IN THE MATTER OF THE TRANSPORT AND WORKS ACT 1992

IN THE MATTER OF THE NETWORK RAIL (HUDDERSFIELD TO WESTTOWN (DEWSBURY)) IMPROVEMENT ORDER 20[XX]

AMENDED STATEMENT OF CASE OF HARGREAVES GB LIMITED AND OTHERS

Introduction

1. This is the amended Statement of Case on behalf of the following Objectors against the Network Rail (Huddersfield to Westtown (Dewsbury) Improvement Order 20[XX] ("the Order") :

Hargreaves GB Limited ("HGB")

Newlay Asphalt Limited ("NAL")

Newlay Readymix Limited (NRXL")

Newlay Concrete Limited ("NCL")

Dewsbury Sand & Gravel Limited ("D&SG")

Wakefield Sand & Gravel Limited (WS&G")

2. There is an interrelationship between each of the above Objectors in two principal ways. First, by having some common directors and shareholders. Second, because sand and/or gravel excavated from a quarry operated by DS&G is delivered to NRXL and NCL (and from 2022 when WS&G is operational, to NAL) for processing as asphalt, readymix concrete, and other concrete products.

3. In support of the respective Objections on behalf of each objecting Company, there are Witness Statements made by David Michael Beaumont and Claire Rebecca Finney. These statements set out the extent of the land

which the respective Objector companies occupy, and the plots identified from the deposited plans which Network Rail is seeking powers of compulsory acquisition under the Order. There is also an expert report by Richard Asher FRICS

The relevant legal and policy considerations

4. The Objectors will rely on the policy guidance on the use of powers of compulsory acquisition found in the following materials.

5. First, *The Compulsory Purchase Process and the Crichel Down Rules: Guidance* (MHCLG, July 2019) ("the 2019 Rules"), in particular at paragraphs 12, 13 and 19, the effect of which is, that the use of compulsory acquisition powers requires a compelling case in the public interest, and that a confirming minister has to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire.

6. Second, *A Guide to TWA Procedures* (TFL) June 2006 ("the 2006 Rules"), and in particular paragraph 2.2:

> "*… the carrying out of wide and thorough consultations in advance of an application [for an Order] is a crucial part of the whole authorisation process…*"

And paragraph 2.13 which states:

> "*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. 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.*"

7. Third, the NPPF, whilst generally directed to local planning authorities, is relevant to decisions by the Ministry of Transport relating to transport matters, and in particular paragraphs 102(d) and 108(c) in relation to the effect of a compulsory acquisition and any relocation of the Objectors' businesses, if such relocation is possible, in relation to extended journey distances and times.

8. Fourth, NPPF at section 17 (paragraph 204(e)) as to the guidance to safeguarding existing sites for the processing of minerals, the manufacture of concrete and concrete products.

9. Fifth, the guidance in *Planning Practice Guidance (Minerals)* of the Department of Housing, Communities and Local Government, para 006, ref ID-27-006-20140306, that planning authorities should safeguard existing storage, handling and transport sites. Whilst mainly directed to local planning authorities, the guidance must also apply to decisions by the Minister of Transport.

10. Sixth, it was held in Prest v Secretary of Wales [1983] 1 EGLR 17 that a failure to consider the land acquisition costs of alternative sites was a failure to consider a material consideration, which in that case led to the quashing of a compulsory purchase order.

Lack of consultation and engagement with the Objectors

11. As described in the Witness Statements of Mr Beaumont, Ms Finney, and the expert report of Richard Asher FRICS, each of the Objectors run successful businesses extracting and then processing minerals for use in the local economy. Contrary to the guidance in 2006 Rules, Network Rail failed to consult and/or engage with any of the Objectors in relation to the selection

of the "fly-over" option, in preference to the "dive-under" option, as described in Chapter 3 of the Environmental Statement, Volume 2i: Scheme-Wide Assessment, Chapter 3, and in particular paragraph 3.3.36 where it is stated that one of the key design drivers in the decision-making process included "*minimising third-party land take and impacts on local businesses*".

12. As explained in the Witness Statements, and in particular by Mr Asher in his expert report, had the "dive-under" option been chosen, nearly all the land proposed to be acquired immediately west of Calder Road in which HGB, NAL, NRXL and NCL occupy and have interests would not be needed. Had that been the case, the businesses of four of the Objectors would not be extinguished at the very considerable costs now likely to be involved. It is clear from para 154 of the Consultation Report with the Application for the Order that with a 'dive-under' option there would be no need to re-align Calder Road, therefore removing the need to take any land from the Objectors for temporary purposes.

13. As there was no consultation with the Objectors as to the choice between the two options, Network Rail never had the information as to the full consequences and land acquisition costs of selecting the fly-over option in preference to the dive-under one.

14. That failure to consult the Objectors as occupiers, lessees and/or owners, destroys any justification for the fly-over option, and the consequential compulsory acquisition of the land required for it. Further, in the absence of considering the land acquisition costs of the 'fly-over' option, a material consideration is absent from the Application for the Order.

15. It follows, that Network Rail cannot show a compelling case, for the purposes of the 2019 Rules, in circumstances where there was an alternative, particularly where that alternative was not properly and fully examined in consultation with the affected occupiers.

16. Further, a failure to take into account the land acquisition costs of the 'fly-over' option in comparison with those under the 'drive-under' option means that a material consideration will not be properly taken into account, contrary to the decision in Prest v Secretary of State for Wales.

17. Accordingly, Network Rail has failed to comply with the advice at the paragraphs identified above of both the 2019 Rules, that a compelling case can be made, and the 2006 Procedure Rules, and the Order should not be confirmed.

Land acquisition too extensive

18. Both the two lay witnesses, Mr Beaumont and Ms Finney, state that, even if Network Rail can justify the "fly-over" option, and the compulsory acquisition for that purpose, the land proposed to be acquired goes much further than the land actually needed for that option. The excess land is identified in the witness statements of Mr Beaumont and Ms Finney.

19. Accordingly, Network Rail has failed to comply with the advice at the paragraphs identified above of both the 2019 Rules, and the 2006 Procedure Rules, that a compelling case can be made for compulsory acquisition.

Planning policies

20. Three matters arise here in relation to the policies of the NPPF and ministerial guidance on the protection of minerals. Whilst these policies are

mainly directed to local planning authorities, they raise matters that are material considerations in the decision-making process.

21. First, contrary to the advice in section 9 of the NPPF to promote sustainable transport (paras 102(d) and 108(c)), the effect of the acquisition and any relocation of the Objectors' businesses, if such relocations are possible, will be to extend journey distances and times to meet the business requirements of existing customers from alternative sources which are some 14 and 27 miles away. Had those additional costs been taken into account in the decision-making process in relation to the choice of the 'fly-over' or 'dive-under' options, a different outcome may have arisen.

22. Further, had Network Rail consulted with the Objectors, it would have appreciated that a high proportion of lorry vehicle movements in and out of the Objectors' premises involve the delivery of materials that are extremely time sensitive, such as readymix concrete and asphalt products. That information should have informed Network Rail of the very high likelihood of very serious delays to vehicle movements during the construction stage of Network Rail's Project. Had Network Rail been so informed it should have addressed such delays into its project design and consequential land acquisition proposals in satisfaction of the advice in section 9 of the NPPF to promote sustainable transport (paras 102(d) and 108(c), the guidance in NPPF at section 17 (paragraph 204(e) and the guidance at *Planning Practice Guidance (Minerals)* of the Department of Housing, Communities and Local Government, para 006, ref ID-27-006-20140306. In effect it should have selected a project design that avoided any works to Calder Road or its vicinity.

23. Second, contrary to the advice in the NPPF at section 17(para 204(e)) to safeguard existing sites for the processing of minerals, the manufacture of

concrete, concrete products, and asphalt, and the processing and recycling of secondary aggregate material, the acquisition of part of the Objectors' lands, will cause such activities to cease or be severely curtailed. There appears to have been no proper or adequate consideration of the loss of such sites for such purposes in Network Rail's decision-making process.

24. Third, the Order fails to have regard to the Planning Practice Guidance (Minerals) of the Department of Housing, Communities and Local Government, para 006, ref ID-27-006-20140306, that planning authorities should safeguard existing storage, handling and transport sites. Although that guidance is directed to local planning authorities, nonetheless the protection of such sites should have been a consideration to be addressed by Network Rail, and will be a material consideration for the Minister of Transport.

Loss of jobs

25. As explained in the witness statements of Mr Beaumont and Ms Finney, a large number of people will lose their jobs if the full land acquisition takes place and the respective businesses of the Objectors are extinguished. Nowhere in the documents supporting Network Rail's is there a full and rationalised reason for the loss of local jobs.

Conclusions

26. In conclusion, by reason of the total failure of Network Rail to engage and consult with the Objectors or any of them in relation to the choice between the 'fly-over' or 'dive-under options', and in the apparent absence of how the choice between those options was actually made, Network Rail have failed to justify the 'fly-over' option, and therefore failed to justify the use of

compulsory acquisition powers in relation to the lands of the Objectors. No compelling case has been made.

27. Second, Network Rail has failed to minimise the land required for the scheme as currently put forward.

28. Third, Network Rail have failed to properly have regard to the policies protective of minerals.

29. Fourth, Network Rail has failed to consider that a consequence of land acquisition is a loss of jobs.

30. Fifth, Network Rail has failed to consider the serious consequences to vehicle movements during the construction phase.

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7th September 2021

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