

TRANSPORT AND WORKS ACT 1992
TRANSPORT AND WORKS (INQUIRIES PROCEDURES)
RULES 2004
NETWORK RAIL (HUDDERSFIELD TO WESTTOWN
(DEWSBURY) IMPROVEMENTS) ORDER

SECOND REBUTTAL PROOF
RELATING TO PROOFS OF EVIDENCE
KINDER PROPERTIES LIMITED (OBJ/15), DP REALTY
LIMITED (OBJ/16) AND R&D YORKSHIRE LIMITED (OBJ/45)
Nigel Billingsley – Property

Document Reference	NR/PoE/REB/NB/05
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The Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order

NR/PoE/REB/NB/05.2 Second Property Rebuttal

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1. INTRODUCTION

1.1 Introduction

1.1.1 The following are my responses with regard to property related issues raised in the proof of evidence of Mr Strafford.

1.1.2 In his proof of evidence Mr Strafford combines the objections of three interested parties listed below;

- Kinder Properties Limited (Kinder)
- DP Realty Limited
- R&D Yorkshire Limited

2. REBUTTAL OF OBJECTOR'S EVIDENCE

2.1 Kinder Properties Limited (OBJ/15), DP Realty Limited (OBJ/16) and R&D Yorkshire Limited (OBJ/45)

Introduction

- 2.1.1 The following are my responses to the proof of evidence of Mr Trafford on behalf of Kinder Properties Limited (OBJ/15), DP Realty Limited (OBJ/16) and R & D Yorkshire Limited (OBJ/45).
- 2.1.2 In his proof of evidence Mr Trafford seeks to summarise a number of matters in section 3, conclusion.
- 2.1.3 The matters covered in this rebuttal are as follows:
- Consultation with the objectors
 - Network Rail's consideration of objectors businesses
 - Comments regarding Rule 15 notices
 - Consideration of impact on the pizza business

Consultation with the objectors

- 2.1.4 In paragraphs, 3.1, 3.2, 3.5 and 3.6 of his proof, Mr Trafford questions the level of consultation with the objectors. I include a schedule of engagement with the objectors as appendix NB08 attached to this proof of evidence.
- 2.1.5 Early consultation began in January 2019 and communications have taken place since that time. In particular, Network Rail's team met with Kinder in London on 1st February 2020 to outline proposals and seek comments from Kinder. The record shows that Mr Arundale sought subsequently to make contact on a number of occasions but was unsuccessful. Prior to May 2021 the agent acting for Kinder was Fletcher King.

Consideration of objectors business

- 2.1.6 In paragraph 3.3 of his proof of evidence Mr Trafford states that the Scheme is not being promoted in a way that reduces the impact on commercial occupiers. However Network Rail have considered the impact on commercial occupiers and have sought to minimise the duration of works that require the occupation of the car park area of the property. I refer to the evidence of Graham Thomas and Mike Pedley for further details.
- 2.1.7 Network Rail will not need to demolish as part of the scheme, and they have offered to serve a minimum of 6 months' notice prior to taking possession of

the land on a temporary basis. Hence the occupiers will have a longer period than usual to prepare for a temporary loss of car parking.

- 2.1.8 The Draft Order also provides for the payment of compensation where a loss resulting from interference with a proprietary right is demonstrated as set out in my main proof of evidence in accordance with the Compensation Code.

Consideration of comments regarding Rule 15 Notices

- 2.1.9 In paragraphs 3.4 and 3.9 of his proof of evidence Mr Trafford considers the service of notices under Rule 15 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the TWA Application Rules”). He does not challenge the fact that the Rule 15 notices were properly served in accordance with the requirements of Rule 15 of the TWA Application Rules. He notes that the notices did not refer to the car park in particular, however the notices served by Network Rail under Rule 15 were served in accordance with the form prescribed by the TWA Application Rules (Form 5 in Schedule 2 to the TWA Application Rules). In addition information regarding the scheme and land take has been in the public domain, easily accessible via the Network Rail website. Application documents including order plans are available for download and can be found at the following link www.networkrail.co.uk/running-the-railway/railway-upgrade-plan/key-projects/transpennine-route-upgrade/huddersfield-to-westtown-dewsbury/
- 2.1.10 I note that Mr Trafford describes the approach of Network Rail to the service of the Rule 15 notices as ‘laissez faire’. This is certainly not the case. Network Rail and its consultants are under a statutory obligation pursuant to Rule 10(8) of the TWA Application Rules to submit to the Secretary of State a sworn affidavit of compliance with the TWA Application Rules including Rule 15. Owen Kelly (WSP), Technical Director for and on behalf of Network Rail has submitted to the Secretary of State such a sworn affidavit confirming compliance with Rule 15 of the TWA Application Rules, that affidavit also containing an example of the Rule 15 notices served together with a postal list of the persons and bodies served. Details of the provision of this sworn affidavit and a copy of this sworn affidavit are to be provided in paragraph 2.10 and Appendix 11 of the Compliance Pack¹ to be submitted by Network Rail to the Inquiry. This Compliance Pack also contains at Appendix 18 the acknowledgment of receipt of this sworn affidavit received from the Department for Transport. Accordingly it is Network Rail position that all

¹ Compliance Pack - Submitted on behalf of Network Rail Infrastructure Limited in support of confirmation of compliance with statutory formalities

Rule 15 notices have been duly served in compliance with the requirements of the TWA Application Rules.

Consideration of impact on pizza business

- 2.1.11 In paragraph 3.7 of his proof of evidence Mr Strafford list three areas of concern regarding the impact on the objectors' business. I take this to mean the impact on R&D Yorkshire the sub tenant in actual occupation of Unit A. With regard to points one and two Mr Strafford notes that these issues could be addressed if Network Rail procured an alternative car park. I note that there is a car park close by, it is a municipal car park called Bath Street Car Park, I have measured the distance from the 'Dominos' unit to the entrance to the car park at being less than 60m using LandInsight software.

3. WITNESS DECLARATION

3.1 Statement of declaration

3.1.1 The named witness hereby declares as follows:

- (i) This proof of evidence includes all facts which I regard as being relevant to the opinions that I have expressed and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion.
- (ii) I believe the facts that I have stated in this proof of evidence are true and that the opinions expressed are correct.
- (iii) I understand my duty to the Inquiry to help it with matters within my expertise and I have complied with that duty.

Nigel Billingsley



28th October 2021

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APPENDIX NB08

Summary table of communication between Network Rail and Kinder Properties Ltd, DP Realty Limited (t/a Domino's) and R&D Yorkshire Ltd, and their representatives

Organisation Name	Report Type	Report Date	Name and Details
Kinder Properties Limited	Letter	11/01/2019	Consultation - Transpennine Route Upgrade
R&D Yorkshire Limited	Letter	11/01/2019	Consultation - Transpennine Route Upgrade
Kinder Properties Limited	Letter	14/01/2019	Kinder Properties Limited - Access letter received-Follow up required. Although there is a signature, the do/do not agree box is not selected so a follow up is required to clarify. Access letter received and signed on behalf of Kinder Properties.
Kinder Properties Limited	Letter	15/01/2019	Access letter received and signed.
Kinder Properties Limited	Email	21/01/2019	Email to check if happy for Network Rail to access land. Permission for access for surveys received.
Kinder Properties Limited	Letter	26/07/2019	Consultation - Amber Consultation Letters
R&D Yorkshire Limited	Letter	26/07/2019	Consultation - Green Consultation Letters
Kinder Properties Limited	Letter	13/12/2019	Letter from David Vernon (Network Rail) requesting meeting for Huddersfield to Westtown (Dewsbury) scheme
Kinder Properties Limited	Letter	08/01/2020	LIQ Request
R&D Yorkshire Limited	LIQ	08/01/2020	LIQ Request
Kinder Properties Limited	Meeting	11/02/2020	Meeting to explain scheme requirements. Attended by Dave Vernon and Damian Arundale. <ul style="list-style-type: none"> • Detailed overview of TRU scheme and the proposed Order application and timing (it was Autumn 2020 at that time). • Intention of Network Rail to include CPO powers in the Order • Likely requirement of the scheme to use the retail park car park for bridge works • At that time still in early design stage, but when details became available, we would contact again • Discussed approach to tenants - as design not settled to wait until further information available.
Kinder Properties Limited	Email	20/02/2020	Email regarding LIQ. I am writing to Kinder Properties Limited to enquire as to whether you have received the Land Interest Questionnaire for the freeholder of the land described as: Land and buildings at Castlegate Retail Park, Huddersfield on the north east side of Fitzwilliam Street, Huddersfield. This document was posted to: c/o Walker Morris LLP, Kings Court 12, King Street, Leeds, West Yorkshire, LS1 2HL, United Kingdom. This document is being sent out by WSP on behalf of Network Rail in order to collect the information of the relevant individuals and businesses which have an interest in land which could potentially be effected by the planned upgrade to the Transpennine Railway. Please contact me if you have any queries.
Kinder Properties Limited	Email	04/03/2020	Email regarding LIQ I am writing to Kinder Properties Limited to enquire as to whether you have received the Land Interest Questionnaire for the freeholder of the land described as: Land and buildings at Castlegate Retail Park, Huddersfield Land on the north east side of Fitzwilliam Street, Huddersfield.

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Organisation Name	Report Type	Report Date	Name and Details
			This document was posted to: c/o Walker Morris LLP, Kings Court 12, King Street, Leeds, West Yorkshire, LS1 2HL, United Kingdom. This document is being sent out by WSP on behalf of Network Rail in order to collect the information of the relevant individuals and businesses which have an interest in land which could potentially be effected by the planned upgrade to the Transpennine Railway. Please contact me if you have any queries.
Kinder Properties Limited	Phone Call	04/03/2020	Phone call re: LIQ. No answer, no option to leave voicemail
Kinder Properties Limited	Email	12/03/2020	Response to LIQ Request
R&D Yorkshire Limited	Letter	18/03/2020	LIQ Chaser Letter
R&D Yorkshire Limited	Letter	15/04/2020	LIQ Chaser Letter
Kinder Properties Limited	Email	28/04/2020	<p>Email correspondence with Julia Moorhouse and Josh Wilson</p> <ul style="list-style-type: none"> Incoming email from Julia Moorhouse stating that she has received the previous email regarding parcel 40991. Julia explained that she forwarded it to Josh Wilson at Fletcher King. Furthermore, Julia stated that Peter Handley has retired from Bilsdale Properties Ltd so all future correspondence should be sent directly to Fletcher King. Incoming email from Josh Wilson stating that he has looked into the land registry image that I have sent him and is unclear as to what it refers to. He states that the only structure he can see is the arches which are demised to various retail tenants. Josh included an image of the area that which did not show any area relating to the land registry image. Tom further said that he is somewhat stumped with this and would like to know if we get anywhere with it. Incoming email from Josh Wilson stating that he will ask a couple of colleagues and should anyone have any idea as to ownership he will come back to me. Outgoing email to peter@bilsdaleproperties.co.uk in order to confirm if Kinder Properties Limited have an interest in parcel 40991 Outgoing email to Josh stating that after looking at the photo provided there definitely looks to be no structure there as it sits flush to the arch rather than underneath implying that it is just an area of land. I suggested that the area could possibly occupied Kinder Properties and possibly one of the companies in the arch and explained that it could also be part of the access to the gated area and back of the arches.
Kinder Properties Limited	Email	12/05/2020	Email from Chris Bradshaw asking for an update following meeting in February
Kinder Properties Limited	Letter	13/05/2020	Consultation Letter Network Rail - Land Plot ID 28140 & 28145
R&D Yorkshire Limited	Letter	20/05/2020	LIQ Chaser Letter
Kinder Properties Limited	Email	31/05/2021	Chaser from Chris Bradshaw regarding email of 12/05/2021
Kinder Properties Limited	Phone Call	08/06/2020	Discussion with Josh as he did not complete the LIQ for parcel 28145. Josh requested that I sent the LIQ document over to him again and he will respond.
Kinder Properties Limited	Email	08/06/2020	Outgoing Email containing original LIQ document & Incoming email confirming ownership of 28145.
Kinder Properties Limited	Email	20/10/2020	Further chaser from Chris Bradshaw regarding email of 12/05/2021. Response from NR agreeing to send information and confirming temporary requirement for land..
Kinder Properties Limited	Voicemail	02/02/2021	Voicemail left for Chris Bradshaw by Damian Arundale – no call returned.

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Organisation Name	Report Type	Report Date	Name and Details
Kinder Properties Limited	Email	02/02/2021	Email from Damian Arundale to Chris Bradshaw requesting to discuss scheme's impact on retail park
Kinder Properties Limited	Phone call	12/02/2021	Ran through the scheme and purpose of the call with Josh, but suggested a Teams call would be easier so we could share the plans on the screen
Kinder Properties Limited	Email	16/02/2021	Follow up email from Damian to set up Teams call
Kinder Properties Limited	Meeting	19/02/2021	Meeting between Damian Arundale and Chris Bradshaw/Josh Wilson
Kinder Properties Limited	Letter	18/03/2021	Letter from Damian Arundale to Kinder Properties outlining the TWAO and steps for the Castlefield Retail Park site.
Kinder Properties Limited	Letter	13/05/2021	Objection Letter from David Strafford.
DP Realty Limited (t/a Domino's)	Letter	13/05/2021	Objection letter
Kinder Properties Limited	Email	08/06/2021	Emails regarding meeting setup and issues for the meeting
Kinder Properties Limited	Email	16/06/2021	Confirmation of who received rule 15 notice
Kinder Properties Limited	Email	21/06/2021	NR provided information on highways measures
Kinder Properties Limited	email	24/06/2021	Kinder Properties request for plans
DP Realty Limited (t/a Domino's)	Meeting	24/06/2021	Meeting between Sam Dean and Sarah Pritchard.
Kinder Properties Limited	Letter	01/07/2021	Kinder Properties Limited Statement of Case OBJ15
Kinder Properties Limited	letter	05/07/2021	NR objection response letter
DP Realty Limited (t/a Domino's)	Letter	05/07/2021	Objection response letter
Kinder Properties Limited	letter	15/07/2021	NR letter
DP Realty Limited (t/a Domino's)	Letter	21/07/2021	Rule 15 clarification and costs letter
DP Realty Limited (t/a Domino's)	Letter	26/07/2021	DP Realty Limited (t/a Domino's) Statement of Case
DP Realty Limited (t/a Domino's)	Email	30/07/2021	Chaser email from NR, DP Realty Limited (t/a Domino's) response
Kinder Properties Limited / DP Realty Limited (t/a Domino's) / R&D Yorkshire	Email	06/09/2021	Kinder Properties confirming attendance at pre inquiry
Kinder Properties Limited / DP Realty Limited (t/a Domino's) / R&D Yorkshire	Email	15/09/2021	NR sending construction presentation
Kinder Properties Limited / DP Realty Limited (t/a Domino's) / R&D Yorkshire	email	23/09/2021	Discussion following Teams call
Kinder Properties Limited	Email	30/09/2021	Discussing Proofs of Evidence

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Organisation Name	Report Type	Report Date	Name and Details
Kinder Properties Limited / DP Realty Limited (t/a Domino's) / R&D Yorkshire	email	05/10/2021	Discussion around draft documents
Kinder Properties Limited / DP Realty Limited (t/a Domino's) / R&D Yorkshire	email	08/10/2021	Proposed Interface Management Agreement issued by Network Rail
Kinder Properties Limited / DP Realty Limited (t/a Domino's) / R&D Yorkshire	Email	11/10/2021	Kinder requesting plan
DP Realty Limited (t/a Domino's)	Email	12/10/2021	NR responses to client feedback
Kinder Properties Limited / DP Realty Limited (t/a Domino's) / R&D Yorkshire	Email	14/10/2021	Discussion around compromise agreement
Kinder Properties Limited / DP Realty Limited (t/a Domino's) / R&D Yorkshire	Email	15/10/2021	Plan for proposed Interface Management Agreement issued by Network Rail
Kinder Properties Limited / DP Realty Limited (t/a Domino's) / R&D Yorkshire	Letter	20/10/2021	Proofs of Evidence