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12 December 2022

Dear Adam

Information request
Reference number: FOI2022/01332

Thank you for your letter of 26 October 2022, in which you requested the following information:

- 1. The consultation document refers as follows “after extensive research in this area, we have identified that the only suitable area for the compound and access to the south side of the railway, is the land currently occupied by Jewson Ltd, Horn Lane, Acton”. Network Rail (NR) are asked to disclose all of their “extensive research” aforementioned, including but not limited to notes (digital and manuscript), records of meetings, presentations (including PowerPoint presentations), reports, all optioneering studies, all constructability reports, all assessments of options, and formal decisions. This information should include earlier and later drafts where more than one version exists. It should be specifically explained why other options have been discounted and why this is “the only” suitable site, including why the North Pole Depot, which had been one of NR’s options, is now not an option and not considered “suitable”. This request should be taken as a request for information pursuant to the Freedom of Information Act 2000 and the Environmental Regulations 2004.*
- 2. NR are also asked to advise where Jewson’s are to be relocated to, and whether terms have been agreed for a relocation site. If NR have undertaken a site search, assessment or produced and report in relation to the identification of a site to relocate Jewson’s to, then NR are asked to disclose this. This request should be taken as a request for information pursuant to the Freedom of Information Act 2000 and the Environmental Regulations 2004.*
- 3. NR are asked to advise if they have consulted on plan numbered 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1 with the local planning authority and highway authority for Horn Lane, and if so, NR are asked provide any feedback provided by*

these authorities. This request should be taken as a request for information pursuant to the Freedom of Information Act 2000 and the Environmental Regulations 2004.

4. *NR are asked to confirm what permitted development right(s) they are relying on in relation to the “smaller, permanent access” and to disclose any report that confirms how they have come to the conclusion that the works are permitted development. This request should be taken as a request for information pursuant to the Freedom of Information Act 2000 and the Environmental Regulations 2004.*

I have processed your request under the terms of the Environmental Information Regulations 2004 (EIR).¹

In the course of working on your request it has become clear that for question one, locating, retrieving and reviewing all the information we hold would create a disproportionate burden on our resources. This means that we need to refuse this request under regulation 12(4)(b) of the EIR, which applies to requests which would take too much time for us to reasonably deal with under the Regulations.

I will explain the legislation and my reasons for reaching this conclusion below. I will also provide some advice and assistance for you as to how you could look to make your request more manageable (see ‘Next steps – refining your request’).

Regulation 12(4)(b) of the EIR

A request can be refused as ‘manifestly unreasonable’ under the EIR due to the burden it places on a public authority’s resources in terms of either time or money. When working out what constitutes an unreasonable or disproportionate burden, we draw guidance from Section 12 of the Freedom of Information Act 2000, which allows a public authority to refuse a request if the cost of providing the information exceeds the ‘appropriate limit’.²

In the case of your request, you have asked us to disclose all of the information we hold which demonstrates why the area Jewson’s Ltd is currently located on is the only suitable area for the logistics compound. It is a very broad request as it asks for *any* written documentation related to determining the location of the compound.

¹ Section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA and requires us to consider it under the EIR. Information about the construction of a lineside logistics compound meets the definition of environmental information at Reg.2(1)(c) of the EIR because it is a plan that will affect elements of the environment such as the landscape.

² The appropriate limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as £600 for government departments and £450 for all other public authorities. This equates to eighteen hours of staff time at a flat rate of £25 per hour. Further information can be found here: <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

There is a minimum of eight people who are working or have worked on the team. Each of these individuals would need to carry out comprehensive searches of their emails, hard drives, portable media (flash drives, etc.), notebooks, phones and anywhere else where they might conceivably have stored information over the last two years. This would take a minimum of three hours per individual. It should be noted that this is a conservative estimate since there has been a turnover of team members and it is likely to take people longer to locate information when they are no longer working on the project.

Additionally, there are two people who no longer work at Network Rail and we think it would take five hours to locate any records that they might have created since we would also need to “rebuild” their mailboxes and this takes approximately two hours per individual.

This means that just the process of locating information alone would take at an absolute minimum 34 hours.

Even once this was done, we would need to read through and extract only the information that was relevant to your request. Even from our preliminary searches we’ve located 53 individual documents of up to 243 pages in length – many of these documents contain a series of appendices. There is no way we could review these to determine their relevance, remove any personal data and check with our subject matter experts to confirm whether there are commercial, security or other reasons why the information should be withheld within a reasonable timeframe. It is difficult to be precise but even at a conservative estimate of 90 minutes per document, this review process would still take well over 150 hours.

Bearing this in mind I am content that there is no means of meeting your request without placing a disproportionate burden on our resources.

The public interest test

Regulation 12(4)(b) can only be applied subject to a public interest test. I have considered the public interest factors for and against disclosure and have set out my findings below.

There is a general presumption in favour of public authorities providing information under the FOIA and EIR to promote transparency and accountability. I appreciate that there is a significant public interest in any development associated with Old Oak Common; however, we have just completed a public consultation for the development of this logistics compound and I would say this satisfies the public interest.

We also have to consider how complying with your request would place significant demands on our resources. It is important to remember that Network Rail is funded by the taxpayer and that this creates an obligation for us to use our staff time efficiently. The

strain that would be placed on resources to comply with this request would get in the way of us being able to deliver other services and answering other requests.

Having considered the arguments above, it is my decision that the reasons for maintaining the exception outweigh the public interest in complying with the request on this occasion and I am therefore refusing your request under regulation 12(4)(b).

Advice and assistance

To help you with your enquiries, we would like to offer the following information in response to your request.

1. We have located a document called Old Oak Common Lineside Logistics Compound Strategy. The document sets out why other locations are either too far away to make working time on site productive, are outside of possession limits, or too steep due to being in a cutting. We believe this document satisfies question one and is labelled *152270-NWR-STR-DEL-000001 P01 Issue 20220720*.
2. No terms have been agreed with Jewson and as such no site identification has taken place. This matter will be dealt with directly between Network Rail and Jewson.
3. I can confirm that we have consulted this project with the local planning authority and highway authority. Please see the attached minutes *12.10.22 Ealing Meeting Minutes_Redacted*.
4. I can advise that we have not produced or procured a report on permitted development. The project is being advised by the Wales and Western Regional Town Planning and Heritage Manager.

Next steps – refining your request

For question one, if the document we have provided does not meet what you were looking for, I would recommend narrowing your request by specifying the types of documents you are most interested in. It may also help us if you provided a timeframe upon which to base our searches.

As with any request though, I cannot guarantee disclosure of any information prior to hearing back from you as one of more of the EIR exemptions may apply.

If you have any enquiries about this response, please contact me in the first instance at FOI@networkrail.co.uk. Details of your appeal rights are below.

Please remember to quote the reference number at the top of this letter in all future communications.

Yours sincerely

Anisha Pandya
Information Rights Specialist

You are encouraged to use and re-use the information made available in this response freely and flexibly, with only a few conditions. These are set out in the [Open Government Licence](#) for public sector information. For further information please visit our [website](#).

Appeal rights

If you are unhappy with the way your request has been handled and wish to make a complaint or request a review of our decision, please write to the Compliance and Appeals team at Network Rail, Freedom of Information, The Quadrant, Elder Gate, Milton Keynes, MK9 1EN, or by email at ComplianceandAppealsFOI@networkrail.co.uk. Your request must be submitted within 40 working days of receipt of this letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner (ICO) can be contacted at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or you can contact the ICO through the 'Make a Complaint' section of their website on this link: <https://ico.org.uk/make-a-complaint/>

The relevant section to select will be "Official or Public Information".