

## **Draft Network Rail (Old Oak Common Great Western Mainline Track Access) Order**

### **Summary of Proof of Evidence of Adam Rhead BSc (Hons) MRICS**

#### **On behalf of Bellaview Properties Limited**

## **1 Introduction**

- 1.1 My name is Adam Philip Rhead. I am a Member of the Royal Institution of Chartered Surveyors (RICS) and a partner in the Planning and Development team of Gerald Eve LLP, Chartered Surveyors and Property Consultants.
- 1.2 I specialise in matters relating to compensation and compulsory purchase and land assembly, advising both claimants and acquiring authorities.

## **2 The Property**

- 2.1. Bellaview Properties Limited ("**BPL**") is the freehold owner of land known as 239 Horn Lane, London W3 9ED, registered at the Land Registry under Title Number AGL22605 ("**the Property**"), located on the western side of Horn Lane, Acton and adjoining and to the south-east of the Great Western Mainline ("**GWML**") railway. The Property comprises a warehouse building, offices, storage yard, parking, and hardstanding, with vehicular and pedestrian access off Horn Lane.
- 2.2. The Property is let on a lease to Saint-Gobain Building Distribution Limited – now STARK Group, trading as Jewson ("**STARK**") – dated 16 March 2009 for a term of 9 years commencing on 10 April 2016. STARK occupies the Property as a Jewson trade counter depot.
- 2.3. BPL's sister company, Builder Depot Limited ("**BDL**"), is an independently owned builder's merchants operating throughout branches across London. BDL currently has a depot in West Hampstead ("**14 Blackburn Road**") but may need to relocate due to a redevelopment; if this need arises the business may take occupation of the existing building at the Property or of a new building constructed as described below.
- 2.4. On 1 December 2022, BPL and BDL applied for full planning permission to the London Borough of Ealing (reference 225069FUL) to redevelop the Property, as well as other land within BPL's ownership for a mixed use residential led scheme with commercial space to the ground floor ("**BPL's Scheme**"). On 19 July 2023, London Borough of Ealing's Planning Committee resolved to grant planning permission subject to completion of a section 106 agreement and Stage II referral to the Greater London Authority.

## **3 The Draft Order**

- 3.1. Network Rail Infrastructure Limited ("**NRIL**") has applied, pursuant to section 6 of the Transport and Works Act 1992, for an order under section 1 and section 5 of that Act. It seeks powers in respect of the Property via the draft Network Rail (Old Oak Common Great Western Mainline Track Access) Order ("**the Draft Order**"), submitted on to the

Secretary of State on 17 April 2023. The Explanatory Note to the Draft Order states that:

*“This Order confers powers on Network Rail Infrastructure Limited acquire compulsorily rights over land and to use land temporarily, as well as to undertake certain ancillary works, all in connection with the development of a temporary road rail vehicle access onto the Great Western Main Line railway to enable delivery of the Old Oak Common station and provision of a permanent maintenance access point for road rail vehicles onto the Great Western Mainline.”*

- 3.2. NRIL’s proposed temporary use of the Property is in connection with the carrying out of works at Old Oak Common Station. The works include construction of a temporary Road Rail Access Point (“**RRAP**”) and a permanent RRAP to the GWML railway for future maintenance purposes. The temporary RRAP would be across the Property. The permanent RRAP would be located on the adjoining triangle of land to the west of the Property (“**the Triangle Site**”).
- 3.3. The rights sought by the Draft Order relate solely to the Property although I understand that, to secure the permanent access referred to in the Draft Order, NRIL also needs to reach agreement with The Crown Estate as owner of the Triangle Site to the west of the Property.
- 3.4. The Draft Order seeks rights for NRIL to:
  - a) take temporary possession of the entirety of the Property for a temporary construction compound;
  - b) Remove any buildings and vegetation from that land;
  - c) Construct temporary works (including the provision of means of access) and buildings on that land;
  - d) Temporarily occupy and use airspace to operate a crane;
  - e) Construct any permanent works specified in relation to that land in column (3) of the Schedule 2 or any mitigation works on that land.
- 3.5. The effect of the temporary rights sought would be that NRIL would take exclusive occupation of the Property (including the warehouse and other buildings and land) for the duration of its works (minimum of six years). In addition, NRIL would have a permanent right of way over Plot 3 and the right to demolish the existing building.

## 4 Consequences of the Draft Order

- 4.1 The consequences of the Draft Order, if made, would be that:
  - a) STARK would be dispossessed of its lease and therefore of the Property.
  - b) The implementation of BPL’s Scheme will be delayed at least six years.
  - c) BPL would be unable to let to another tenant if, for any reason, STARK intended to vacate on lease expiry.
  - d) BPL would lose the option of taking occupation of the Property as a relocation site for 14 Blackburn Road if the latter is compulsorily acquired by London Borough of Camden for the re-development of the O2 Centre, Finchley.
- 4.2 Further, powers would also be available to remove buildings and hardstanding areas but there is nothing in the Draft Order or the deemed planning permission to suggest that NRIL needs to clear the Property. NRIL is entirely dependent on agreeing a private treaty purchase of the Triangle Site to deliver a permanent RRAP.

## 5 Compensation provisions

- 5.1 The Draft Order makes provision for the rules of compulsory purchase compensation to apply, with adaptation where necessary, to the acquisition of land and rights.
- 5.2 NRIL has identified the land acquisition costs associated with the Draft Order to be £7,413,206. No breakdown or methodology has been provided in the Statement of Case other than to state that the costs have been estimated by its advisers. I consider this estimate of the land acquisition costs to be inadequate considering the circumstances.
- 5.3 I have assessed the compensation due to BPL and STARK based on the likely scenarios that could occur in the 'no-scheme world'. These are as follows:
- a) BPL unable to grant new lease to STARK;
  - b) No new lease granted to STARK and BPL redevelops;
  - c) STARK vacates on expiry of the lease or earlier surrender – i.e. 'walks away'; and
  - d) BPL obtains possession on expiry of STARK's lease and leases the Property to BDL.

## 6 Summary of estimates

- 6.1 For the scenarios described in paragraph 5.3 a) and b), which are the most likely scenarios in my opinion<sup>1</sup>, my estimates of land acquisition costs are more than £10,000,000. This is before the cost of the Triangle Site is considered and this can only be acquired by agreement.
- 6.2 In conclusion, NRIL's land acquisition cost estimate is insufficient and raises doubt as to NRIL's ability to deliver the scheme, particularly as the Triangle Site can be only acquired by agreement.

## 7 Public Interest Case and Conclusion

- 7.1 The key principle, stated in paragraph 2 of Guidance on Compulsory purchase process and The Crichel Down Rules ("**the Guidance**") is that "*a compulsory purchase order should only be made where there is a compelling case in the public interest.*"
- 7.2 The minister will therefore consider the balance of the benefit – i.e. the 'public interest' case – of the order against the consequences and prejudice to owners and occupiers of the interests or rights proposed to be acquired.
- 7.3 I consider NRIL's land acquisition cost estimate is insufficient, particularly as compulsory purchase powers cannot be exercised against The Crown Estate for the purpose of delivering the permanent RRAP.
- 7.4 In terms of other key considerations:
- a) NRIL have not taken reasonable steps to acquire by agreement. NRIL's requirements have been unclear and this has resulted in protracted negotiations. BPL has led discussions on site-sharing to mitigate the impact of NRIL's scheme.

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<sup>1</sup> See paragraph 7.57 of Adam Rhead's Proof of Evidence

- b) There are alternative means by which temporary and third permanent access to the GWML can be secured other than interfering with the Property and other third-party interests.
- c) BPL will lose the option of relocating the BDL business at 14 Blackburn Road to the Property if this branch is compulsorily acquired. This puts 65 jobs needlessly at risk.
- d) it is likely that it will not be possible for BPL to redevelop the Property for at least six years. BPL will have to make a fresh planning application as BPL's Scheme cannot be implemented due to NRIL's permanent access easement (Plot 3).
- e) NRIL's proposal to take 'full-time' temporary possession of the Property is unjustifiable when considered alongside its proposed infrequent use of the RRAP over the course of Saturday nights from 10pm to 10am Sunday.

7.5 I therefore conclude that the Order should not be made.