



## **TRANSPORT AND WORKS ACT 1992**

### **TRANSPORT AND WORKS (INQUIRIES PROCEDURES) RULES 2004**

### **THE NETWORK RAIL (LEEDS TO MICKLEFIELD ENHANCEMENTS) ORDER**

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#### **PROPERTY & OPEN SPACE CERTIFICATES**

#### **SUMMARY PROOF OF EVIDENCE**

**Benjamin Thomas**

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|--------------------|--|
| Document Reference | CD 7.16                                      |
| Author             | Benjamin Thomas on behalf of<br>Network Rail |
| Date               | February 2024                                |

**The Network Rail (Leeds to Micklefield Enhancements) Order**

*CD 7.16 Property & Open Space Certificates - Summary Proof of Evidence*

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## **1 INTRODUCTION**

- 1.1.1 My full name is Benjamin Wilson Thomas. My name is Benjamin Thomas, I am a salaried partner at Carter Jonas LLP. I am a member of The Royal Institution of Chartered Surveyors (RICS) and an RICS registered valuer.

## **2 POWERS SOUGHT BY NETWORK RAIL**

### **2.1 Purpose of the Order**

- 2.1.1 The purpose of the Order is to enable Network Rail to deliver the Scheme. It would authorise Network Rail to carry out and maintain the Authorised Works to facilitate the delivery of the Scheme and realise the full benefits of the wider TRU.

### **2.2 Powers to acquire land and rights**

#### Summary of Order Powers

- 2.2.1 The Order includes several articles giving powers to Network Rail to acquire or use land on a permanent or on a temporary basis and/or to acquire rights in land.
- 2.2.2 A Schedule of Land and Rights is appended to my main proof of evidence at Appendix A containing a summary of the powers being sought over each individual plot of land.

#### Permanent Acquisition Powers

- 2.2.3 A summary of the principal powers that directly impact landowners within the Book of Reference (NR08) are set out in section 3.2 of my main proof. This section also contains a full list of the permanent acquisition powers being applied for.
- 2.2.4 The Order in particular includes powers to permanently acquire land in Article 22. The powers confer on Network Rail the ability to compulsorily acquire land within the limits of deviation for the Authorised Works.

#### Temporary Access and Possession Powers

- 2.2.5 Article 28 of the Order authorises Network Rail to take temporary possession of land in specified instances.
- 2.2.6 Powers of temporary possession are not limited to the Scheduled Works and extend more generally to the Authorised Works.
- 2.2.7 Furthermore temporary powers are sought in relation to the work which will be consented via separate planning permission.

## Diversion of Public Rights of Way (PRoW) & Acquisition of New Rights

- 2.2.8 The Order provides for the stopping up of five level crossings, with public rights of way over each level crossing to be extinguished with new public rights of way for four of the level crossings.
- 2.2.9 Article 25 of the Order contains a right for Network Rail to acquire easements or other rights over any land which it is authorised to acquire under Article 22.

### Summary

- 2.2.10 If approved, the Order will therefore include powers to enable Network Rail to take land on a permanent and temporary basis, impose rights on land, extinguish rights, undertake works affecting the highway and allow entry for survey and tree lopping purposes. The rights set out in the Order are all required to facilitate delivery of the Scheme.

## **2.3 Network Rail Approach to Land Acquisition**

- 2.3.1 Network Rail will seek to minimise the amount of permanent land acquired under the Order. As Network Rail moves through to detailed design, it is likely that the land required for compulsory acquisition will be reduced. Network Rail will not take more land than is required for delivery of the Scheme and it will restrict itself to temporary use or acquisition of rights where those are sufficient to deliver the Scheme.
- 2.3.2 In general, the intended approach will be to initially occupy land on a temporary basis, permanently acquiring land once final acquisition boundaries are known or following construction of the Scheme.

## **3 COMPENSATION PROVISIONS**

- 3.1.1 Where Network Rail permanently acquire land or rights under the Order, the Compensation Code will apply subject to the modifications set out in Schedule 11 of the Order as summarised in paragraph 4.1.5 of my proof of evidence.
- 3.1.2 The Compensation Code provides the ability to claim for the market value of land taken, injurious affection/severance, disturbance, loss payments and professional fees.
- 3.1.3 Where land is used temporarily, compensation will be payable in accordance with article 28 of the Order (*Temporary use of land for construction of works*). Compensation will be payable for any loss or damage arising from the exercise of that power.

- 3.1.4 In the event compensation cannot be agreed, either party can make a reference to the Upper Tribunal (Lands Chamber).

## **4 LANDOWNER ENGAGEMENT AND NEGOTIATIONS TO ACQUIRE PROPERTY & RIGHTS**

- 4.1.1 As part of the process of consultation and engagement, Network Rail consulted and sought to engage with those parties who held land interests that had the potential to be included within the Order, presenting an opportunity for discussions on our proposals from an early stage in the process.

## **5 HUMAN RIGHTS**

- 5.1.1 Article 1 of the First Protocol to the European Convention on Human Rights provides for the protection of a person's property. However, the article also provides for the State to enforce laws including those which deprive a person of his possessions subject to that being compelling in the public interest, striking a fair balance and being provided for by law.
- 5.1.2 The land and rights to be acquired which are included in the Order have been carefully considered and reviewed as part of the application process. All reasonable efforts have been undertaken by Network Rail to reduce the impact of the Scheme with the land and rights contained within the Order being only those necessary to meet the construction and design requirements of the Scheme.
- 5.1.3 It is considered that there is a compelling case in the public interest for the Order powers sought, and that the railway purposes for which the powers are sought are sufficient to justify interfering with the human rights of the landowners proposed to be affected.
- 5.1.4 The Order, including the requirement to pay compensation, strikes a fair and proportionate balance between the private interests of the landowners and the public interest in securing the benefits of the Scheme to the national railway network. Therefore, the interference with Convention Rights is considered to be justified in the public interest.

## **6 OPEN SPACE**

- 6.1.1 Powers of acquisition are sought over six plots in the Order which may be considered 'open space'. These are plots 2-001, 2-002, 2-003, 2-004, 7-010 and 7-016B as shown on Sheets 1 and 4 of the Works and Land Plans (**CD 1.09.01** and **CD 1.09.04**).

6.1.2 For plots 2-001 to 2-004, Network Rail applied for a certificate under section 19(1)(b) of the ALA Network Rail received notice on 25 September 2023 that the Secretary of State was minded to grant the certificate.

6.1.3 With regards to plots 7-010 and 7-016B, Network Rail have applied for a certificate under section 19(1)(b) of the ALA.

## **7 CONSIDERATION OF OUTSTANDING OBJECTIONS**

### **7.1 Summary**

7.1.1 A total of 136 known parties hold a legal interest in the land affected by the Order. From these interested parties Network Rail has received 8 objections and 2 representations (with one objection and one representation having been withdrawn).

7.1.2 There are a further 21 objections and 5 representations from parties with no legal interest in land included in the Order.

7.1.3 There have also been 3 letters of support for the Scheme.

7.1.4 In my main proof of evidence, I set out a detailed summary of the objections and representations, with the outstanding objections listed below:

*Table 1: Outstanding Objections*

| <b>Reference</b> | <b>Party</b>            | <b>Key Topics</b>  | <b>Response</b>   |
|------------------|-------------------------|--|---|
| Objection 30     | Jean Makin              | Access to Field during temporary works                                 | Commitment provided to main access to field.  |
| Objection 03     | Stephen Nightingale     | More information required on Austhorpe Lane Works                      | Further detail provided to objector of the works involved.  |
| Objection 06     | Ashdale Land & Property | Permanent Acquisition of Private Access Track in their ownership       | Letter sent confirming willingness to avoid use of permanent acquisition powers, subject to negotiation of a temporary licence. |
| Objection 07     | Leeds City Council      | Justification of Powers Sought<br><br>Acquisition of Public Open Space | Please see section 8.6 of main proof.   |

|              |  |  |   |
|--------------|--|--|---|
| Objection 09 | Makins Enterprises Limited & Chris Makin       | Removal of Brady Farm Bridge & associated water pipe.  | Please see section 8.7 of main proof.   |
| Objection 19 | John Chapman, Andrew Chapman and David Leeming | Objection to new right of way sought, due to claimed sterilisation of future development land. | Network Rail do not consider this new right would sterilise any future development, with the route being along the edge of a field boundary alongside an existing right of way. |

## 8 CONCLUSIONS

- 8.1.1 The land and rights to be acquired and included in the Order have been carefully considered and reviewed, with the powers applied for being necessary to deliver the Scheme.
- 8.1.2 Of the remaining objections I am satisfied that Network Rail have sought to minimise any adverse impacts of the scheme and the compensation provisions within the Order will ensure that the objectors are compensated in accordance with the Compensation Code or as otherwise provided for in the Order.
- 8.1.3 In conclusion, I consider there to be a compelling case in the public interest for the Order powers sought, justifying the interference with the human rights of the landowners proposed to be affected.
- 8.1.4 My proof of evidence includes my declaration as an expert witness which also applies to my summary of my evidence.

Signature & Date



Benjamin Thomas

Date: 2<sup>nd</sup> February 2024