**TRANSPORT AND WORKS ACT**

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

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

**NOTE ON PRECEDENT DEEDS OF AGREEMENT/UNDERTAKING**

1. INTRODUCTION

On 17 April 2023 Network Rail Infrastructure Limited (NR) 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).

On 23 June 2023 the Secretary of State made a decision to hold an inquiry into the Application. The inquiry commenced on 14 November 2023.

At the roundtable meeting with the Inspector on 9 February 2024, Network Rail stated that it is common practice for agreements to be entered into with landowners, in the context of a Transport and Works Act Order or other order, such as a compulsory purchase order or development consent order, pursuant to which the undertaker, to whom compulsory land acquisition powers may be granted, restricts the exercise of those powers.

The agreements that Network Rail has located are deeds of agreement rather than unilateral undertakings and Network Rail does not feel comfortable disclosing the agreements without having first obtained the consent of the other party which it has sought but has not yet been provided. Paragraph 2 of this note provides a summary of the relevant provisions.

We have located a publicly available unilateral undertaking provided by the Department of Transport to Transport for London in the context of the High-Speed Rail (London-West Midlands) Bill. We provide a link to the undertaking and brief commentary at paragraph 3.

1. The [*redacted*] Order 2022

The [*redacted*] Order 2022 (Network Rail Order) provides Network Rail with a number of compulsory powers including:

* + 1. Article 3 – a power to acquire land;
    2. Article 6 – a power to acquire new rights;
    3. Article 8 – temporary possession of land;
    4. Article 12 – extinction or suspension of private rights of way;
    5. Article 15 – use of private roads for construction.

An Agreement by Deed relating to the Network Rail Order includes a clause relating to a private access road in respect of which the Order grants Network Rail powers, by virtue of article 15, to use the land in connection with the carrying out of the authorised works. The clause provides:

The parties agree that notwithstanding the wording of Article 15 of the Order no part of the existing highway in [*redacted]* Road shall be stopped up pursuant to the Order.

An Agreement by Deed relating to the Network Rail Order provides that:

* + 1. During the construction of the Scheme Works, Network Rail will, notwithstanding its powers under the Order, ensure that the landowner has access at all times to land described from the public highway along a route notified to the landowner by Network Rail (**Permitted Route**);
    2. The landowner is provided with a non-exclusive right to use the Permitted Route as a bare licensee and on the basis that it is acknowledged that Network Rail retains management and possession of the Permitted Route at all times;
    3. Network Rail will not extinguish rights granted to the landowner over [*redacted*] road or exercise any of its powers of compulsory acquisition or temporary possession until an alternative access has been granted.

We have seen a copy of both agreements and the Network Rail Order and confirm that the summary of relevant provisions and articles in this note is accurate.

1. Unilateral undertakings
   1. The Secretary of State for Transport entered into a unilateral deed of undertaking dated 9 October 2015. Pursuant to clause 2, the SoS undertook that, in the implementation of powers granted under the HS2 Act and in the carrying out of the HS2 Works, HS2 Ltd would comply with the terms of the undertaking.
   2. An example of how the undertaking restricts the exercise of powers under the Act is at clause 7.1.4. It provides that HS2 Ltd will not close Victoria Road to vehicular traffic when Old Oak Common Lane is closed to vehicular traffic.
   3. A link to the undertaking is here <https://content.tfl.gov.uk/hs2-executed-ooc-lane-fpu.pdf>
2. Conclusion
   1. The restriction on the exercise of compulsory powers in a statutory order or Act of Parliament by means of a deed of agreement or unilateral undertaking is a tried and tested mechanism.

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23 February 2024