

**TRANSPORT AND WORKS ACT 1992**

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

**PROPOSED NETWORK RAIL (HUDDERSFIELD TO WESTTOWN (DEWSBURY)  
IMPROVEMENTS) ORDER**

**Proof of Evidence**

**of:**

**David Andrew Strafford BSc FRICS**

**Senior Associate**

**Gateley Hamer**

**for**

**Kinder Properties Limited (OBJ/15)**

**and**

**DP Realty Limited (OBJ/16)**

**and**

**R & D Yorkshire Limited (OBJ/45)**

## CONTENTS

<b>1</b>	<b>Introduction and Scope of Evidence</b>	<b>Page 2</b>
<b>2</b>	<b>Chronology and Background</b>	<b>Page 3</b>
<b>3</b>	<b>Conclusion</b>	<b>Page 7</b>
<b>4</b>	<b>Witness Declaration</b>	<b>Page 9</b>

## Appendices

<b>1. Kinder Properties Limited Letter of Objection</b>	OBJ15&16&45/DAS/002/1 & 2
<b>2. Kinder Properties Limited Statement of Case</b>	OBJ15&16&45/DAS/003/1 to 3
<b>2.1</b> Kinder Statement of Case Attachment 1 – Schematic and serial Views	OBJ15&16&45/DAS/003/4
<b>2.2</b> Kinder Statement of Case Attachment 2 – Letter of Objection	OBJ15&16&45/DAS/003/5
<b>2.3</b> Kinder Statement of Case Attachment 3 – NR Copy Notices	OBJ15&16&45/DAS/003/7 to 14
<b>2.4</b> Kinder Statement of Case Attachment 4 – NR Plan	OBJ15&16&45/DAS/003/15
<b>2.5</b> Kinder Statement of Case Attachment 5 – Castlegate Retail Access and Egress	OBJ15&16&45/DAS/003/16
<b>3. DPR Email of Objection</b>	OBJ15&16&45/DAS/004
<b>4. DPR Statement of Case</b>	OBJ15&16&45/DAS/005/1 to 3
<b>4.1</b> DPR Statement of Case Attachment 1 – Schematic and Serial Views	OBJ15&16&45/DAS/005/4
<b>5. RDYL Statement of Case</b>	OBJ15&16&45/DAS/006/1 to 3
<b>5.1</b> RDYL Statement of Case Attachment 1 – Schematic and Serial Views	OBJ15&16&45/DAS/006/4
<b>6. Rule 15 Notice received by Kinder Properties Limited</b>	OBJ15&16&45/DAS/007/1 to 3
<b>7. Network Rail Letter to Fletcher King</b>	OBJ15&16&45/DAS/008/1 to 3
<b>8. Email chain preamble to 16 June meeting</b>	OBJ15&16&45/DAS/009/1 to 4
<b>9. Email chain re deficient Rule 15 Notice</b>	OBJ15&16&45/DAS/010/1 to 3
<b>10. Email chain re missing Rule 15 Notice</b>	OBJ15&16&45/DAS/011/1 & 2
<b>11. Email report to client of 16 June meeting</b>	OBJ15&16&45/DAS/012/1 & 2
<b>12. Post 16 June email to Network Rail</b>	OBJ15&16&45/DAS/013/1 to 4

## 1. INTRODUCTION AND SCOPE OF EVIDENCE

- 1.1 My name is David Andrew Strafford. I am a senior associate at Gateley Hamer a property consultancy working predominantly in the fields of compulsory purchase, statutory compensation, infrastructure and land referencing.
- 1.2 I am a Fellow of the Royal Institution of Chartered Surveyors and a RICS Registered Valuer. I qualified as an Associate Member in 1995 and became a Fellow in 2015. I hold a Bachelor of Science degree in Urban Land Economics from the University of Sheffield awarded in 1994 and a BTEC National Certificate in Cartography, Surveying and Town and Country Planning from Leeds College of Building awarded in 1986.
- 1.3 I have worked in the field of compulsory purchase and compensation throughout my professional career, having started work for the former Yorkshire Water Authority in 1986. In 1998 the in-house team at Yorkshire Water was outsourced to DTZ Debenham Tie Leung. I set up my own practice in 1999 specialising in compulsory purchase and compensation work. During that period I dealt with a wide range of infrastructure and regeneration projects for both central and local government as well as the private sector.
- 1.4 My Evidence relates to paragraph 4 and paragraph 12 of the Statement of Matters issued jointly by the TWA Orders Unit, Department for Transport and the Planning Casework Unit, Ministry of Housing, Communities and Local Government on 28 September 2021, as follows:
- 1.4.1 **4. The likely impact of the exercise of the powers in the proposed TWA Order on local businesses, tenants and occupiers. Consideration under this heading should include:**
- (a) the impacts on access to and within the area, including the effects on local road networks, private roads, access to businesses and loss of car parking facilities;**
  - (b) the economic impacts on local businesses and occupiers;**
  - (c) health and safety implications on the loss of fire evacuation facilities;**
  - (d) the impacts of the temporary change of entry and exit arrangements to the retail park;**
  - (e) the impacts of temporary possession of land on businesses for the duration of the construction period;**
- 1.4.2 **12. Whether all statutory procedural requirements have been complied with.**
- 1.5 I represent
- 1.5.1 Objector 15: Kinder Properties Limited, Oak Walk, St Peter, Jersey, E3 7EF (“Kinder”), freehold owner of the Castlegate Retail Park, Huddersfield.
- 1.5.2 Objector 16: DP Realty Limited (t/a Domino’s) (“DPR”), who have a leasehold interest in Unit A, Castlegate Retail Park, Huddersfield HD1 5AT. DP Realty is also the Landlord in relation to the underlease of Unit A to R&D Yorkshire Limited t/a Domino (“R&D”).

- 1.5.3 Objector 45: R&D Yorkshire Limited (“RDYL”), who have a subleasehold interest in Unit A, Castlegate Retail Park, Huddersfield HD1 5AT.
- 1.6 To avoid unnecessary duplication, I have combined the evidence of Objector 15, Objector 16 and Objector 45 in this single proof of evidence. Where appropriate I have separately identified matters that are individual Objector specific.
- 1.7 This statement supplements the letter of objection and subsequent statement of case submitted on behalf of Kinder on 13<sup>th</sup> May 2021 (Appendix 1) and 30 June 2021 (Appendix 2) respectively; the email of objection submitted by Sarah Pritchard, Senior Estates Manager for DPR on 13<sup>th</sup> May 2021 (Appendix 3) and the statement of case submitted by me on behalf of DPR on 26 July 2021 (Appendix 4); and my statement of case submitted on behalf of RDYL on 23 September 2021 (Appendix 5).

## 2 CHRONOLOGY AND BACKGROUND

- 2.1 Mr J Wilson of Fletcher King Chartered Surveyors (“FK”), Kinder’s Managing Agent, contacted Gately Hamer (“GH”) on 28 April 2021 by email in relation to a Rule 15 Notice that had been issued by Network Rail (“NR”), c/o Kinder’s solicitor Walker Morris LLP. A copy of the Rule 15 Notice was provided by FK to GH within the email. The Rule 15 Notice was dated 31 March 2021, with a deadline for objections of 17 May 2021 (Appendix 6).
- 2.2 A virtual video inception meeting took place between FK and GH on 6<sup>th</sup> May 2021. In the course of that meeting FK provided me with a copy of a letter sent by Mr Damian Arundale, Senior Surveyor, Network Rail dated 18 March 2021 (Appendix 7).
- 2.3 An initial comparison of Mr Arundale’s letter and the Rule 15 Notice served on Kinder suggested that the two documents did not correspond. Based on the content of Mr Arundale’s letter, which was relatively contemporaneous with the date of the Rule 15 Notice, I undertook a detailed and lengthy investigation into the TWAO documents, plans, sections and statements that were available online and concluded that the scheme of works proposed under the Order did not appear to have been reduced subsequent to Mr Arundale’s letter. I wrote by email to FK on 11 May 2021 querying the completeness of the Rule 15 Notice that they had provided me with, and requested they check with Walkwr Morris LLP as to whether the whole document had been forwarded by them. FK responded on 11 May 2021 confirming that Walker Morris had nothing else to send and nothing further was received on behalf of Kinder.
- 2.4 Given the deadline for receipt of objections to the Order, my immediate available time was spent on lodging an objection and protecting Kinder’s position. The objection submitted on behalf of Kinder on 13 May 2021 represented the situation that existed to the best of my knowledge as of that date (Appendix 1).
- 2.5 I was hopeful that an accommodation could be reached with NR that would deal with the concerns of Kinder and see a withdrawal of Kinder’s objection. The timetabling arrangements under Rule 4 of the Transport and Works (Inquiries Procedure) Rules 2004,

S.I. No. 2018 set a deadline of 6<sup>th</sup> July 2021 for the submission of a statement of case. That being the case and minded of the ground to be covered I sent an email to Damian Arundale at NR on 4<sup>th</sup> June 2021 to commence discussions. A virtual video meeting was arranged for 16<sup>th</sup> June 2021. To aid those discussions I sent an email to Penny Carter, Consents Officer at NR on 8<sup>th</sup> June 2021 outlining the principal issues of concern to Kinder (Appendix 8). Network Rail have failed to properly engage with Kinder ahead of making the Order.

- 2.6 Network Rail has not to date acknowledged any problems with the delivery of the Rule 15 Notices. My assertion in the 16<sup>th</sup> June 2021 meeting that Kinder has received a Rule 15 Notice on only a very small part of the overall affected site was resisted and the view of NR seems to be that it is satisfied that all relevant Rule 15 Notices were properly served (Appendix 9). They have not adduced any evidence to show that the correct Rule 15 Notices have been properly served.
- 2.7 Regrettably NR and its consultants were unable to provide the level of clarity on the points that were set out in my email to Penny Carter of 8<sup>th</sup> June 2021 that would have enabled me to recommend a withdrawal of the objection. Minutes of the meeting were not provided by NR, and I would therefore refer you to my email report on the meeting sent to FK of 18<sup>th</sup> June 2021. I would respectfully draw your attention to the commentary on fees that are set out in that email (Appendix 11) and my subsequent email to Penny Carter of 24 June 2021 (Appendix 12).
- 2.8 The meeting with Network Rail was not productive, and in my experience, did not reflect an authority at all keen to engage with affected parties. FK confirmed instructions for GH to continue discussions with NR and progress to a statement of case if that proved necessary. I submitted a statement of case on behalf of Kinder on 30 June 2021 (Appendix 2).
- 2.9 In early July 2021, FK was contacted by Sarah Pritchard, Senior Estates Manager, DP Realty Limited (t/a Domino) ("DPR"). Ms Pritchard was contacting FK as Landlord, following a site meeting she had attended with and at the request of NR's consultants, WSP, on 24<sup>th</sup> June 2021. Also in attendance at that meeting was Mr Azim Siddiqui, Operations Manager, R&D Yorkshire Limited (RDYL).
- 2.10 FK referred Ms Pritchard to me.
- 2.11 RDYL hold the sub-leasehold interest in Unit A, Castlegate Retail Park and DPR Limited hold the head-leasehold interest in relation to the same unit. RDYL is the franchisee of the Domino Huddersfield Central Domino's Pizza hot food takeaway and delivery business operated from the unit. DPR is the franchisor.
- 2.12 The site meeting of 24 June 2021 was the first substantive contact NR had made with DPR. Ms Pritchard had an 'awareness' of the scheme having received a Rule 15 Notice and had fortunately secured DPR's position by responding to DfT by email on 13<sup>th</sup> May 2021 (Appendix 3). However, the lack of detail in the Notice and the absence of any meaningful dialogue or consultation by NR prior to the 24<sup>th</sup> June meeting effectively meant that this was first time DPR was made aware of the scope and impact of the planned scheme of NR's works.

- 2.13 The Rule 15 Notice served on DPR is in relation to the head-leasehold interest only and therefore omits the important car park element of the scheme that is of crucial importance to the pizza delivery business.
- 2.14 The situation for RDYL is somewhat worse. They have not received a Rule 15 Notice and were effectively blindsided by the WSP meeting request coming out of the blue. Furthermore, the missing sub-leasehold Rule 15 Notice would have shown the car park as being impacted by the proposals and thus alerted the parties to the need to take advice and object to the Order. NR have been unable to produce any evidence that a Rule 15 Notice was served on RDYL.
- 2.15 Concerned at the pattern of missing/incomplete Rule 15 Notices that was beginning to emerge, I raised the issue with FK, who agreed that as agent for the Landlord they should approach all of the tenants on the Castlegate Retail Park to ensure that they are aware of, and have received a Rule 15 Notice in relation to the proposed TWAO scheme. My previous two requests to NR for confirmation of those occupiers that have representation has gone unanswered.
- 2.16 As a consequence of the Landlord's consultations it has been established that 'Cubico', the occupier of the neighbouring unit, B, did not receive a Rule 15 Notice and was also unaware of the scheme. I understand that in the light of being informed of the scheme Cubico's interests are now being represented and an objection has been lodged.
- 2.17 I would wish to draw to the inspector's attention that this statement is being drafted at the absolute eleventh hour because of Network Rail objecting to our request for a further extension of time for the submission of proofs whilst discussions for a compromise agreement progress.
- 2.18 I understand that Network Rail has provided the following summary to the Inspector in response to my request:
- 5<sup>th</sup> October: Undertaking sent to David Trafford to pay his reasonable fees for the negotiation of the compromise agreement up to £3k for each of his clients subject to the usual caveats.
  - 6<sup>th</sup> October – David Trafford asked whether the further £11,661 of his costs would be covered by NR.
  - 7<sup>th</sup> October – email sent to David Trafford confirming that his costs for work in relation to the Notices would not be covered by NR.
  - 8<sup>th</sup> October – email from David Trafford stating that the costs were not in relation to the Notices and that he required a revised undertaking and draft agreement by the end of the day.
  - 8<sup>th</sup> October – Draft undertaking sent to David Trafford and covering email stating that the undertaking position was being considered by NR.
  - 14<sup>th</sup> October – email sent to David Trafford confirming that NR would not cover any costs beyond the initial undertaking but remain willing to engage in relation to the compromise agreement.
  - 15<sup>th</sup> October – plan to accompany the agreement sent to David Trafford.

2.19 For the record and the avoidance of any doubt I would like to provide a complete summary for the Inspector's information:

- 5<sup>th</sup> October: Undertaking sent **by Sarah Wood, Eversheds** to David Strafford to pay his reasonable fees for the negotiation of the compromise agreement up to £3k for each of his clients subject to the usual caveats. **Sent at 21.10**
- 6<sup>th</sup> October – David Strafford asked **Sarah Wood** whether the further apportioned sum of £11,661 of his costs **out of the recorded total of just less than £19,000** would be covered by NR. **Sent at 07.46**
- 7<sup>th</sup> October – email sent **by Sarah Wood** to David Strafford confirming that his costs for work in relation to the Notices would not be covered by NR **and promising to send a draft compromise agreement shortly. Sent at 21.43**
- 8<sup>th</sup> October – email by David Strafford **to Sarah Wood** stating that the costs were not in relation to the Notices and that he required a revised undertaking and draft agreement by the end of the day. **Sent at 08.50**
- 8<sup>th</sup> October – Draft undertaking sent by **Sarah Wood** to David Strafford and covering email stating that the undertaking position was being considered by NR. **Sent at 22.43 on a Friday.**
- **11<sup>th</sup> October – email sent by David Strafford to Sarah Wood at Eversheds requesting the “Plan” referred to in the Compromise Agreement. Sent at 12.26**
- **11<sup>th</sup> - October email sent by David Strafford to Sam Dean, WSP with detailed feedback on operational issues relevant to client business operations to inform the Compromise Agreement. Sent at 12.54**
- **11<sup>th</sup> October – email from Sam Dean, WSP to David Strafford thanking me for the comments and promising to circulate to the project team. Also promising to chase Eversheds for Agreement plan. Sent at 15.04**
- **11<sup>th</sup> October – email sent by David Strafford to DPR and RDYL with draft Compromise Agreement, synopsis and commentary. Sent at 15.40**
- **12<sup>th</sup> October email from Sam Dean to David Strafford responding to operational points raised but no attempt to take on board or incorporate into the Compromise Agreement. Sent at 13.58**
- **14<sup>th</sup> October – email from David Strafford to Sarah Wood querying response to undertaking request made on 8<sup>th</sup> October. Sent at 16.14**
- 14<sup>th</sup> October – email sent **by Sarah Wood** to David Strafford confirming that NR would not cover any costs beyond the initial undertaking but remain willing to engage in relation to the compromise agreement. **Sent at 22.52**
- **15<sup>th</sup> October email from DPR on behalf of DPR and RDYL requesting Teams meeting to discuss compromise agreement, offering 11am to 1pm on 18<sup>th</sup> or 19<sup>th</sup> October. Sent at 11.56**
- **15<sup>th</sup> October – email sent by David Strafford to Sarah Wood and Sam Dean chasing the Agreement plan. Sent at 12.30.**
- 15<sup>th</sup> October – plan to accompany the agreement sent by Sarah Wood **to David Strafford. Sent at 12.33**
- **15<sup>th</sup> October - email sent by David Strafford to DPR and RDYL agreeing Teams meeting for 11am on 18<sup>th</sup> October and providing a copy of the Agreement Plan. Also informing them that I would be requesting a further extension of time to progress the Agreement. Sent at 12.48**
- **15<sup>th</sup> October – email from David Strafford to Joanna Vincent requesting a further two weeks extension for submission of proofs. Sent at 13.02.**

- 18<sup>th</sup> October – Teams meeting at 11am with DPR and RDYL taking instructions on compromise agreement. Subsequent queries with colleagues and formulating approach.
  - 18<sup>th</sup> October – email from Joanna Vincent refusing further extension of time and requesting submission of Proofs on 19<sup>th</sup> October 2021. Sent at 18.29
  - 19<sup>th</sup> October – drafting Proof.
- 2.20 As you can see from the above details, NR have been slow to respond, which has created additional pressure and cost on the affected parties and only a short timescale for evidence to be submitted.

### 3 CONCLUSION

- 3.1 In my statements of case I have made the point that prior to making the TWAO application Network Rail has entered into very little dialogue and consultation with affected occupiers at the Castlegate Retail Park. Indeed, the third paragraph of Mr Arundale’s letter of 18 March 2021 (Appendix 7) to Kinder’s agent, Fletcher King, is unequivocal:
- ‘We have not discussed the proposed scheme with any of your tenants at the retail park but we are of course willing to undertake those discussions if any questions arise with you directly following the Order application.’***
- 3.2 I am in no doubt that the activity that occurred by NR’s consultants at the end of June 2021 was as a result of points that were raised by me in the otherwise unproductive meeting of 16<sup>th</sup> June 2021.
- 3.3 This scheme is not being promoted in a way that reduces impact on commercial occupiers
- 3.4 In this case Network Rail seems to have scant concern or regard for the importance of serving the requisite Rule 15 Notices. Whilst I accept that some Notices were received, it is interesting to note that the content of those notices omitted any reference to works in the car park - a key area of importance to the operation of the retail park. Those parties that did not receive a notice have been put in a disadvantageous position. I have concerns that there are more parties that haven’t received notices and have been denied the opportunity to make representations
- 3.5 The DfT’s 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.'*

- 3.6 It is both interesting and ironic that only in the last couple of weeks have we engaged to the level of consultation that ought to have been undertaken prior to the submission of the Order. Those consultations could have provided mitigations easily accommodated by Network Rail with no impact on the programme or working areas, but, which importantly, would have provided my clients with some comfort as to avoiding the long term adverse impact on their business that even a temporary cessation of operations could affect. It is not a surprise to me that correspondence was not mentioned in the summary of correspondence provided by Network Rail.
- 3.7 There are three areas of significant concern to the pizza business:
- 3.7.1 firstly, the impact on the business that that will be caused by the two periods of permanent closure during the blockades required to accommodate the crane oversail; and,
  - 3.7.2 secondly, the loss of car parking spaces available for pizza delivery drivers. Under the terms of their occupation lease Domino's have 17 parking spaces allocated; and
  - 3.7.3 thirdly, the impact of road closures on the company's target delivery period of 30 minutes or less.
- 3.8 Two of those three issues could be addressed by Network Rail procuring for the duration of its impact on the car park suitable alternative car parking provision in the immediate vicinity outside of the road closure areas, and is what we were hoping to progress this week had Network Rail been minded to further meaningful discussions.
- 3.9 Kinder has an overriding duty to ensure its tenants are aware of any statutory works that are planned in relation to the site. Likewise, it is under an obligation to disclose any such known works to prospective future tenants of currently vacant units. In the absence of the detailed due diligence that I have undertaken in relation to this matter, and the seemingly laissez faire attitude of NR to both affected party consultations and the service of Rule 15 Notices we could well have had a situation here where the pre-Order Application perceived impact of the works to both Landlord and Tenants was substantially less than is actually planned.

## 4 WITNESS DECLARATION

4.1 I hereby declare as follows:

- 4.1.1 This Proof of Evidence includes all facts which I regard as being relevant to the opinions which I have expressed, and the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion.
- 4.1.2 I believe the facts which I have stated in this Proof of Evidence are true and that the opinions expressed are correct.
- 4.1.3 I understand my duty to the Inquiry to help it with matters within my expertise and I believe I have complied with that duty.

David Strafford BSc FRICS,  
19<sup>th</sup> October 2021