

The Secretary of State for Transport,
c/o Transport Infrastructure Planning Unit,
Department for Transport,
Great Minster House,
33 Horseferry Road,
London,
SW1P 4DR

Date: 23 September 2021

Our ref: 142314.145

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By email to transportinfrastructure@dft.gov.uk

Dear Sir,

***The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006
R&D Yorkshire Limited Unit A, Castlegate Retail Park, Huddersfield,
Statement of Case in relation to The Network Rail (Huddersfield to Westtown
(Dewsbury) Improvements) Order***

We act for R&D Yorkshire Limited ("RDL"), who have a subleasehold interest in Unit A, Castlegate Retail Park, Huddersfield HD1 5AT.

DP Realty Limited have the headleasehold interest in relation to the same unit. We also act for DP Realty Limited (OBJ/16), in respect of which we have previously submitted a Statement of Case.

Kinder Properties Limited are the freehold owner of the Castlegate Retail Park, and the principal Landlord of the complex. We also act for Kinder Properties Limited (OBJ/15), in respect of which we have also previously submitted a Statement of Case.

RDL is the franchisee of the Huddersfield central outlet and operate the Domino's Pizza hot food takeaway and delivery business from Unit A.

In our previous letter to you of 26th July 2021 we informed you that we were expected to be instructed by RDL. We have now been instructed and I will be grateful if you kindly accept this letter as our letter of objection incorporating a statement of case in relation to R&D Yorkshire Limited.

The lateness in submitting this objection and statement of case is regretted and due principally to the fact that my client did not receive a Rule 15 Notice.

The Castlegate Retail Park is located on the northern edge of Huddersfield town centre at the junction of the Castlegate Ring Road and St John's Road. The complex comprises six retail units totalling approximately 22,000ft². Units A and B have a dual frontage on to St John's Road and the rear private carpark, whilst units 1,2,3 and 4 are accessed solely from the private carpark (see RDL Statement of Case Attachment 1 - Schematic and Serial Views).

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The retail park is broadly triangular in shape with the units arranged around two sides, and the railway viaduct that is to be the subject of the Network Rail improvement scheme, along the third side. A 61 space private dedicated carpark is bounded by the retail units and the viaduct. The carpark is maintained by Kinder as Landlord under the service charge provisions of the retail occupiers' leases.

A single point of access (entry only) to the car park is located in the north west corner of the complex from St John's Road. A single point of egress (exit only) is located at the southern point of the triangle exiting on to Fitzwilliam Street, immediately abutting the viaduct arch being Network Rail Bridge MVL3-92.

Both Fitzwilliam Street and St John's Road are subject to double yellow line parking restrictions and all servicing of the retail units is from the private carpark.

Prior to the submission of the TWAO to the DfT there had been no consultation by Network Rail in relation with R&D Yorkshire Limited.

Your Departmental Guidance Transport and Works Act Orders: good practice tips for applicants, updated 26 November 2013 has a specific section headed 'The importance of pre-application consultations' and recommends as follows:

'Undertaking thorough and effective consultations before an application is made will almost certainly reap dividends later. The extent of consultations required will depend upon the size and nature of the scheme. But having a constructive and meaningful dialogue with those likely to be interested in or affected by a project can provide helpful feedback into its design, can help to allay fears and suspicions that may be based on a lack of understanding of the scheme, and can help greatly to limit the number of objections once an application is made.

In particular, promoters are asked to consult key players in their area, such as local authorities, development agencies, public service providers, MP's etc. The importance of meaningful pre-application consultation is reinforced by the statutory procedure rules which require a report summarising the consultations that have been carried out to accompany the application.'

In the case of the Castlegate retail complex your departmental guidance has not been followed in relation to the Order. There has been very little in the way of dialogue and consultation or any effort to establish the logistics and nature of the franchisee's operations from Unit A. Such consultations ought to have been undertaken and should have informed the overall planning of the scheme including but not limited to the loss of car parking spaces and refuse storage area, access and egress from the car park, and critically in the case of the franchisee's operations the impact of the road closures on customer accessibility and delivery services from the unit.

We are of course aware that the Inquiry will not concern itself with financial compensation considerations, and that losses may be claimed by affected owners and occupiers in accordance with the statutory compensation code. This seems to be the sum of Network Rail's response to our concern over the imposition of the scheme proposals on the occupiers' businesses without any prior consultation. Proposals which incidentally are still being determined, consultations with Kirklees Highways only having been commenced on 1 July 2021.

We are concerned that the scheme proposals, timetabling, road closures and associated practical aspects of the scheme have been unilaterally determined by Network Rail and imposed on the occupiers without appropriate and sufficient consultation to assess the impact of the works on all of the businesses.

Finally, in closing, we would like to raise the issue of costs. We are aware that there is only limited scope for an objector to recover their costs at inquiry. However, given the circumstances of this case we feel that there is a compelling case for the Secretary of State to exercise his discretion and make a costs award. The key point to recognise is that most of our fees have not been incurred in objecting to the scheme but primarily in trying to understand the impacts, appraise our clients of their options and also inform them of their compensation entitlement in different circumstances, all of which ought to be reimbursed by Network Rail. We have spent a considerable amount of time undertaking a forensic analysis to try and establish precisely what is being proposed as a direct consequence of Network Rail not having fully served the required Notices or undertaking the required pre-Order consultations. The level of detail in the Notices, even if they had been received was, in the absence of the consultations, inadequate to permit an owner or occupier to assess the impact of the works, or to determine what in fact the works will be. There is still a significant lack of detail as to the nature and duration of road closures and the accessibility of the unit for both visiting customers and pizza delivery operations. Please therefore accept this statement of case as a prior application for costs if our objections remain to be dealt with at the inquiry.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'David Strafford', written over a horizontal line.

David Strafford

For and on behalf of Gateley Hamer Limited

