**TRANSPORT AND WORKS ACT 1992**

**TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004**

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

**NOTE RESPONDING TO BELLAVIEW'S COMMENTARY ON NETWORK RAIL'S RISK ASSESSMENTS (UNDATED)**

**10 JANUARY 2024**

1. **INTRODUCTION**
2. On 17 April 2023 Network Rail Infrastructure Limited (**Network Rail**) submitted an application (**Application**) to the Secretary of State for Transport to make the Network Rail (Old Oak Common Great Western Mainline Track Access) Order (**Order**).
3. On 23 June 2023 the Secretary of State made a decision to hold an inquiry into the Application. The Inquiry was subsequently opened on 14 November 2023 and continued on the 15th, 16th, 21st and 22nd November 2023.
4. Following the Inquiry, on 5 January 2024, Addleshaw Goddard instructed on behalf of Network Rail received a document from Bellaview Properties Limited (**BPL**) entitled ‘Commentary on Network Rail's Risk Assessments’ (**BPL's Commentary**). A copy of this document has also been shared with the Inspector.
5. BPL's Commentary provides observations in relation to the risk assessments described in the oral evidence of Mr Fleming during the Inquiry and shared with BPL on 21 November 2023 (**Risk Assessments**). It raises a number of concerns and some of these are responded to in the paragraphs below. Such response is provided having sought express instruction from Mr Fleming on the issues raised. If the Inspector wishes to have Mr Fleming to speak to this document, then Network Rail will of course make him available to do so.
6. By way of preliminary, general observation, we note that the Risk Assessments reflect thinking at the time of their drafting, which has in various respect been overtaken following provision of further information to Network Rail, as well as negotiations with the individual parties involved, including BPL. As such, they do not reflect the current, up-to-date position, which is as stated in the evidence of Mr Fleming and Mr Ford, as provided to the Inquiry.
7. This document is not intended to be an exhaustive response on all matters and deals only with certain points where it is considered appropriate or helpful to respond in writing. Where a specific point has not been dealt with, this does not mean that the point is accepted.
8. **Responses to points raised in the BPL's Commentary**
9. As paragraphs in BPL's Commentary are not numbered, the individual points have been responded to by way of the following table, to assist the Inspector in understanding which statements are being responded to.

Introduction

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| **BPL's Commentary** | **Network Rail's comments** |
| This note provides BPL’s commentary in relation to the Network Rail (**NR**) risk assessments described in the oral evidence of Mr Fleming for NR and made available to BPL on 22 November 2023, following the completion of Mr Fleming’s oral evidence on 21 November 2023. | The Risk Assessments were sent to Norton Rose Fulbright, acting for BPL, on 21 November 2023, not 22 November 2023. |
| The Risk Assessments comprise three documents, which appear to summarise the project promoter's thoughts on various options for trackside access at the time at which these were produced. | This statement is correct. As per the observation above, the Risk Assessments reflect thinking at the time of drafting and do not reflect the most up-to-date position. That position is reflected in the oral evidence given to the Inquiry by Mr Fleming and Mr Ford, and also their Proofs of Evidence. |

Document #1 RS RRAP access v3 ("prepared following a site visit to Hitachi on 12/8/2023. The document was completed on 02/09/2022")

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| **BPL's Commentary** | **Network Rail's comments** |
| We assume the site visit to Hitachi was in August 2022, otherwise the chronology does not make sense | This statement is correct. |
| We understand the document was produced by SRSA (Southern Rail Systems Alliance/Colas). | This statement is correct. |
| The document is understood to identify options for access to the main and relief lines for the Rail Systems Project. 6 options are identified for access to the main lines:   * Jacobs Ladder * Jewson’s Yard (Permanent) * Jewson’s Yard (Temporary) * North Pole Depot (OOC Lane) * North Pole Depot (Mitre Way) (OPTION 1) (PREFERRED) * North Pole Depot (Mitre Way) (OPTION 2)   The clear indication is that there is a preferred option and a second preference option to access the main lines. In relation to the relief lines, the same language is used with an “OPTION 1 (PREFERRED)” and an “OPTION 2” also identified. What is clear is that Jewson’s Yard (Temporary) was not a preferred or second preference option when the document was prepared. | The document uses the word "preferred" where there are two options at the same location (North Pole (Depot) Mitre Way, and Acton Yard). Where the document states that an option is "preferred", it is referring to an option preferred by SRSA of the two options available, not the preferred RRAP solution overall.  Regardless, the Mitre Way RRAP is already in use. This document was put together to establish additional access requirements as North Pole Mitre Way is not sufficient in itself (as agreed by Mr Gallop during his oral evidence). |
| The document identifies “pros” and “cons” for each option. We have summarised below the data relevant to Jewson’s Yard (Temporary) and (Permanent), North Pole Depot OPTION 1 (PREFERRED), North Pole Depot OPTION 2, and North Pole Depot (OOC Lane). It is assumed that the reference to “Jewson’s Yard (Permanent)” is a reference to the proposed permanent RRAP on the Crown land / plot 1. It is assumed that the “North Pole Depot (OOC Lane)” option is equivalent to the “western RRAP” at the Hitachi Depot referred to in evidence at the Inquiry, and seen on the site visit. Mr Fleming confirmed on the site visit that the western RRAP was the one that SRSA/Colas rail had assessed. | This statement is correct. |
| As can be seen, the document identifies two positives in relation to the two Jewson’s Yard options:   1. Currently limited mains access in this location and; 2. Existing large yard can be modified (temporary access only).   The first of these does not appear to specifically relate to the proposed Rail Systems Project, but is rather a statement of fact that there is limited mains access in this location. Whilst this is relevant to the permanent RRAP proposal, is consistent with NR’s evidence, and its justification for needing a permanent RRAP, importantly it does not relate to the Rail Systems Project and provides no justification for the temporary RRAP. Other options considered do specifically consider the suitablilty of the option for the Rail Systems Project, for example, the “pro” for access at the OOC Station RRAP (not summarised above) specifically identifies “close to site of works”, and the North Pole Depot (Mitre Way) options (summarised above) “Provides low mileage access”. | This analysis is incorrect. The reference to ‘access’ is in the row for the temporary RRAP specifically required for the Rail Systems Project. As described in the Statement of Case submitted on behalf of Network Rail, as well as Mr Ford's Proof of Evidence, there is limited mains access in this location, which can be utilised for the Rail Systems Project. Therefore, the proposed temporary RRAP is required.  Strategic need for the RRAP is addressed in detail in the evidence of Mr Fleming and Mr Ford, and has not been disputed. Mr Gallop expressly agreed a further temporary RRAP would be required in addition to the existing Mitre Way RRAP (referred to as Barlby Road). |
| In terms of the second benefit, the “large yard”, NR has modified its requirements during the Inquiry such that the majority of the yard and the entirety of the warehouse area is no longer required, and therefore this “pro” is no longer relevant | Yard space is still available, albeit reduced. Therefore, it is still relevant and remains a 'pro'. |
| In relation to North Pole Depot (Mitre Way) (OPTION 1 (PREFERRED) and OPTION 2), the document notes this location would provide low mileage access, and use the existing compound; in relation to OPTION 2 only, the document goes on to refer to two futher “pros”: efficiencies in using existing shed, and low mobilisation costs. This option is identified as having more “pros” than any of the other mains options (4 “pros” in total), and more than the 2 “pros” (neither of which are now relevant as referred to above) identified in respect of Jewson’s Yard (temporary). | This option is being used by Network Rail, as discussed during the Inquiry (where it was referred to as ‘Barlby Road’). However, as agreed during the Inquiry (and confirmed by Mr Gallop in his oral evidence) it is insufficient on its own for delivery of the Rail Systems Project and can only work in combination with another access point. |
| Impact/interface is noted as a “con” for North Pole Depot (OOC Lane) [North Pole Operations] and (Mitre Way) Option 1 [may conflict with third parties], but there is no mention of conflict with an operational builders depot, BPL’s development construction site, or residential neighbours in respect of the Jewson’s Yard sites. This is a significant omission | At the time of preparation of the Risk Assessment, it was Network Rail's proposal to take full extent of the builder's yard. As such, interface with builders' depot was not considered/addressed in the Risk Assessment.  Impacts on residential amenities have been discussed during the inquiry by Mr Fleming and Mr Field. |
| Taking an overview of the “pros” and “cons”, it seems clear that more “cons” and fewer “pros” were identified in respect of the Jewson’s Yard sites than there were for the three North Pole Depot sites. Moreover, a number of the “cons” are common across the sites. | It is simplistic and wholly inappropriate to simply ‘count up’ the number of pros and cons; the number itself should not be taken as a deciding factor. This is because there are issues of ‘weight’ to consider; some pros/cons have greater impact (and should therefore carry greater weight) than others. |

Document #2 Rail Systems Mains Access Options (produced on 15/11/2022)

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| This matrix considers alternative options to provide access to the “Mains” for the Rail Systems Project.  For conciseness and relevance to the Inquiry we have only considered the entries related to Do Nothing, Jewson’s, and OOC Lane.  Do Nothing – i.e. no new RRAPs are created and existing RRAPs are used to deliver the Rail Systems Project. This is also the scenario that would transpire if the TWAO order sought by NR was not granted. In this scenario, a one-year delay in programme is expected, with the programme completing at Christmas 2030 (instead of Christmas 2029). This scale of delay was confirmed in the oral evidence of Mr Fleming. NR therefore proposes six-years of disruption to residents and BPL to save one year of programme on a project. This also assumes that there is no delay to HS2’s overall programme at OOC i.e. the 1 year programme delay in relation to the Rail Systems Project would have a nil effect on the public’s ability to interchange between the new HS2 OOC station and Crossrail station if the delivery of the OOC station project was also delayed by a year or more. | Dates for HS2 completion have been provided to Network Rail by HS2 and Network Rail is continuing to work to these dates. Network Rail cannot allow the Rail Systems Project to be delayed on the basis of an assumption of a notional/potential delay to HS2 elsewhere in the programme, which delay may not be realised.  As explained at the Inquiry, a one-year delay is considered to be the best-case scenario in the event that the Order is not made (dependant on getting agreements for Network Rail to change access and possessions). The delay may therefore be longer. However even a one year delay would result in significant cost impacts, reduced efficiency of delivery, and further damage to the reputation of the Rail Systems Project. |
| New RRAP at Jewson’s – could save one year of programme (if the programme is realistically extended so that the baseline finish is 2030, as should be the case for a do-nothing scenario). NR note that the probability of success of securing Jewson’s Yard is only average. Furthermore, they must secure access no later than September 2024, if they are to have the RRAP operational in January 2025 (unless NR can put in place an “accelerated process”). Ideally, it is stated, that the land would be available from mid-2024. If the RRAP is not operational in January 2025 then it is assumed that the one year time saving will not be realised. It is stated “no impact to programme if RRAP can be utilised from January 2025”. However, it would seem there is actually a very low probability of those timescales being met, for the reasons set out below, which in turn would mean no 1 year timesaving benefit compared to the do-nothing scenario.   1. The programme for determination of the order by the secretary of state: originally NR advised that they had assumed a determination in April 2024 which would have been circa 4 months from the close of the inquiry in late November 2023. With the close of the inquiry now 9 February 2024 it is assumed that the secretary of state’s determination is now anticipated circa the first week of June 2024. 2. The potential for legal challenge to any decision in favour of the order : A legal challenge pursuant to section 22 Transport and Works Act 1992 (**TWA92**) must be made within 42 days of the date of publication of the notice required pursuant to section 14(1)(b) TWA92. Assuming notice was published in early June 2024, it would mean a challenge period expiring in circa the third week of July 2024. If a challenge was made, noting that there is no requirement to obtain leave to bring the proceedings, it would mean the High Court hearing the case substantively in circa December 2024 without expedition, and possibly October 2024 with expedition (the Trinity Term ends 31.7.24 and the Michaelmas Term starts 1.10.24). There must be a risk that judgment would not be given *ex tempore*, meaning a further delay in waiting for judgment to be handed down in circa January 2025 without expedition, and circa November 2024 with expedition. This assumes that there is no appeal to the Court of Appeal or that leave to appeal is refused. If leave to appeal is sought and refused then an additional 2 weeks should be added pushing towards February 2025 and December 2024.      1. The service of notice : the draft order provides that NR must serve not less than 14 days notice before entering upon and taking temporary possession of land. If judgment is handed down in November 2024 or January 2025 then NR would not be able to take temporary possession until either later in those months, or depending on timing, December 2024 or February 2025. 2. Build period : if the period required by NR to construct the RRAP and ramp at Jewson’s Yard and establish the compound is circa 4 months without an “accelerated process” (based on possession from September to December 2024 with the RRAP utilised from January 2025), then if possession is obtained in December 2024 or February 2025, the RRAP will not be available until April 2025 or June 2025. | Pursuant to the provisions of the draft Order, Network Rail can use the Order Land for the purposes of the "development" and the "associated development" subject to a 14 days' notice (see Article 8 of the revised draft Order shared with the Inspector on 19 December 2023). As to operation of the RRAP, that can commence before full compound construction works are completed. Therefore, Network Rail wholly refutes the suggestion that “…there is actually a very low probability of…” the relevant timescale being met. In the event that the Order is made in June 2024 (and of course it may be made earlier), then there is significant leeway between then and commencement of operations in January 2025. Such period would even allow for the bringing and determination of legal proceedings, should such proceedings be brought. However, on the basis of a robust decision by the Secretary of State there is no reason to anticipate such proceedings. |
| New RRAP at OOC Lane – the possibility of achieving access is only considered to be a low and very low probability, but it is not clear what this is based on, and whether this was informed by the seemingly predetermined official DfT view as Mr Sinclair referred to in evidence. There also appears to have been a lack of awareness of the existing lease and sublease rights in the leases from DfT to Agility Trains, and Agility Trains to Hitachi, to secure the co-operation of Hitachi, meaning that many of the concerns relating to shared access could be readily resolved through appropriate activation of those contractual rights. | The assessment of probability was not pre-determined but based on conversations held by Network Rail/the Alliance with HS2 and Hitachi. Mr Fleming and Network Rail were aware of the relationship between Hitachi and Agility Trains at the time of these conversations. Mr Fleming spoke to Hitachi as the operator of the depot from a logistics perspective and it was indicated that they were informing Agility of these conversations.  The mitigation measures proposed in the assessment were discussed in the Inquiry. Access from Wormwood Scrubs/OOC Lane remains wholly uncertain due to the HS2 utilities programme of work to lower OOC Lane, and also HS2’s construction of the reconfigured access road. Access from the east of North Pole Depot has not been able to be resolved with Hitachi and issues remain for access. The interfacing between access, depot operations and other HS2 works imparts limitations of the access to any RRAP at this location. |
| It is noted that the document also includes “pros” and “cons” with one of the “cons” for the OOC Lane RRAP being “significant interface & risk associated between live depot and construction works”. It is noted the NR have not included, in relation to the New RRAP at Jewson’s, any risk associated with a live builders’ merchant, or the construction of the BPL development. Although these are both now risks that seem to be acceptable to NR. | Due to depot operating hours, there is a significant interface between North Pole Depot operations and the Rail Systems Project activities. Any interface with the builders' depot and/or BPL's development is very significantly reduced in comparison, as no works would take place during Network Rail's proposed operating hours. As discussed during the Inquiry, the majority of Network Rail's operations associated with the Rail Systems Project are proposed to take place during nights/weekends. |
| Interestingly, no “con” repeating the “Requires land purchase/ agreement” is repeated in relation to the New RRAP at OOC Lane referred to in Document #1 above, although this continues to be a “con” in relation to the New RRAP at Jewson’s, namely “Land agreements not agreed.” “Proximity to local residents” is the other “con” identified in relation to the New RRAP at Jewson’s. In relation to the New RRAP at OOC Lane, one of the “pros” is “Access required already post Xmas 2026”. This suggests that NR have already agreed access via the North Pole Depot to access the brownfield site, which Document 1# advises was the “only source of offtrack access to brownfield site”, this interpretation is also confirmed by Document 3#. | No access through the Hitachi depot post-Christmas 2026 has been agreed with Network Rail. The reference to access being required post-Christmas 2026 is an interface between HS2 and Hitachi, the full details of which have not yet been agreed.  The nature of access to a brownfield site compared to possession-based working is not comparable. |
| Document #2 also notes in relation to the New RRAP Access at OOC Lane that if “access road is not available” (presumably a reference to the Hitachi North Pole Depot access from OOCL) possibly because of the bridge lowering works referred to in evidence as part of HS2, then “plant would need to be offloaded directly on public highway OOC Lane”. It is noted that this is not listed as a “con”, but instead a “compound impact”. | Negative impact is a "con". |
| It is also noted that this was something that NR said in evidence would not be acceptable to them (off-loading RRVs onto the highway) at Horn Lane. It is also queried why access to the Hitachi Depot from the west would not be available, given that the Hitachi representative Mr Tim Green stated on the site visit that it was a “legal requirement” for them to have two accesses including an emergency access. | Having checked with the BBVS Methods Manager (subcontractor responsible for the HS2 works), Network Rail is advised that the HS2 proposal for a new retaining wall (as part of the ground lowering works) and reconfigured North Pole Depot access road does involve closure of the North Pole emergency exit road for prolonged period of time. Network Rail is further advised that this has been confirmed in conversations with the HS2 team responsible for the delivery of the works. The exact agreements of this have not yet been finalised with Hitachi, but would prevent access to any RRAP from OOC Lane. |
| It is also stated in relation to the New RRAP at OOC Lane that a “mitigation to meet programme” if the western access from OOC Lane was not available would be to “agree road access with Hitachi through depot from East access.” | As discussed during the Inquiry, Network Rail has explored this possibility but has been unable to agree this. |

Document #3 OOC Lane/Hitachi Access Point Requirements Matrix (produced on 28/06/2023)

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| As presented in Mr Gent’s evidence, access from Old Oak Common Lane would be possible for larger vehicles. The Hitachi representative confirmed on the site visit that they had installed a sub-station with a 250-tonne mobile crane (typically a 16m rigid vehicle), which had to access via Old Oak Common Lane due to the height access restrictions from Mitre Way. The assumption that larger vehicles cannot access via the existing ramp therefore appears to be mistaken. | This proposition is rejected. In particular, it contradicts analysis done by HS2 on access from OOC Lane as provided in the Rebuttal of Mr Chris Ford. It remains HS2’s intention that the access road will be reconfigured by them to allow for the plant they require. |
| The Hitachi representative also stated that there is a legal requirement for them to maintain two accesses, the access from Old Oak Common Lane is used as an emergency access, and therefore any works to amend the access ramp will need to maintain suitable access for the emergency services, with any route suitable for fire tender access also likely to be suitable for construction vehicle access. | Conversations on this are ongoing and, as stated at the Inquiry, Network Rail’s understanding is that HS2 are looking to block off this access. |
| The document notes that the amended ramp would be operational from Christmas 2026 and would be suitable for access by all vehicles. | This statement is correct, HS2 will reconfigure the access road for the start of brownfield operations from Christmas 2026. This is two years later than required for the delivery of critical works under the Rail Systems Project. Further, the works to reconfigure the access would take place during the period January 2025-Christmas 2026, which period Mr Fleming identified during the Inquiry as being critical. Works to reconfigure the access road would prevent access from OOC Lane to a RRAP in Hitachi Depot during this period. |
| The document notes a risk of trains parking across the (western) level crossing, although this is not possible with Hitachi’s stated legal requirement to maintain the availability of the two accesses, including an emergency access at all times. | This is a risk which Network Rail has been advised of by Hitachi. Trains can and do park across level crossings (including both the western and eastern crossings) during the course of operations. |
| The document notes that agreement is required with Hitachi for “additional, early access above previous discussions”, in relation to the mains track access from July 2024 - December 2026, suggesting that access has already been agreed, for the brownfield site access from Christmas 2026 – Christmas 2028. The column relating to the brownfield site access does not state that access is still to be agreed in principle with Hitachi (as is the case with the mains track access), reference is only made in the browfield site column to requiring agreement with Hitachi on the interface with staff, vehicle movements, and OOC station works, which supports this interpretation. If agreement has therefore been reached with Hitachi in principle, with only details to be agreed, it suggests that access via OOCL to the adjacent railway corridor is agreeable to Hitachi in principle, and it is then simply a question of managing the interface in terms of the movement of people and plant, as part of an agreed protocol, as Mr Gent and Mr Gallop referred to in evidence, and as appears to be suggested will be required (and no suggestion that a solution cannot be reached) in relation to the brownfield site access. | Brownfield access is not comparable with possession access due to the different times in operation and the shorter durations of access in possessions. Which, in turn, means that delays cannot be accommodated to Network Rail's movements.  HS2 are in control of arrangements. The wider principle of access via OOC Lane in certain scenarios is acceptable to Hitachi. However, logistically, it would not work for Network Rail with possession arrangements.  Even if agreements could be reached, the aforementioned issues around the access road and closures due to HS2 works mean that the access cannot be guaranteed.  It is simplistic to talk in terms of ‘managing interface’ for the purposes of Network Rail possessions undertaken from a new RRAP within the Hitachi depot. As stated at the Inquiry, such interface would be extremely complex and would inevitably result in risk, delay, and wasted expense. |
| The document notes that the existing track cant would need to be checked to confirm the feasibility of a RRAP in this location. We understand from comments made by Mr Fleming on the site visit that this check has not been undertaken. The document suggests that track cant would be acceptable when accessing the realigned tracks between Christmas 2026 and Christmas 2028. Track cant has not been identified as a constraint for western RRAP in any evidence presented by NR at the Inquiry. | It is correct that this check has not been carried out, the reason being that other issues have meant that this RRAP solution could not be progressed. The issue of track cant has not been raised at the Inquiry by Network Rail as this is not something Network Rail relies on in its evidence. |
| We note that Appendix CF2 of Mr Ford’s proof (Best Practice Guide for Network Rail Infrastructure Access Points) states in Section 5.4 that wherever possible RRAPs should be located on straight and level track and lists a series of parameters relating to locations where RRAPs should not be located. Track cant is not listed. In any event, we assume that if the track cant is considered to be such a severe engineering constraint on access locations, that this would have formed part of the very initial sifting exercise alongside the consideration of level access, which has been undertaken. As such we conclude the cant is unlikely to preclude an access in this location. | The cant of a railway track is the rate of change in elevation (height) between the two rails. This is typically greater where the railway is curved. By locating a RRAP on straight and level track, this is ensuring that the cant is acceptable. As noted above, not having undertaken a check in relation to rail cant, Network Rail has not sought to rely on the issue for the purposes of the Inquiry |
| Document 3# states that additional laydown areas are required at HS2s Wormwood Scrubs depot in connection with a RRAP within the Hitachi depot accessing the mains. This was not part of NR’s evidence to the inquiry and we assume that it is no longer an issue. Evidence was given in relation to a new laydown / storage compound being created for NR at the North Pole depot, and on the site visit the area of this compound was seen being levelled and prepared between the old Eurostar building and the Barlby Gardens RRAP. | This is in relation to on/off loading vehicles directly on OOC Lane. Provision was sought to use land on Wormwood Scrubs to off load plant to mitigate against on/off loading vehicles on OOC Lane. The availability of this land was not able to be confirmed due to the HS2 utilities programme and access road works. The off loading of vehicles on OOC Lane remains a constraint on the access. |

1. **Conclusion**
2. BPL's Commentary concludes by suggesting that the Risk Assessments, in BPL's view, demonstrate the following matters (to which Network Rail respond as follows):
3. Network Rail's comparative exercises show that access via the North Pole Depot has more pros and fewer cons than access via Jewson's Yard.
4. As per the observations above, the number of pros and cons itself cannot be taken as a deciding factor. It is a question of 'weighting' for different considerations; some pros/cons have greater impact than other.
5. The position remains as per Mr Fleming and Mr Ford's evidence. Network Rail has considered a number of alternative options, including utilising existing RRAPs and evaluation other potential locations for new RRAPs and concluded that the Order Land is the only real and practical location for the Project.
6. Many of the concerns raised in relation to access from Old Oak Common Lane appear to have been misplaced when assessed in more detail, and/or with the benefit of clarification from Hitachi on the site visit.
7. This proposition is fundamentally rejected. The issues and uncertainty around Old Oak Common Lane access as presented in the Inquiry remain.
8. The maximum benefit of access via Jewson's Yard is a one year saving on a construction programme (without questioning the validity of HS2's currently projected opening year for their OOC Station).
9. This is not the 'maximum' benefit. A one-year delay is a conservative estimate, which assumes that major changes to the Old Oak Common station staging will be agreed. A one-year delay to commencement of HS2 services is the minimum impact which would result from a failure to make the Order; the delay may be greater.
10. Even in the event of one year’s delay, there would be an increase in costs associated with less efficient delivery and an increase in number of shifts and over a prolonged period of time, which may provide a longer-term negative impact to local residents.
11. The one-year programme saving (the only tangible benefit of using the Jewson's Yard site) is only achievable if NR secures access by September 2024 (or can accelerate its programme after that date so that the RRAP can be utilised from January 2025). The probability of this programme being met is extremely low given the delays in the inquiry process, should a legal challenge be made to the granting of the order, the time period required to obtain temporary possession pursuant to the order, and the build period for the RRAP/ramp/ compound, therefore even if the order is granted, it is likely that there would not be any time saving compared to the do-nothing scenario).
12. Pursuant to the provisions of the draft Order, Network Rail can use the Order Land for the purposes of the "development" and the "associated development" subject to a 14 days' notice (see article 8 of the revised draft Order shared with the Inspector on 19 December 2023). As to operation of the RRAP, it can commence before full compounds works are completed.
13. It is simply incorrect that "the probability of [the] programme being met is extremely low". A positive decision to make the Order (whether in June 2024 or before) would comfortably enable the RRAP to come into use on schedule. Such timetable would even allow for legal challenge.
14. Further, there are benefits associated with the RRAP as compared to the do-nothing order beyond the programme, this includes reduced operational costs and provision for the access to the Permanent RRAP at Jewson's.
15. The extremely limited potential for a one-year programme saving must be considered in the context a) of the likelihood of the project completion date not extending in any event and b) the six years of nuisance and disruption that would be inflicted on residents of Acton House and the activities of Jewson’s, BPL, and BDL. Mr Aarsonson gave evidence in relation to a compromised builders’ merchant operation; and a time and cost extension to the construction of the new BPL development.
16. The suggestion that there is only "extremely limited potential for a one-year programme saving" is simply not made out to the evidence. Rather, the evidence entirely supports the proposition that failure to make the Order would result in a one-year delay to delivery of HS2. Such failure would impact on Network Rail’s ability in relation to meeting the major commissioning dates of Christmas 2026 and Christmas 2028. There is major disruption to programme if these dates are not met, regardless of overall HS2 project completion date.
17. The alleged noise and disruption and the works around the builders’ merchant have been discussed during the Inquiry.
18. Any costs to BPL could be the subject of a claim for compensation, and Mr Rhead agreed expressly that such financial loss was not a relevant consideration for the purposes of the Inquiry.