
PROOF OF EVIDENCE IN RELATION TO LAND AND PROPERTY OWNED BY TAURUS INVESTMENTS LIMITED

Network Rail (Huddersfield to Westtown
(Dewsbury) Improvements) Order 2020

John Sayer, Senior Director, CBRE Ltd

5 October 2021

CONTENTS

1.	Qualifications and Experience	3
2.	Introduction and Scope of Evidence	4
3.	Objection and Proposed Solution.....	5
4.	Statement of Truth.....	7

APPENDICES

A	Objection Letter	9
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1. Qualifications and Experience

- 1.1 My name is John Barry Sayer. I am a member of the Royal Institution of Chartered Surveyors (MRICS). I am an Associate Member of Chartered Institute of Arbitrators (ACI Arb). I am a member of the Compulsory Purchase Association and an elected member of the Association's National Committee.
- 1.2 I am a Senior Director of the Compulsory Purchase Team at CBRE Ltd, an International Property Consultancy. I have been with the firm for almost 15 years and am based in London.
- 1.3 CBRE is the world's leading commercial property and real estate services adviser, providing a comprehensive range of commercial property services. We have approximately 10,000 people based in the UK in key cities including Aberdeen, Belfast, Birmingham, Bristol, Edinburgh, Glasgow, Jersey, Leeds, Liverpool, London, Manchester and Southampton. UK turnover is in excess of £350m.
- 1.4 I have almost 20 years of property experience with the last 15 years dedicated to compulsory purchase and compensation matters on a variety of schemes including town centre development, transport infrastructure, housing and mixed use regeneration projects.
- 1.5 I have advised a variety of acquiring authorities including London Boroughs, Borough Councils, Development Agencies, Central Government, and developers who work alongside acquiring authorities to bring about comprehensive redevelopment. I also have experience of advising and acting on behalf of landowners and occupiers whose property interests are included in compulsory purchase orders. I have advised a range of property owners, ranging from private individuals to major funds on a variety of assets including industrial, retail, residential, and offices.
- 1.6 As a Chartered Surveyor providing advice regarding property interests in the UK that relates to the seeking or use of compulsory purchase, or where the seeking or use of such powers is contemplated, I can confirm that I have followed the RICS professional statement "Surveyors advising in respect of compulsory purchase and statutory compensation" 1st edition, April 2017.
- 1.7 As a Chartered Surveyor acting as an Expert Witness in a Public Inquiry, I am required to include in my evidence a declaration that my evidence is produced in accordance with the Royal Institution of Chartered Surveyors' Practice Statement on "Surveyors acting as Expert Witnesses (Fourth Edition) 2014". This is included at the end of my evidence.

2. Introduction and Scope of Evidence

- 2.1 I have been advising Taurus Investments Limited (“Taurus”) in respect of this asset since September 2020.
- 2.2 The freehold interest in the land and property owned by Taurus is held as an investment and is let to Mama’s and Papa’s PLC. The land is broadly identified in Network Rail’s proposals as plots 11-026, 11-029, 11-031, 11-018, 11-019, 11-022, 11-025, 11-032, 11-048 upon which the Building known as “Building 1” is located.
- 2.3 My role has included:
 - 2.3.1 Providing advice on the statutory process relating to land assembly
 - 2.3.2 Identifying risks relating to the threat of compulsory purchase
 - 2.3.3 Providing strategic advice to minimise the impact on the property
 - 2.3.4 Acting as agent on behalf of Taurus to allow discussions to take place with Network Rail, in so far as they have chosen to engage.
- 2.4 My evidence sets out the current position of Taurus and what is required of Network Rail to satisfy their major concerns the proposals will have on the asset and its occupier.

3. Objection and Proposed Solution

OBJECTION

- 3.1 In the interest of brevity, I will not fully rehearse the concerns raised in the objection that has been made. This evidence should be read alongside the objection letter submitted by my client's legal advisers, Bryan Cave Leighton Paisner LLP on 17 May 2021 (see copy at Appendix A).
- 3.2 The overarching concern for Taurus is that should the powers of compulsory acquisition be granted and fully exercised this would have a huge impact on the property. This would result in Mama's and Papa's, or any other business occupier, being unable to operate from the property. It is highly likely in these circumstances that Taurus would have strong grounds on which to compel Network Rail to acquire the entirety of their interest in the land.
- 3.3 Whilst there has been dialogue with Network Rail since the objection was made, the output of those discussions do not provide the necessary commitments or clarity from Network Rail to allay Taurus's concerns. They do not fully mitigate the impact on the property and ensure that the continued occupation and trading of the property is not affected. It is concerning that the tempo of those discussions is slow. Following the objection being made on 17 May 2021 the chronology of dialogue is as follows:
- A detailed technical meeting took place virtually on 21 July 2021. Representatives from Network Rail and Taurus participated in that call. The key output was for the Network Rail team to respond with a mitigation proposal.
 - On 1 September 2021 Damian Arundale contacted CBRE requesting a call to discuss locating a crane.
 - The call took place on 10 September 2021. At that time CBRE were still waiting for detailed mitigation proposals.
 - On 24th September 2021 Damian Arundale shared the proposed mitigation measures. Unfortunately, the measures are not fully detailed due to ongoing design work in relation to car parking arrangements.
- 3.4 It is challenging that it took over two months from the call on 21 July, to receive details of Network Rail's mitigation proposals. The passing of time is inevitably leading to Taurus incurring additional costs.
- 3.5 For the avoidance of doubt, the concerns raised in the objection letter remain extant. Taurus require further solutions from Network Rail to minimise the impact on the property and for these to be documented by way of legal contract. A key concern is that Network Rail's mitigation proposals are lacking in clear commitment. In the case of access to the property, Network Rail have indicated in their mitigation proposals of 24 September 2021 they will 'so far as reasonably practicable..... shall not prevent access and egress'. This falls short of the comfort that is required and access must be made available at all times.
- 3.6 It remains the case that Network Rail have not made any offer to acquire or take occupation of the land by way of a negotiated contract.

SOLUTIONS REQUIRED

3.7 To alleviate Taurus's concerns and enable Taurus to withdraw their objection, we require Network Rail to enter into a Deed of Undertaking to:

- a) Confirm Network Rail's land requirements for their scheme, together with a commitment not to exercise powers of compulsory acquisition in respect of the property.

Undertake to:

- b) Provide six month's written notice before accessing the land to allow the building occupier adequate time to prepare.
- c) To ensure the current number of parking spaces remains, as a minimum, at all times during and after completion of the works.
- d) Ensure that access to and from the building, on foot and with vehicles, is possible at all times. This includes access for heavy goods vehicles.
- e) Consult with Taurus and the building occupier on the timings to undertake pylon works.
- f) Agree the completed specification for landscaping and surfaces with Taurus and the building occupier. This must be agreed between the parties before occupation of land takes place.
- g) Network Rail commit to minimising the disruption caused by the of their works and ensure that any damage or works areas are reinstated to the reasonable satisfaction of Taurus at Network Rail's cost.

3.8 Should the Inspector be minded to confirm powers of compulsory acquisition we ask that the requirements identified in (a) to (g) above are placed as a condition of the confirmation.

4. Statement of Truth

- 4.1 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true.
- 4.2 The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

DECLARATION

- 4.3 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 4.4 I confirm that I understand and have complied with my duty to the Public Inquiry as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 4.5 I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- 4.6 I confirm that I have no conflicts of interest.
- 4.7 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Public Inquiry.
- 4.8 I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses’.



Signed: John Barry Sayer MRICSACI Arb

Date: 5 October 2021

APPENDICES

A Objection Letter

Date: 17 May 2021
Our ref: ADEA/3004902.000001
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By Post and E-mail to: Transportinfrastructure@dft.gov.uk

Dear Sir/Madam,

Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order - Objection by Taurus Investment Limited - Main Plots of concern : 11-026, 11-029, 11-031, 11-018, 11-019, 11-022, 11-025, 11-032, 11-048¹ (Building 1)

We act for Taurus Investment Limited who are the freehold owner of the above plots. Taurus Investment Limited object to the above order on the following basis:

1. Contrary to the Guidance in the Department of Transport – A Guide to Transport and Works Act Orders Procedures 2006 Network rail has not undertaken adequate consultation at an early stage with affected land owners. Paragraph 2.13 of the guidance indicates that

"Where the project would involve the compulsory acquisition of land or rights in land, the prospective applicant should normally consult the owners, lessees, tenants and occupiers of such land at an early stage. The timing and nature of such consultation will need careful consideration according to the particular circumstances of the project. In many cases this should best be undertaken prior to any public announcement of the intended location or alignment of the project".

The only contact that Taurus Investments Limited have had with Network Rail has been in connection with Land Referencing and only 1 on site meeting to discuss the impact of the proposals has been held with Taurus Investment Limited's agent on the 16th September 2020. At this meeting concerns were raised about access and width for HGV circulation of the building amongst other issues. No resolution of this issue has been identified. The guidance indicates that "mitigation may be agreed as a consequence of discussions with land owners". Obviously in the absence of adequate consultation and discussion, no mitigation has yet been even discussed let alone agreed.

2. As the Department of Transport Guidance – A Guide to Transport and Works Act Orders Procedures 2006, acknowledge the compulsory acquisition of land or rights are subject to the relevant advice in circular 06/04 (now replaced by the Government Guidance "the Compulsory Purchase Process and the Crichel Down Rules" ("the Governments CPO Guidance") dated

Our client reserves the right to identify any further plots included in the order which are identified to give rise to any further impacts on their ownership following further clarification by Network Rail of the impacts of their Order.

To: Secretary of State for Transport
Date: 17 May 2021
Page: 2

February 2018. Contrary to paragraph 2 of the Governments CPO Guidance, Network Rail have not made all reasonable attempts to acquire land or rights by agreement prior to making the compulsory purchase Order. Taurus Investment Limited have not been approached by Network Rail to grant any necessary licences, easements or acquisition of their land or negotiate HoT's for the same. Taurus Investment Limited remain open to negotiations to acquire the necessary interests (subject to all appropriate mitigation) by agreement and would welcome Network Rail engagement to this end in order to seek to resolve their objection to this order. In the absence of any attempts to acquire by agreement before making the above Order, Taurus Investment Limited would query the adequacy and appropriateness of Network Rail's internal authorisation to proceed to make the CPO.

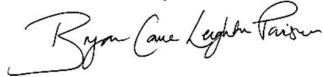
3. The Governments CPO guidance also requires that there must be a compelling case in the public interest to justify the use of compulsory acquisition powers. This compelling case in the public interest must be balanced against the human rights of the owners of private land affected. As part of this balancing exercise the Secretary of State has to have regard to both the extent of the private impact (including the mitigation that is possible) and the compelling case in the public interest. We would contend that unless Network Rail make efforts to mitigate the impact of their proposals this test is not adequately made out.
4. The impact of the Order, if authorised, including all acquisition (land and rights) or temporary acquisition would potentially render unusable the property of Taurus Investment Limited for a significant period of time. Even temporary possession powers under the order appear to be operable for an indefinite period and can then endure until a year after completion of works, creating a significant period of uncertainty for this land interest. However the rights sought include permanent rights as well as temporary possession powers and full land acquisition which potentially affects service access. The timescales for this occupation are therefore unclear and could be a considerable period of time. The temporary possession powers appear to be operable on only 14 days notice meaning they can be utilised at very short notice. The Order affects all areas of land except the built development on the site and therefore potentially affects, access, servicing, circulation and parking.
5. Vehicular access to and from the Unit at all reasonable hours by all necessary vehicle types for access and servicing will be required, this is required over private internal access routes and the adopted public highway (which will need to remain as adopted public highway not withstanding any land acquisition proposed by the Order).
6. Such impacts could have a potentially significant impact on continued occupation and use of the unit by our client's tenants. Accordingly unless appropriately mitigated this impact could result in the disruption of a significant local employers warehouse function potentially rendering the tenants continued occupation of the premises untenable and therefore potentially also having a significant impact on the landlord.
7. Obviously, the extent to which these financial costs have already been taken into account in the estimate of costs is also relevant. Furthermore the benefits to costs ratio of the scheme needs to be supported by a robust business case where the economic benefits are part of the justification to use compulsory purchase powers. Again we would query the extent to which this has adequately been taken into account in Network Rail's internal decision making process prior to authorising the making of the compulsory purchase order. Furthermore we would query the extent to which funding is clearly available within the lifetime of the Order to justify the extent of compulsory acquisition powers. Finally, we reserve the right to make further

To: Secretary of State for Transport
Date: 17 May 2021
Page: 3

comments on the acceptability of the variation of compulsory acquisition powers and the notice timescales for exercise of powers.

We reserve the right to raise any subsequent issues of objection once more is understood about Network Rails proposals and once the impact of the proposed Order on the above Plots becomes clearer following engagement from Network Rail.

Yours sincerely



Abigail Walters

Enc.

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