not aware of how long that stretch of carriageway was, or whether in fact it was dual or single carriageway. There was talk of 200m, 300m or indeed 400m; as the Inspector will have noted in the site view, the stretch is in fact some 1km in length. For much of that distance, there is only one operative

lane; the remainder of any space is used for parking spaces. As noted above, traffic speeds for some vehicles would be no more than 5mph, and the potential for congestion/conflict is self evident. In this regard, it must of course be borne in mind that the Hitachi Depot does not keep 'office hours'. Unlike the Jewsons Depot, it is very much active during the night time periods when NRIL would need to be making use of the Temporary RRAP.

Proposed Location

67. The final point as regards 'Hitachi West' relates to the proposed compound/RRV location itself (as distinct from access to it). In this regard, Mr Ford stated in terms in his rebuttal proof why it is that the location proposed by Mr Gallop on behalf of BPL would not meet NRIL's requirements¹¹. The siting proposed by Mr Gallop (shown at Appendix Q of his proof) would conflict with existing facilities for welfare, storage and waste, whilst after Christmas 2026 the railway tracks at this location will move northwards meaning that if a temporary RRAP were sited here then plant and material would need to travel northwards through HS2's contractor's (BBVS) construction site, resulting in yet more conflict (albeit this time between NRIL and HS2).

Hitachi East

68. Turning then to Hitachi East, this can be dealt with relatively swiftly.

69. Here, BPL assume that access would simply be from Mitre Way. In this case, traffic would pass through the security gate, along the underpass, and then over the level crossing beneath the overhead electric lines, as previously discussed in the context of Hitachi West. However, at this point it would then be necessary to unload RRVs from their transport vehicles, in this busy location, complicated by the proximity of both underpass, crossing point and overhead lines. Without having visited the site, Mr Gallop is content that such operation is feasible. NRIL, whose contractors will be the ones actually serving any such temporary RRAP, fundamentally disagree.

70. Further, NRIL is confident that the site visit undertaken by the Inspector will have demonstrated beyond all doubt, the practical impossibility of this approach as advanced by BPL.

¹¹ See page 7 and page 9 of Mr Ford's rebuttal proof.

71. Hitachi East is simply not a credible proposition, and it says much about the approach of BPL's witness team that Mr Gent and Mr Gallop are prepared to say otherwise.

Conclusions

72. The answer to all of this, so far as BPL is concerned, is 'management'. It is simply said that Hitachi/Agility and NRIL would need to 'manage' the situation, putting in place schedules and timetables so that all parties could make use of the infrastructure in a way which accommodated everyone, whether for Hitachi East or Hitachi West. No detail, or explanation is provided as to the feasibility of any of this, NRIL is simply told to 'manage' the position.

73. Such high-handed assertion on the part of BPL and its witnesses is so cavalier as to be almost offensive. As noted above, Mr Fleming explained to the Inquiry (XC) the complexity of the position, how tight timings are, in relation to the operation of a possession in the ordinary course of events when dealing with the constraints imposed by the railway itself. He also explained how draconian (and costly) the consequences of overruns can be. In these circumstances, it is simply not credible or sensible for the Inquiry now to proceed – as BPL asserts that it should – on the basis of an assumption that conflict/clashes with the rolling stock, plant and ordinary operations of Hitachi/Agility in the Hitachi Compound will have no material adverse effect on the operations of NRIL and its contractors, working urgently to ensure delivery of the Systems Project, to enable construction of OOC Station, and thus completion of HS2. This is to say nothing of the adverse impact on Hitachi/Agility, and the work done in the Hitachi Compound to maintain the fleet of GWR trains that already serve thousands of passengers throughout the west of England (and Wales) every day.

74. For all these various reasons, it cannot sensibly be advanced that either of the proposed Hitachi RRAPs represent a meaningful alternative to the Jewsons Depot. The complications in terms of access, and in terms of interaction with existing compound activities, mean that they would prove a manifestly inferior alternative to the access compound which NRIL have promoted, and would significantly increase the risks associated with delivery of the Rail Systems Project, and thus HS2.

Procedural Issues

75. The only further observations NRIL makes in the context of this Issue, relate to procedure. Such observations are made on the basis that it has appeared from the way that questions have been put (XX), and from the disclosure requests that have been made, that BPL will seek to raise a procedural point about how NRIL has identified the Jewsons Depot as the appropriate location for the Temporary RRAP.

76. To the extent that they are made, such points are misconceived, and entirely without merit. In so saying, NRIL makes the following observations:

- First, the question of consideration of alternatives is largely artificial and academic, having been overtaken by the concessions made by BPL's own witnesses. Even on their (best) case, the only alternatives to what NRIL propose, are use of either Hitachi East or Hitachi West with Barlby Road, as opposed to Jewsons Depot with Barlby Road.
- Second, whilst it appears to be suggested that there are internal materials/studies held by NRIL which analyses alternatives, but which NRIL is refusing to provide to the Inquiry/BPL, this is simply not true. All relevant materials have been disclosed¹².
- Third, as the Inquiry will have seen, none of that disclosed material serves to strengthen BPL's case; none of it indicates that the Hitachi options are viable. Critically, 'historic studies' suggested that a location within the Hitachi Compound might be a desirable site for the Temporary RRAP. However, all such studies voiced their conclusions only on a provisional basis, without any discussions with Hitachi/Agility as to the feasibility/viability of this option having taken place. Indeed at the relevant time, Hitachi/Agility had not even been approached.
- Fourth, it is on the basis of those historic studies that NRIL (and in particular Mr Fleming and Mr Ford) sought to engage with Hitachi/Agility, to explore the position. However the output of the meetings/discussions was that the siting of the Temporary RRAP and access compound within the Hitachi Depot, would work neither for NRIL nor for Hitachi/Agility.

¹² See for example, the three draft Arcadis reports (none of which were finalised or accepted by NRIL) disclosed to BPL following the First Round Table held on 1st February 2024.

- Fifth and finally, the upshot is that NRIL undertook all proportionate analysis of alternatives, and concluded that the Jewsons Depot was the optimum (and indeed only credible) location for the Temporary RRAP. In terms of documentation of the analysis undertaken by NRIL, the Inquiry has before it various studies, both adopted and draft, as well as the Risk Assessments that were provided to BPL towards the end of the Inquiry, following a request for their disclosure. BPL alleges that this is 'inadequate', that the job of considering alternatives has 'not been done properly'. However, such assertion is wrong, and it is unfair. In this regard, perhaps the key indication, or 'tell', is that for all its complaints alleging deficiency of the NRIL work on alternatives, BPL has not managed to identify a single workable alternative itself. It points to only two options, and NRIL has shown through the course of this Inquiry, and in these submissions, that neither of these will serve.

Issue 2: Impact on BPL

77. The second of the issues raised by BPL concerned the impact on its use of the Jewsons Depot. Here the position was not straightforward, since BPL apparently have a number of different purposes to which the site may be put. In this regard, it was variously suggested that:
- BPL may continue to allow Stark to occupy the Warehouse and builders' depot;
 - BPL may arrange for its sister company, BDL Ltd, to occupy the Warehouse and builders' depot; or
 - BPL may pursue a mixed use redevelopment of the builders' depot (which would of course require demolition of the Warehouse¹³).
78. In each one of these cases, it was said by BPL that there would be cost/loss incurred by BPL, by reason of the proposed Temporary RRAP and access compound.
79. In assessing the materiality of these considerations, it is of course first necessary to stand back and take stock of NRIL's proposals as they now stand, in the context of the Revised Order, and in the context of the Permission.
80. Taking the latter first, the Inquiry will recall that there was a resolution to grant the Permission even by the time of the initial Inquiry sessions held in November 2023. The Permission has

¹³ Albeit not yet granted at the time of the Inquiry, NRIL notes that planning permission for such redevelopment has now been issued as was anticipated ('the **Permission**').

now been granted, subject to a planning condition (Condition 28), which expressly makes provision for NRIL's activities (in the form of the Temporary RRAP and access compound)¹⁴. Thus in granting the Permission, the local planning authority has looked to ensure that the proposed re-development of the Jewsons Depot does not prejudice NRIL's activities (in the form of the Temporary RRAP and access compound). Indeed, the authority has granted the Permission in such a way that if the Secretary of State determines to make the Order, the phasing of the BPL development should 'fit around' NRIL's activities; in essence, BPL's development will have to play 'second fiddle'. The Permission has been expressly granted on that basis.

81. Turning next to the Revised Order, significantly, it is no longer NRIL's intention to take possession of the Warehouse at all, and indeed it is seeking rights of possession of only a limited part of the yard area of the builder's depot. Further, it is offering a legal undertaking ('the **Undertaking**') which provides for site sharing arrangements over certain areas. The consequences of these revisions to the Order as originally promoted are significant. Notably in this respect, having regard to the reduced land take proposed,

¹⁴ *The developer shall not commence construction of the development (which excludes demolition, site clearance, site investigation, site remediation, and ground works) unless either:*

(a) the developer has submitted to the Council for approval a phasing plan which demonstrates the phases of the development, and how the phases can be constructed to ensure that Network Rail's Old Oak Common Station works and its proposed construction and use of a temporary Road Rail Vehicle Access Point (RRAP) on the site are not impeded; For the avoidance of doubt, works phased on the footprint of the existing warehouse building will be assumed to provide no impediment to Network Rail's works. The phasing plan will demonstrate, in particular, how Network Rail's access to the site and turning of vehicles, storage requirements, parking requirements for RRVs and track plant, and access to the temporary RRAP will be accommodated and not impeded. Construction management measures may be included in the phasing plan to demonstrate lack of impediment to Network Rail's works. The phasing plan may include an early works phase, that may include setting out, and substructure works; or

(b) the Secretary of State has refused to make the proposed Network Rail (Old Oak Common Great Western Mainline Track Access) Order promoted by Network Rail and either Network Rail has confirmed in writing to the Council that it will not seek a statutory review of the refusal to make the Order, or the period of 6 weeks has expired from the Secretary of State's decision without a statutory review having been commenced against the Secretary of State's decision in which case the requirement in (a) shall no longer apply.

If a phasing plan is submitted to the Council for approval pursuant to (a) above, the developer will observe the phasing plan throughout the construction of the development. A phasing plan submitted pursuant to (a) above need not cover all phases of the development, and more than one phasing plan can be submitted for approval. Any phases that are planned to follow either the completion of Network Rail's Old Oak Common Station works or follow reinstatement of the land used for the temporary RRAP if earlier need not be the subject of a phasing plan.

Reason: To ensure that both the intentions of the developer and network rail for the application site can be delivered should the Secretary of State make the Network Rail (Old Oak Common Great Western Mainline Track Access) Order.

- Mr Aaronson confirmed that, in the event that BDL needed alternative accommodation (on account of their being dispossessed by a compulsory acquisition of their existing site in Hampstead¹⁵), they could operate from the ‘reduced’ Jewsons’ Depot. To be clear, Mr Aaronson stated very firmly that such enterprise would be less than ideal, as it would mean operating on a more limited basis from a more constrained site. However, he nevertheless – fairly – stated unequivocally that it could be done. Thus there is no question of the BDL enterprise at Hampstead having to ‘fold’, or of the workforce being laid off. If Mr Aaronson wants to move the business to Acton (which of course would – as he accepted (XX) – mean an entirely new business, in the sense of an entirely new customer base), he can do so¹⁶.
- In light of the Permission having been granted for the Scheme, the arrangements proposed by NRIL (in terms of reduced land-take, and in terms of the protection afforded by the Undertaking) would allow BPL to pursue the mixed use redevelopment discussed at the Inquiry. In this context BPL have suggested that implementation of the Scheme during the period within which the Temporary RRAP is operational might lead to increased construction costs, may extend/lengthen the construction period, and may even potentially impact upon values achieved for the residential units constructed.

The Undertaking

82. As regards the Undertaking and its contents, the Inquiry has heard and received extensive submissions as to the arrangements it will provide for. The Inquiry can note that NRIL sought to reach agreement with BPL in this regard, and indeed at one point it appeared that such agreement would be reached. However, the fact of the matter is that no sooner had NRIL addressed one concern of the BPL, than another was raised; this position is perhaps best illustrated by the fact that the Undertaking was drawn up by NRIL by reference to shared land areas which it had agreed with BPL’s witness team, only for BPL’s lawyers subsequently to indicate that such areas were not acceptable (as explained during the Round Table session on 1st February 2024).

¹⁵ No compulsory purchase order has been made, still less confirmed (Aaronson XX), but there have been discussions to the effect that the regeneration of the area (including the BDL premises) may potentially necessitate one.

¹⁶ In this context, NRIL note that no evidence has been given to the Inquiry by Stark on this issue. However, given that Mr Aaronson confirmed that BDL could operated from a ‘reduced’ Jewsons Depot, there is no reason to believe that Stark could not similarly operate, should they be allowed to do so by BDL, as landlord.

83. Ultimately, all the various concerns which BPL still seeks to raise have been addressed, comprehensively by NRIL in its document entitled 'Network Rail's response to Bellaview's comments on the unilateral undertaking provided on 8 February 2024', dated 23rd February 2024. It is respectfully submitted that such document provides a reasonable, practical response to the various complaints made. The truth is, that BPL is straining to find problems and failings where there are none; the Undertaking will serve to ensure that BPL's activities and rights are protected as stated.

84. The Order, if made, will take effect subject to the constraints of the Undertaking. That Undertaking provides in terms for NRIL and BPL to share the use of the Jewsons Depot, during the period of the Temporary RRAP and access compound. The sharing arrangement will allow for the operation of a builder's depot (as per Mr Aaronson's evidence (XX)), for the carrying out of redevelopment pursuant to the Permission, or even potentially for the occupation of a residential development constructed pursuant to that Permission. In drafting the document, NRIL has bent over backwards in its attempts to accommodate the various requirements BPL has identified. This includes reducing its land take to an absolute minimum, maintaining access to BPL's 'retained land', and being prepared to move its (minimal) parking areas around the site, in order to accommodate the various stages of the proposed redevelopment (if pursued). NRIL has also committed to proceeding in a constructive, pragmatic fashion, in order to accommodate what will doubtless be an 'evolving position' as regards the requirements/wishes of BPL and its contractors.

85. In short, there is every reason to believe that BPL will – during the limited period of NRIL's activities – be able to proceed down whichever avenue it wishes to, as regards its future intentions for the Jewsons Depot.

Entitlement to Compensation

86. However, if, even and insofar as the powers sought by NRIL would interfere with the activities of BPL, then that position too is catered for.

87. To be clear, NRIL does not accept as inevitable the adverse financial impacts that BPL assert, either in the context of use the Jewsons Depot continuing as a builders merchants (whether for BDL or otherwise), or in the context of the site's redevelopment for the Scheme. However,

happily, this disagreement is not one that need be resolved for the purposes of the Inspector's/Secretary of State's deliberations in respect of the Order.

88. The reason for this, is that in the event of any of the potential financial loss/increased cost suggested, BDL would have a right to compensation. It is for that reason that Mr Rhead (for BPL) confirmed (XX) that matters of financial loss are "*not relevant*" for the purposes of these proceedings. If losses were to be suffered, then compensation would be payable by NRIL. In the ordinary course of events, the quantum of such compensation would be agreed; if the parties were not able to agree, then the matter would be resolved by the Upper Tribunal (Lands Chamber).
89. As such, whilst NRIL recognises that there would be a degree of inconvenience experienced by BPL, and even that there may be financial loss incurred, that is no reason for the Secretary of State not to make the Order. Legislation provides for fair compensation, and as such BPL would be fairly compensated for any loss.
90. This is a complete answer to this ground of objection as advanced by BPL.

Issue 3: Residential Amenity Considerations

91. There is then the question of residential amenity. This was a matter raised most fiercely by BPL, notwithstanding that as matters currently stand there are of course no residential occupiers of the Jewsons Depot. Instead, the objections from actual residents came from occupants of Acton House, but as these submissions have already noted, those residents were under a profound misapprehension both as to the extent of the activity to be carried out in the compound, and as to the frequency of that activity.
92. Returning to BPL's position, it essentially raised complaint as to three issues; dust, noise and lighting. It pointed to the lack of environmental assessment of the likely impacts in respect of these issues – the lack of materials before the Inquiry – and also pointed to media reports of other railway works, in other locations, which had caused upset and frustration to local inhabitants in those areas.

93. In light of the way that BPL puts its case – and how high it puts that case – it is necessary to stand back, and allow the actual facts of this case to be put into context. In this regard NRIL makes the following observations

- (1) Commentary regarding other rail engineering operations, and other compounds/RRAPS, at other locations is, with respect, of minimal – if any – relevance. Rail projects come in all shapes and sizes, and are subject to different restrictions and conditions. There is no detail before this Inquiry as to the instances reported in the press cuttings provided in the appendices of Mr Gallop, and NRIL does not accept that they have any application in the present context.
- (2) The substantive works which the access compound/Temporary RRAP will facilitate, will not be undertaken in the compound. Rather, those works will be undertaken on the railway, not at the compound/RRAP, and so will not cause any adverse impact on amenity in that location. This is true in respect of both noise, dust and light pollution. Further, it must of course be borne in mind that insofar as works to the railway are necessary, they will – ultimately – be carried out irrespective of whether or not the Revised Order is made.
- (3) The third point to bear in mind is the very limited nature of the use of the Temporary RRAP and access compound which NRIL anticipate. To be clear, the use of the compound/RRAP is vital, but it is not extensive. It is a very far cry indeed from the type of ‘continuous’ activity referred to in some of the objections; instead what is anticipated is infrequent use. The very limited extent and frequency of this activity means that the noise/light/dust generated will itself be very limited. It is for this reason that NRIL has not provided the Inquiry with assessments of impact, but has instead sought to guarantee amenity through the imposition of conditions on the deemed permission (about which see further below); it has adopted a sensible, common sense approach which has regard to the minimal nature of activity proposed. To be clear, there will not be industrial or construction activities carried out at the compound; instead on the limited occasions when the site is being used, there will be a small number of deliveries (whether or plant,

material or personnel) and then a process in moving that plant/material across the RRAP and up the railway¹⁷.

(4) The fourth point to bear in mind is that this is not the first occasion that NRIL have operated a RRAP and compound such as this. Mr Fleming explained (XC) that he had wide experience of dealing with issues arising from the proximity of residential development to a works compound, and spoke to some of the measures taken to address the potential for adverse impacts (such as the use of electric (as opposed to diesel) generators, and the directing of stand-lights away from residential properties). In this context, it should be borne in mind that the historic, temporary RRAP in this location (see further below), was closer to Acton House than that which is now proposed.

(5) Lastly, and perhaps most importantly, there is the matter of the proposed conditions. As the Inquiry has heard, NRIL (specifically Mr Colin Field) engaged with the local planning authority ('the LPA') and sought to agree planning conditions for the deemed planning permission, which would serve to protect the amenity of residential properties. The LPA in fact agreed those conditions and has not raised any issue with the Inquiry. That said, NRIL of course recognises that the LPA has also suggested in correspondence with BPL that it would be happy to accept revised conditions of the type that BPL has suggested. In any event, the position has of course moved on because the parties have engaged with the Inspector, who has produced his own set of conditions (in conjunction with the parties – 'the **Inquiry Conditions**').

94. It is respectfully submitted that the Inquiry Conditions provide a comprehensive answer to any concerns voiced by BPL regarding residential amenity. Those conditions provide certainty and comfort on many different fronts. For example, they serve to limit, in absolute terms both the number of times that the compound/RRAP may be used over its lifetime, and within that,

¹⁷ In this context, these Closing Submissions must address also the point made by BPL as regards delivery of plant and materials to the Jewsons Depot, and the weight restrictions over Acton Bridge and Friary Road. As originally presented to the Inquiry, it certainly appeared to NRIL that this point was pursued by BPL with a view to suggesting that operation of the Temporary RRAP from that location was not feasible/practicable. The Inquiry will have its own view as to how the matter was put. In any event, following further submissions from the parties, it is evident that BPL now accepts as common ground the fact that NRIL (and/or contractor) vehicles would be able to obtain a licence to use Friary Road, and thus there is no bar to its use. However, what is now said, is that there will be adverse impact on amenity of residents along that route. It is respectfully submitted that the number and frequency of heavy vehicular movements cannot sensibly be said to be such as to have any material impact whatsoever on properties along Friary Road.

the number of times they may be used with powered RRV plant (Inquiry Condition 7¹⁸). In addition, they provide for local residents to be kept informed as to when activity will place, and thus when they may anticipate some (limited) degree of disturbance (again, Inquiry Condition 7). Further, the Inquiry Conditions provide for the submission and approval by the LPA of an Environmental Management Plan – ‘the **EMP**’ - (Inquiry Condition 5) and a Traffic Management Plan (Inquiry Condition 6), which will serve to ensure that on the limited occasions that the compound facility is in use, it is operated in a manner that minimises that disturbance. In this regard, the EMP will includes measures to address noise, dust and lighting¹⁹.

95. In this context, it is perhaps helpful to recall the evidence given by Mr Gent in respect of the conditions issue. He confirmed (XX) that in all the many years that he has practised planning and been involved with developments of this type (the particular example discussed was bus depots), he has never – not once – been confronted with a situation where suitable conditions could not be imposed so as to render the development acceptable in planning terms.

96. For all these reasons, most notably the limited degree of activity to be carried out at the access compound and the suite of Inquiry Conditions guaranteeing that limit, it is respectfully submitted that there will be no material adverse impact on amenity. This must particularly be the case in circumstances where the existing environment is not a tranquil one, but instead one where both the Jewsons Depot and Acton House back on to the GWML (with its 24 hour rail activity) and, beyond it, the aggregates depot, scrap metal facility and other intrusive activities housed in the Acton Goods Yard; this is to say nothing of the impacts of the BPL redevelopment, should it proceed. Further, it is a location where there was – in recent memory – another temporary RRAP, which was used by NRIL in connection with delivery of Crossrail, before it was removed to allow for modification of the Acton Main Line Station.

97. The Secretary of State can be satisfied that no material adverse impact would result.

¹⁸ In this regard, during the entire 5+ years of NRIL’s powers, it will only be entitled to use mechanized plant on 300 occasions, supplemented by a further 175 midweek nights when using non-powered RRVs.

¹⁹ As regards lighting, see also Condition 4.

Benefits

98. Having addressed the various objections levelled at the Order, these Closing Submissions now turn briefly to consider the benefits which it would deliver (at this stage, simply in terms of the First Proposal). Such benefits can be summarised briefly, but are of huge significance all the same.
99. The central benefit which will be secured by the making of the Order, as regards the First Proposal, is delivery of HS2. The Inquiry has been told in terms by Mr Fleming, who is responsible for delivery of the Systems Project in this location, that the Temporary RRAP is fundamental to carrying out those works to the GWML which are necessary in order to construct the OOC Station. That RRAP will operate alongside the existing RRAP at Barlby Road.
100. The need for the Temporary RRAP – or at least a temporary RRAP – is not disputed by Mr Gallop. Nor is the fact that if the Order is not made, then there will be a delay of at least 12 months to the operational commencement of HS2 services.
101. That is, quite simply, a massive consideration to which the decision maker in this context (the Secretary of State, as advised by the Inspector) must have regard. The benefit inherent in the avoidance of substantial delay to a multi billion pound piece of national infrastructure, intended to provide a qualitative step change in public transport between London and the Midlands.
102. In this regard, it is crucial to bear in mind that there is no other option; the restriction on the ability of NRIL and its contractors to take possessions – and in particular the lengthy possessions of up to 29 hours – means that works must commence from the Temporary RRAP no later than January 2025, if OOC Station (and thus HS2) is to be delivered on time. That timeframe means that there can be no Plan B; there is no question of promoting any other scheme. Further, in any event the only alternative posited by the main objector has been shown at the Inquiry not to be workable. The difficulties with ‘external’ access from the public highway (as regards Old Oak Common Lane), with ‘internal’ access from within the Hitachi Compound (as regards conflict with the existing operations of Hitachi and its infrastructure), and the inherent unsuitability of the locations within the Hitachi Compound which BPL point to, mean that there is no other way of achieving NRIL’s objectives.

The Revised Order

103. Lastly in the context of the First Proposal, these submissions then turn to consider the merits and substance of the Revised Order, having regard to all the various considerations considered in the preceding paragraphs.

Powers Sought

104. The first point to address in this context is the approach adopted by NRIL in seeking powers of temporary possession under the Revised Order. It is necessary to consider this matter having regard to the query raised by the Inspector during the Inquiry and the Round Table sessions which followed it. In this regard, NRIL understands the Inspector's concern to relate to the question of whether or not the powers of possession sought are excessive; could not NRIL make do with powers to use parts of the Jewsons Depot in a particular way, and then look to come to terms with BPL, as landowner, regarding arrangements to share the use of it?

105. There is, as NRIL hopes was made clear during the 8th February Round Table session, a clear and definitive answer to this point. Given the nature of the works which NRIL wishes to undertake from the access compound, and given also that – in practical terms – the compound will essentially become part of the operational railway during the period of a possession, there can be no question/risk of any other party – whether BPL, its contractors, the customers for a builders depot or the residents of any future residential development – having an unrestricted right over the Jewsons Depot. On the contrary, NRIL *must* be able to assert rights of exclusive possession so as to exclude all others from parts of its compound at particular times.

106. No powers less than the powers of temporary possession will guarantee that outcome; it cannot be left to chance to see whether or not that exclusive possession can be secured by negotiation. Failure to reach agreement – were BPL, or some other successor party to them prove to be intransigent– would leave NRIL simply unable to make use of the Temporary RRAP as required.

107. Thus, respectfully, it is submitted that NRIL is justified in seeking the nature of powers which it does; indeed there is no lesser alternative that would secure the outcome necessary.

Restriction on Powers

108. As the Inquiry is aware, the powers of compulsory acquisition conferred by the Revised Order will take effect subject to the restrictions imposed by the Undertaking.

109. BPL has sought to suggest that this is in some way improper, and that the terms of the Undertaking should be included within the body of the Revised Order instrument itself. With respect, such submission is entirely without substance. In this regard NRIL makes the following observations:

- First, there will be absolutely no prejudice to BPL (or anyone else) if the relevant restrictions are included within the undertaking as distinct from the Revised Order. The relevant provisions will take effect and be capable of enforcement, as a matter of law, notwithstanding they are contained in a free-standing undertaking.
- Second the fact of the site sharing arrangements being contained in the Undertaking is in fact beneficial to all parties, since it will allow for a degree of flexibility (the Undertaking provides in terms for its provisions to be varied by agreement²⁰), which will not be available if the terms are included within the body of the Revised Order. Over the 5+ year period of the Temporary RRAP, it is highly likely that one or other party (particularly BPL, if it pursues its redevelopment ambitions) will wish for the terms of the arrangement to be varied.
- Third, the inclusion within the body of the Order of the terms of the Undertaking would be without precedent. BPL's legal advisors have not put before the Inquiry any example of such arrangement; that is because it has never before been done. As NRIL submitted at the Round Table, it is in fact highly doubtful that the Transport Infrastructure Planning Unit ('**TIPU**') would accept the inclusion of text which sat so far outside of the model provisions. The precedent which would be established is problematic enough with one affected landowner; in the context of an order for a linear scheme – where dozens of landowners might be affected – the position would be wholly untenable. Quite simply any order made on that basis would be hopelessly unwieldy.

²⁰ See Clause 3.2 of the Undertaking

- Fourth and finally, there is precedent for the grant of powers within a Transport and Works Act order, as modified by an external instrument. In this regard, NRIL's 'Note on Precedent Deeds of Agreement/Undertaking' (dated 23rd February 2024) explains clearly how the powers conferred by a 2022 Order were restricted by means of agreements contained in separate deeds, and how powers conferred by the HS2 Act were restricted by commitments given by the Secretary of State in a unilateral undertaking dated 9th October 2015. Having regard to these clear precedents, it is respectfully submitted that there is no basis to reject the course of action which NRIL now proposes.

Form of Order

110. BPL's lawyers have raised numerous queries as to the drafting of the Order; it is respectfully submitted that none of these queries admits of any substance. NRIL has provided a comprehensive response to all the complaints raised, in its document entitled 'Network Rail's response to Bellaview's comments on the revised Order provided on 8 February 2024' dated 23rd February 2024. That document accepts certain proposed revisions where justified, but otherwise explains why it is that the proposed drafting is maintained.

111. To be clear, the approach to drafting employed in the Order is not novel, speculative, or in any sense out of the ordinary. On the contrary, it reflects model provisions and established practice, such as will be familiar to TIPU. The Inspector and the Secretary of State are respectfully invited to disregard the complaints made by BPL.

Balance and Conclusions on First Proposal

112. These proceedings are, at root, a dispute regarding powers of compulsory purchase. In this regard, it is trite law that in order to justify confirmation of compulsory purchase powers, an authority must demonstrate a compelling case in the public interest. However, it is also trite law that in this regard, no 'special rules' apply to the legal context governing compulsory acquisition (see *R v Secretary of State ex parte de Rothschild* (1989) 57 P&CR 330). In this regard, the approach of a decision maker is subject to no special oversight "...beyond the ordinary *Wednesbury* rules" (at page 337), and there is no 'burden of proof' for an acquiring authority to discharge; see *de Rothschild* where Slade LJ cited Lord Denning in *Prest v. Secretary of State for Wales* (1983) 81 L.G.R. 193, observing:

*“As Lord Denning observed in Prest itself, the Secretary of State's decision certainly is not a *lis inter partes* . As he said :*

It is a public inquiry—at which the acquiring authority and the objectors are present and put forward their cases—but there is an unseen party who is vitally interested and is not represented. It is the public at large. It is the duty of the Secretary of State to have regard to the public interest.

In making his decision, there are a multitude of different factors which the Secretary of State has to take into account. To mention only a few: questions of landscape and other amenity, feasibility, cost and delay. To talk of questions of onus of proof when so many competing factors have to be taken into the balance seems to me not only inappropriate but a somewhat difficult concept”.

113. As such, in the present case, the task for the Inspector/Secretary of State is to balance the various considerations in play, and determine what course is in the public interest. It is respectfully submitted that, in the present case, the public interest is undoubtedly served by the making of the Revised Order.

114. In this regard, the benefits of the Order are self-evident. Rather, to put it another way, the adverse consequences of *not* making the Order are self-evident. Certainly they are not in dispute; if the Order is not made, that will mean the United Kingdom has to wait an additional minimum 12 months delay for the opening of HS2, over and above the delays that have occurred to date.

115. Set against this, are two matters:

(i) First, the potential interference with the interests of a single commercial enterprise, which may or may not be materially affected. In this regard, the owner of the Jewsons Depot may potentially be prejudiced:

- by having a sister company (BDL) operate a builder's merchants from the premises on a basis which may be less profitable than would otherwise be the case;
- by carrying out a redevelopment of its premises on a basis which may be more costly than would otherwise be the case, or alternatively at a later date than might otherwise have been the case; or

- by letting their premises to another builder's merchant business to operate, at a rent which may be less than would otherwise be the case.

However, in each of the above cases, compensation would be payable (if the anticipated prejudice did in fact emerge).

- (ii) Second, there is the potential impact on the residential amenity of residents of Acton House, insofar as there is any material, residual impact, having regard to the extensive protections afforded by the Inquiry Conditions to be imposed on the deemed planning permission.

116. It is respectfully submitted that the balance to be struck, having regard to the above matters, is a clear and straightforward one. The Order should, must be made. In *de Rothschild*, the question of the delay to delivery of infrastructure was central to the decision reached by the Secretary of State to confirm the compulsory purchase order. That issue is central in the present case also, and wholly justifies the making of the Order.

117. There is a compelling case in the public interest.

THE SECOND PROPOSAL

118. The Second Proposal can be considered far more briefly.

119. The purpose of the Permanent RRAP is to provide additional maintenance facility for the GWML. No evidence has been led by BPL (or any other objector to the Order) that such provision is not required by NRIL for the purposes of its undertaking in ensuring the safe and efficient running of the railway network. Rather, the only evidence that has been provided on this topic is from Mr Fleming/Mr Ford, who have confirmed that the facility is very definitely required.

120. No credible alternative location for the Permanent RRAP has been posited by any party to the Inquiry; the Triangle is the only suitable location for the facility. Further, given that the land formerly comprised part of the railway network, serving the rail sidings which formerly sat within the Warehouse on the Jewsons Depot, there is no possible basis to argue that it cannot serve the purpose anticipated for it.

121. Planning permission is not in fact required for the Permanent RRAP; in that regard the only basis on which it comes before the Inquiry is insofar as the access to the facility will require the grant of an easement over Plot 3, for NRIL personnel and contractors ('the **Easement**').

122. There are essentially two parties opposed to this aspect of the Order; these being Ms Kuszta, and BPL.

Ms Kuszta

123. The objection from Ms Kuszta relates to amenity of her property. The Triangle sits beyond the far end of her garden, and she is concerned about impacts on her living conditions. Respectfully, NRIL contends that such concerns are not justified. Firstly in this regard, NRIL observes that the use of the Permanent RRAP will be extremely infrequent. The facility on the Triangle will not serve as a 'day to day' compound, or anything remotely approaching it. Rather, the evidence given by Mr Ford (XC) was that he would expect it to be used less than 5 times per year with RRVs, supplemented by further use by teams with hand tools and track trolleys on a small number of other occasions. On this basis, any impact on amenity caused by use of the compound/Permanent RRAP to Ms Kuszta's property (or others in its vicinity) would be minimal. Further, as Mr Field confirmed (XC), the construction of the compound on the Triangle would be subject to a Section 61 application under the Control of Pollution Act 1974, made to Ealing Council's Environmental Health Department, which would serve to ensure that residential amenity was respected.

124. In fact, following the Inquiry sessions in 2023, Mr Wilson visited Ms Kuszta's property to discuss her concerns further, and it was agreed that if she wished, NRIL would arrange for planting at the end of her garden to further screen the Triangle, and any activities upon it. That commitment/discussion is recorded in the email exchange which is before the Inquiry.

BPL

125. BPL's objection to the Permanent RRAP is grounded in its desire to resist the grant of the Easement. However, following the engagement between Mr Gent and NRIL's team, the parties are agreed that the route of the Easement as now shown on the final Land Plan, will enable NRIL's staff/contractors to access the Triangle without coming into conflict with either

the Warehouse (and existing operations at the Jewsons Depot) or the site in its 'redeveloped form' in the event that the Permission is built out.

126. Further and in any event, at all material times it has been understood by BPL that redevelopment of the Jewsons Depot must provide for the maintenance of an access along the route of the Easement, in order to allow NRIL to serve the Triangle for the purposes of the Permanent Easement. Indeed, BPL's own Planning Statement expressly confirms that the Permission was sought on that basis²¹.

127. In those circumstances, the only ground remaining to BPL concerns ownership of the Triangle. In this regard, BPL contends that the Easement should not be granted because the Crown Estate, which holds the Triangle bona vacantia, has not sold it to NRIL; thus any grant of the Easement might conceivably be abortive.

128. There is no substance to this ground of objection.

129. First, the Order provides in terms that the Easement cannot take effect until NRIL has acquired a suitable interest in the Triangle to allow it to operate the Permanent RRAP²². Thus BPL's position as regards the grant of a 'superfluous' easement being granted is redundant.

130. Second, as is evident from the correspondence before the Inquiry, the Crown Estate – understandably – is reluctant to commit to sale of the Triangle to NRIL, until it knows that the Order is made. For BPL to rely upon the fact of the Crown Estate has not yet sold the Triangle (or an interest in it) to NRIL is, in these circumstances, an entirely artificial and unattractive construct. It is an attempt to mount a 'chicken and egg' argument, that has no place in a constructive debate.

131. In this context the Inquiry should first note that BPL itself has withdrawn its initial interest in purchasing the Triangle²³. There is only one other potential purchaser of the

²¹ See Paragraph 7.30 of the Planning Statement submitted pursuant to the Permission; "*Network Rail has confirmed that, due to the proximity of the Site to mainline railway, a 5m wide buffer is being provided along the northern boundary of the Site to safeguard future access for Network Rail. This derives from Network Rail requiring that a clear zone from overhead electrical cables to be left alongside the railway line and an allowance for construction traffic and operations that are required by Network Rail to allow for road to rail access of land immediately to the west of the Site. This results in a 5m offset in total and would ensure that Network Rail's operations are not unduly restricted by the Proposed Development.*"

²² See Paragraph 6(2) of the Order.

²³ See letter dated 9th October 2023.

Triangle now, aside from NRIL, and that is a local resident. The Inquiry should then note the statement made by the Crown Estate’s solicitors, that “...where a planning consent has been secured [the Crown Estate] would in the normal course then effect a transfer of the land to facilitate the consented development”²⁴. Finally there is the further statement made by the Crown Estate’s solicitors that “... in this instance we propose to await the outcome of the application made by Network Rail before inviting further representation from each of the interested parties, at which point it should be clear to both parties which is the more appropriate purchaser”²⁵.

132. The only sensible, reasonable way to read these indications – supported as it is by the long-established practice of the Crown Estate – is to conclude that in the event that the Revised Order is made, then the Estate will transfer the Triangle (or at the very least a lease in it) to NRIL.

133. Given this position, it is respectfully submitted that BPL’s position on the issue of ‘land ownership as obstacle/impediment’, must fall away.

Conclusions on Second Proposal

134. There is a compelling case in support of the grant of the Easement, and to that extent, the Second Proposal. The evidence as regards the need for the Permanent RRAP is unanswerable; indeed no party has materially disputed it. Quite simply, it is required to ensure that the maintenance of the infrastructure of the GWML can be properly and responsibly undertaken. As such it is manifestly in the public interest. There will be no material impact on the amenity of any residential properties, and the proposed redevelopment of the Jewsons Depot has been promoted expressly on the basis that the right of NRIL to access the Triangle will be protected. The Easement will not ‘bite’ unless and until the Crown Estate transfers the requisite interest in the Triangle to NRIL, but the reality is that such transfer will follow on the making of the Order. That is the only reasonable basis on which to read the correspondence from the Estate’s solicitors.

²⁴ See email dated 27th June 2023 from the Crown Estate’s solicitors.

²⁵ See letter dated 6th November 2023.

Concluding Remarks

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

136. 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 the absolute minimum of powers are sought. If granted, the Order may interfere with the interests/intentions of BPL as the owner of the Order Land, but NRIL has bent itself over backwards in order to seek to accommodate those interests/intentions, and insofar as interference does result, fair compensation will be paid.

137. The Inspector is respectfully requested to recommend the making of, and the Secretary of State is respectfully requested to make, the Order.

Alexander Booth KC

8th March 2024

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