

TAURUS INVESTMENTS LIMITED

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

STATEMENT OF CASE

JULY 2021

by Taurus Investments Limited under the
Transport and Works Act (Inquiries Procedure)
Rules 2004

1. Introduction

Taurus Investment Limited are the Freehold owner of 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. Our client reserved the right to identify any further plots included in the Order which are subsequently identified to give rise to impacts on the ownership or operation of Building following clarification by Network Rail of their intention in relation to works in the wider/surrounding area. However unfortunately at the time submission of the Statement of Case no meeting has yet been held with Network Rail to understand further their impacts on Building 1.

At the time of making of the Order Taurus Investment Limited also owned a second Building in close vicinity "Building 2". An objection was originally made in relation to both buildings. By a letter dated 14th June 2021 Taurus Investment Limited withdrew their objection in relation to Building 2, which had by that point been sold. However the Taurus Investment Limited objection in relation to Building 1 remains.

2. Grounds of Objection – Lack of consultation and failure to attempt to acquire

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 or secured.

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 July 2019. 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 in the absence of having met the circular tests and correspondingly the appropriateness of confirmation of the Order.

The Network Rail internal authorisation to proceed to make the Transport and Works Act Order will need to be made available as an inquiry document. Taurus Investment Limited would intend to comment on it should Taurus Investment Limited’s objection not have been adequately addressed and if it is therefore necessary for Taurus Investments Limited to appear at inquiry.

3. Ground of Objection – Lack of Compelling Case in the Public Interest

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 whether this is secured) 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.

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.

Vehicular access to and from the Unit at all reasonable hours by all necessary vehicle types for access and servicing will be required in order for this unit to function, this is required over both the private internal access routes and the adopted public highway (which will need to remain as adopted public highway notwithstanding any land acquisition proposed by the Order).

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. Taurus Investment Limited would expect Network Rail to work with them to establish and secure mitigation in terms of removal/minimisation of the extent of land and rights acquired through the order and extent of temporary possession powers to ensure that both parties requirements for the use of the land included in the Order can be met and parties can work together during both construction and operation of the Network Rail scheme to ensure the continued use of Building 1 in an effective manner.

Taurus Investments Limited case will therefore address the justification for Network Rail's compelling case in the public interest and the extent to which it justifies overriding private rights and the extent to which the impacts on Taurus Investment Limited's private rights have been addressed or mitigated by Network Rail at the point at which evidence is required to be submitted.

4. Ground of Objection – Costs Benefit of the Scheme and Funding

If it is necessary for Taurus Investment Limited to appear at the inquiry due to the absence of satisfactory mitigation of the impacts of the Order on their property interests they will raise the financial aspects of these impacts at the inquiry. Firstly in that the compensation impacts of the Order without mitigation will need to have been taken into account in the estimate of costs. 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 and this would be considered in more detail. Again we would query the extent to which this has adequately been taken into account in Network Rails internal decision making process prior to authorising the making of the Order.

Taurus Investment Limited would also query and address the extent to which funding is clearly available within the lifetime of the Order sufficient to justify the extent of compulsory acquisition powers in order to meet the relevant tests along with how the assessment of both Human Rights and Equalities Impacts have been taken into account in considering whether to make and confirm a TWAO. Finally Taurus Investment Limited reserve the right to make detailed comments in evidence about the workability and fairness of the variation of various compulsory purchase acquisition powers and notice timescales for the execution of powers.

Taurus Investment Limited 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 (and any mitigation proposed) on the above Plots becomes clearer following engagement from Network Rail.