

Our reference ELSEM/VOLOT/43283-4013

29 November 2023

FAO The Inspector, c/o The Programme Officer
By email: joanna.vincent@gateleyhamer.com

Dear Sir

**Transport and Works Act 1992
Network Rail (Old Oak Common Great Western Main Line) Track Access Order (Order)
239 Horn Lane, Acton, London W3 9ED**

Thank you for your email dated 24 November 2023 and your views on the proposed modifications to the draft Order and the possible need for additional consultation as a result of the modifications. Our views are set out as follows.

Modifications to the Order

We note your suggestions as to how site sharing could be addressed in the Order.

However, the site sharing arrangements, which have been negotiated with Bellaview in parallel with the inquiry process, are detailed. They provide for a phased sharing of the Property to give Network Rail the rights it needs, and provide Bellaview with maximum flexibility to allow it to operate a builders merchant business and, when it is ready to do so, to implement and build out any mixed-use planning permission that is ultimately granted in respect of the depot site.

Accordingly, the draft Option Agreement, which covers site sharing provides for:

1. Scenario 1: Network Rail to have exclusive possession of certain areas of the Property and for other areas to be shared with Bellaview while Bellaview operates a builder's merchant from the warehouse; and
2. Scenario 2: the areas of exclusive and shared possession will be amended when Bellaview's proposed mixed use development commences and they require shared use of a bigger area.

In addition to the above, Bellaview will have an option to grant Network Rail rights over its adjoining property (shown coloured grey and hatched on Land Plan 11) in case Bellaview require additional parking space on Plot 4 in relation to their proposed development of the Property. In this scenario, Network Rail's rights to park vehicles on Plot 4 will be released.

We attach plans, which have been discussed but not finally agreed with Bellaview. They show how the Property is intended to be shared in the scenarios outlined above. Land to be shared is shown hatched, whereas land which Network Rail will have exclusive possession of is shown coloured green (but not hatched). An additional area which Bellaview may grant Network Rail's rights over, is shown coloured grey and does not form part of the Order.

In our view the level of detail required is not suitable for inclusion in the Order. Our experience of dealing with the Transport Infrastructure Planning Unit at the Department for Transport suggests that the level

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of detailed drafting that would be required would be too significant a departure from the model clauses and from previous orders to be acceptable to the Secretary of State.

Instead, Network Rail proposes that the Order grants Network Rail's powers to:

- take temporary possession over land shown coloured green on the Land Plan (the exact extent of which we hope to agree with Bellaview during the next few days); and
- to create permanent rights over the land shown coloured pink (the extent of which has now been agreed between the parties).

The draft agreement between Network Rail and Bellaview that we have drafted is an Option Agreement. It provides that, if the Order is granted, Network Rail will acquire the temporary rights pursuant to the Order and provides Bellaview with two options to acquire the rights it needs in each of Scenario 1 and Scenario 2 described above with Network Rail reserving the rights that it needs for its project.

If an Option Agreement cannot be agreed with Bellaview before the close of the inquiry, Network Rail will put in place a Unilateral Undertaking, enforceable by Bellaview, which will secure site sharing arrangements on the terms described above, subject to any alternative agreement that is entered into with Bellaview.

We trust that this approach will provide the Secretary of State with sufficient comfort in terms of the enforceability of the proposed site sharing arrangements, while ensuring that the Order presents certainty to anyone reading the Order about the powers it provides. However, please let us know should you have any concerns about this approach.

Additional Consultation

In terms of additional consultation, we note that section 13(4) of the Transport and Works Act 1992, provides that:

13 (4) Where the Secretary of State proposes to make an order which gives effect to the proposals concerned with modifications which will in his opinion make a substantial change to the proposals –

(a) he shall notify any person who appears to him to be likely to be affected by the modifications,

(b) he shall give that person an opportunity of making representations to him about the modifications within such period as he may specify in the notice; and

(c) he shall before making the order consider any representations duly made to him.

Accordingly, the question for the Secretary of State is whether the modifications would make a "substantial change to the proposals".

It is Network Rail's submission that they would not. The modifications to the draft Order *reduce* the extent of land over which Network Rail seeks powers and, in Network Rail's view, in these circumstances the change should not/cannot be regarded as substantial. Common sense dictates that a substantial change is one that would have a significant increased impact on third parties but that would not be the effect of the modifications to the draft Order; in fact, the opposite is the case.

In relation to the application for deemed planning permission and development to be authorised by the Order, the revised Order will seek permission for more restricted development than that originally applied for; namely use of the Order Land "as a construction compound, including provision of a ramp" to be regulated by revised conditions. The original application did not propose conditions limiting the hours of operation of Network Rail's activities on the Order Land or restrictions on the number of days on which the activities may be carried out. The revised conditions will provide very clear restrictions on how Network Rail's activities may be carried out thereby significantly reducing the potential impacts of the activities.

While shared use of the Order Land is now proposed as described above, this would not be secured by the draft Order. The sharing of the Order Land would, in Scenario 1 described above, only be between

Network Rail and Bellaview. Any activities that would be undertaken by Stark (Jewson) would only be as Bellaview's tenant and would need to respect the site sharing arrangements that will be in place between Bellaview and Network Rail.

Activities undertaken by Bellaview/Stark in Scenario 1 would be consented by the existing planning permission that governs the builders merchant activity at the Property.

In site-sharing Scenario 2, Bellaview's residential development works would be permitted by their planning permission. That planning permission includes a condition requiring a Construction Management Plan to be approved by the local planning authority before the relevant development commences. Network Rail's draft deemed planning application includes conditions requiring environment management plans and traffic management plans to be approved by the local planning authority.

Accordingly, in Network Rail's view, the revised planning conditions and description of activities which may be undertaken on the Order Land pursuant to the draft Order and deemed permission, do not constitute a *substantial change* to the proposals that would require further consultation. In fact, it is difficult to envisage what the Secretary of State would be consulting on when the extent of powers sought is now significantly less than those applied for originally.

In summary, Network Rail does not consider that further consultation is necessary or appropriate because:

1. The modifications to the draft Order reduce the extent of the Order Land and the powers that Network Rail seeks are therefore less than in the original application.
2. The application for deemed planning permission and associated conditions have been amended to restrict, not expand, the terms on which the proposed activities may take place. Bellaview's activities are consented by their own planning permission and will be regulated by conditions attached to that permission.
3. The site-sharing arrangements are a voluntary restriction by Network Rail as to how the powers under the Order, if made, will be exercised which will be enforceable by Bellaview either pursuant to an agreed Option Agreement or a Unilateral Undertaking provided by Network Rail.

Should you consider that further consultation *is* required, we ask that Network Rail is given an opportunity to address you about the length of period for any consultation which you deem necessary.

Yours faithfully



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