

TRANSPORT AND WORKS ACT 1992

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

ADDENDUM TO CLOSING SUBMISSIONS OF NETWORK RAIL

Preliminary

1. This document comprises an addendum to the Closing Submissions of Network Rail Infrastructure Ltd ('NRIL'). All abbreviations are the same as adopted in the Closing Submissions document itself.
2. In the course of his closing submissions for BPL, counsel for BPL raised a query as to the ability of the Secretary of State for Transport to determine the application for the Order, having regard to what was described as his 'prior involvement' and 'interest in' the application, with reference to the Hitachi Compound, and its potential to serve as an alternative to the Order Land. Specifically, it was suggested that, were the Secretary of State to determine the application, there would be an 'appearance of bias' for the purposes of the decision in *Porter v Magill*.
3. Counsel for NRIL made oral submissions in response in relation to this issue. The Inspector requested that a written record of those oral submissions be provided as an addendum to the Closing Submissions, and it is on that basis that this document has been prepared.

Submissions

4. NRIL made the following points in Closing Submissions
 - First, that the rhetoric adopted by counsel for BPL was not appropriate; rather it was alarmist and unjustified.

- Secondly, the documentation relied upon at Paragraph 7 of BPL's closing submissions was both limited and dated.
- Thirdly, neither the Secretary of State nor anyone else had given any indication that would suggest a predetermination of the decision whether or not to make the Order; rather, the only discussion had been as regards the suitability of a site within the North Pole Depot (Hitachi Compound) as a potential alternative.
- Fourthly, it is in no way unusual or improper that the DfT were involved at an earlier stage of proceedings, given the public ownership of the North Pole Depot. Such involvement was not inappropriate and does not prevent the Secretary of State from determining the application.
- Fifthly, insofar as an indication was given by DfT personnel in relation to the North Pole Depot and the suitability (or otherwise) as to the location for the Temporary RRAP, or of the Secretary of State's view of that issue, such indication would certainly not have been a predetermination, but would instead only have been an indication of a predisposition, which 'provisional view' is entirely lawful, and would not render the Secretary of State's determination of the application unlawful.
- Sixthly, ultimately it will be a matter for the Secretary of State to decide whether they can approach determination of the application with an open mind and can thus lawfully determine the application.
- Finally, it should be noted by the Inquiry that, in determining whether or not the facts relating to a particular decision give rise to the "appearance of bias", a court will have regard to all circumstances which would be known by the public by the time of the court's decision. Specifically, the court will not focus on the particular factor/circumstance which is said to give rise to the appearance of bias, but will instead look at all matters which would be known to the 'man on the Clapham omnibus'; this proposition has been well established by a line of caselaw that came after the decision in *Porter v Magill*.