

TRANSPORT AND WORKS ACT 1992

TRANSPORT AND WORKS (INQUIRIES PROCEDURES) RULES 2004

NETWORK RAIL (CAMBRIDGE SOUTH INFRASTRUCTURE ENHANCEMENTS) ORDER

**SUMMARY PROOF OF EVIDENCE ON MATTERS OF STATUTORY CODE
COMPENSATION**

**COLIN SMITH – CBRE HENRIETTA HOUSE LONDON ON BEHALF OF THE
UNIVERSITY OF CAMBRIDGE**

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1 QUALIFICATIONS AND EXPERIENCE

- 1.1. My qualifications and experience are set out in section 1 of my main Proof of Evidence in which I set out my experience in compulsory purchase and compensation. I provide details of my career since the 1970s within the public sector (District Valuers), as an equity partner in private practice and since 2006 as a senior director at CBRE based in London, initially as head of the compulsory purchase team and latterly as an expert witness and strategic adviser.
- 1.2. Section 1 of my main Proof of Evidence also references several Lands Tribunal case decisions in which I was an expert witness, including cases involving railway and tram projects which caused vibration and noise effects including in respect of The Francis Crick Institute building in Central London.

2 CONTEXT AND SCOPE OF EVIDENCE

- 2.1 Details of my instruction, together with an explanation of the affected premises and in respect of the Anne McLaren Building ("**AMB**") the basis of occupation are set out in section 2 of my main Proof of Evidence. Reference to the business rates assessment of the AMB building the descriptor being – 'University and Premises' is also set out in section 2 of my main Proof, together with an explanation of my knowledge of the AMB, the location and the operations undertaken within the AMB.
- 2.2 The context and purpose of my evidence on compensation is that an issue arises regarding a gross inadequacy of the property costs assessment allowance for land compensation which threatens viability and deliverability of the Scheme. Additionally, it is considered that certain potential costs and losses may be outside the Compensation Code (or "**Statutory Code**") provisions leading to unrecoverable losses and a threat to operational capability of the AMB.
- 2.3 Reference is also made in my main Proof to my entirely unproductive efforts to secure meaningful engagement with Network Rail's compensation advisers and significant underperformance in respect of MHCLG guidance on use of compulsory purchase powers and compensation. Namely, that compulsory acquisition is to be a 'last resort' effort with promoters being required to acquire land and rights by agreement.

- 2.4 I do not seek to quantify compensation, rather I demonstrate potential issues and losses which do not appear to have been considered by Network Rail.

3 COMPENSATION: OVERVIEW

3.1 AMB

3.1.1 As set out in section 3 of my main Proof, the AMB is a highly specialist premises purpose built and equipped for the specific use undertaken. The layout of floors accommodates significant plant and machinery, including air handling equipment to ensure and maintain environmental conditions for the animals and fish being housed in the AMB.

3.1.2 In section 3 of my main Proof, I reference the Compensation Code 'six rules' of compensation and the distinction between rule 2 – market value and rule 6 – equivalent reinstatement applicable to premises which are 'devoted to a purpose for which there is no general market or demand'. The AMB is considered to be such premises. I also set out the potential to apply 'material detriment' provisions within the Compulsory Purchase Act 1965, requiring acquisition of the whole rather than part only.

3.1.3 I also make reference to Rule 6 'disturbance' compensation broadly to cover losses not compensated under any other head of claim. This may include costs of relocation or loss of income.

3.1.4 My understanding of the overall operations and impact from the Scheme is obtained from University of Cambridge personnel and my fellow expert witnesses who I identify in my main Proof.

3.1.5 The nature, severity and extent of Network Rails proposed construction works for the Scheme and use of the railway will determine the adverse effects on operability of operations at AMB with impacts from works on the University's retained land, resulting in a possible disturbance claim of significance.

3.2 Plot 9

3.2.1 As set out in my main Proof, Plot 9 adjoins AMB and is described in Mr Paul Milliner's Proof of Evidence.

- 3.2.2 Plot 9 is currently undeveloped land potentially subject to use constraints if Network Rail's proposed Scheme causes vibration, noise and/or electro magnetic interference.

4 CONTEXT OF COMPENSATION WITHIN THE TWAO APPLICATION

- 4.1 In section 4 of my main Proof, I reference the University of Cambridge Statement of Case, para 13 which states as follows:

4.1.1 *"13 COSTS AND FUNDING*

13.1 The overall estimated cost of the scheme is stated to be £183,661,399 as set out in Network Rail's Estimate of Costs document (reference NR06). The Estimate of Costs also states that within the overall cost, acquisition of land and rights over land compensation is estimated to be in the sum of £7,673,614.

13.2 As matters stand, the University has not been provided with sufficient information to demonstrate that impacts on the AMB have been properly addressed or could be satisfactorily mitigated. If the effects of the Scheme could not be demonstrated to be acceptable, and it became necessary to relocate the AMB, the costs of doing so (even assuming a suitable site could be identified) would be extremely substantial and likely to be significantly greater than the sum identified for compensation in the Estimate of Costs, even without taking into account the potential losses from research work, including loss of grants (as indicated in Section 4 above).

13.3 There is no evidence that the viability of meeting the potential costs of relocation, to the extent that these are capable of being compensated, have been considered through the funding of the Scheme".

- 4.2 The University has yet to be provided with information from Network Rail to demonstrate that impacts on the AMB have been properly assessed and will (or can) be satisfactorily mitigated whether by design and specification of the works and/or provision of accommodation works.
- 4.3 In section 4 of my main Proof, an explanation is provided regarding the difficulty in assessing what compensation might be, consideration being given to how work undertaken within the AMB might be adversely impacted leading to loss of research

outcomes and consequential loss of grant income. There being potential for losses more than the overall estimated compensation liability of £7.67m set out in Network Rail's Estimate of Costs.

- 4.4 An ultimate 'worst case' is that continuation of operations at the AMB are rendered unviable. There is currently no basis on which to conclude that Network Rail has recognised, understood, and properly estimated the risks in terms of compensation which might arise.

5 COMPENSATION ISSUES

- 5.1 In section 5 of my main Proof, I refer to the potential risk from material detriment and equivalent reinstatement compensation as being the basis of compensation. I also set out the potential losses arising in respect of aborted or lost research work with an annual value of £41.5m.
- 5.2 I also refer to the accepted need to mitigate loss and incur costs in doing so with the concomitant obligation on the project promoter to reduce adverse effects and compensation by appropriate project design and provision.

Plot 9

- 5.3 In relation to Plot 9, I set out that the basis for Compensation is likely to be any additional costs of construction mitigation and/or fit out requirements necessary to overcome any adverse consequences caused by the Scheme when compared with the position now existing.

Potential Losses Beyond Compensation

- 5.4 In section 5 of my Proof, I also refer to the overriding principle of 'equivalence' claimant to be 'no better / no worse off' because of compulsory purchase.
- 5.5 I also identify potentially uncompensatable losses in terms of loss of reputation to individuals and the University itself.

6 CONCLUSION

- 6.1 My evidence explains that although compensation issues are not normally to be considered when determining whether a TWAO should be confirmed, in the particular circumstances of this case compensation issues are relevant, because they potentially affect the viability and funding of the Scheme.

- 6.2 The construction and (potentially) future railway operations on part of the land to be acquired could, if not properly mitigated, result in the University's and other users use of the AMB premises being impaired- damaging the University's (and other occupiers' users) ability to operate within and use the premises. The nature, severity, and extent of the Scheme construction works, and subsequent operational use of the railway will determine the adverse effects on operability on the operations undertaken at AMB and hence quantum of compensation payable.
- 6.3 For present purposes I have assumed that, as one eventuality, compensation would be payable in respect of 'disturbance' to occupation leading to additional costs and loss of income. Another more serious eventuality, would involve the cessation of operations within the AMB.
- 6.4 In either case, the risk of potential levels of compensation being payable in either eventuality would in my view call into question the funding of the Scheme. The funding is based on assumptions relating to compensation payments of a much smaller magnitude than even the former scenario I have identified above.
- 6.5 Without proper mitigation, therefore, there is in my view a clear risk that compensation would be in excess of the estimate which has been made in Network Rail's Estimate of Costs threatening the overall viability and deliverability of the Scheme. The Scheme also raises the risk of causing damage to the reputation of the University and other related harm which may be difficult to identify within the statutory Compensation Code.

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