

**TRANSPORT AND WORKS ACT 1992**

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

**NETWORK RAIL (CAMBRIDGE SOUTH INFRASTRUCTURE ENHANCEMENTS) ORDER**

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

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

<b>Inquiry Document Reference</b>	<b>[TBC]/ OBJ 8</b>
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## **1 QUALIFICATIONS & EXPERIENCE**

- 1.1 My name is Colin David Smith. I am a Fellow of The Royal Institution of Chartered Surveyors (FRICS), an Honorary Member (2014) former Chairman (2007/8) and former Honorary Secretary (2009/2013) of the Compulsory Purchase Association, and a Member of The International Right of Way Association.
- 1.2 I qualified as a Chartered Surveyor in 1973. I worked for the District Valuers Office in Somerset, Gloucestershire, Buckinghamshire, and London (Chief Valuers Office) and was promoted to First Class Valuer (District Valuer) in 1988. I was then with Bruton Knowles from 1989 to 2006 (Equity Partner from 1995) where I was head of the compulsory purchase and compensation team. I joined CBRE (with two members of the Bruton Knowles team) as a Senior Director in 2006 and until 2018 I was head of that team. I am now a strategic adviser (within the CBRE Compulsory Purchase and Compensation team) and expert witness on compulsory purchase and compensation. Most of my work involves the acquisition of land and rights for projects involving transport (rail, airport, and highways), energy (electricity overhead and underground lines), gas (pipelines and storage reservoirs) and residential led regeneration projects which comprise 1,000+ dwellings.
- 1.3 CBRE is the world's leading commercial property and real estate services adviser providing a comprehensive range of commercial property services. We have staff based in the UK with offices in Aberdeen, Belfast, Birmingham, Bristol, Edinburgh, Glasgow, Jersey, Leeds, Liverpool, London, Manchester and Southampton. UK turnover is more than £350m.
- 1.4 Throughout my career I have specialised, and since 1996 worked exclusively, in the field of compulsory purchase and compensation. Major infrastructure and regeneration projects on which I was the lead consultant include Heathrow Terminal 5 (Thames Water (Iver South) Water Treatment Works) 1995 - 1997, the Channel Tunnel Rail Link ('CTRL' 'HS1') 1996 to 2011, the London Olympic Games CPO 2006 to 2015 and Heathrow Expansion from 2018.
- 1.5 I have appeared as an expert witness in the Lands Tribunal, the High Court, the East Caribbean High Court, County Courts and at numerous CPO Public Inquiries. Many of the cases in which I have been the expert witness have progressed to become 'leading

cases' including *Bocardo v Star Energy*<sup>1</sup>, *Clearun and others v GLA*<sup>2</sup>, *EDF Energy v Welford*<sup>3</sup>, *AWE v National Grid*<sup>4</sup> and *Christos v Sec of State for Transport*<sup>5</sup>. I am currently the valuation (statutory compensation) expert witness for the Secretary of State for Transport on the HS2 project in respect of a large compensation claim at Coleshill Manor near Birmingham. I also have extensive experience as an expert in arbitrations, mediations, and other alternative dispute resolution scenarios.

1.6 The proposed Network Rail (Cambridge South Infrastructure Enhancements) Order (“**Order**”) concerns the University of Cambridge (“**University**”)’s medical research premises and adjoining development land for medical research premises the use of which is highly sensitive to vibration, noise, and electromagnetic interference (“**EMI**”). With specific regard to these circumstances I have dealt with the following compensation cases:

1.6.1 Channel Tunnel Rail Link (2003) – A specialist medical and drugs printing business (production of packets and directions for use leaflets) at trackside premises which contained printing presses highly sensitive to vibration;

1.6.2 The Francis Crick Institute St Pancras (2008) – advice regarding compensation and mitigation in respect of specialist flooring and isolation from vibration works in connection with the (then proposed) Thames Tram project (TfL);

1.6.3 CTRL – Bluebell Hill Tunnel (Nr Chatham) – in relation to circa 40 residential properties, several of which were significantly affected by high levels of ground borne noise and vibration, in respect of which two cases were referred to Land Tribunal but settled by negotiation.

1.7 I confirm that throughout this instruction I have complied with the RICS Professional Statement “Surveyors advising in respect of compulsory purchase and compensation”.

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<sup>1</sup> Bocardo: [2010] UKSC 35 (the first modern case to consider how far beneath the surface a landowner’s title to land extends).

<sup>2</sup> Clearun: [2014] UKUT 116 (LC) (compensation case establishing compensation on existing use rather than redevelopment basis).

<sup>3</sup> EDF: [2007] EWCA Civ 293 (issue of remoteness for claim for loss of profits).

<sup>4</sup> AWE: [2014] EWCA Civ 216 (approach to compensation for acquisition of wayleaves).

<sup>5</sup> Christos: [2003] EWCA Civ 1073 (issues relating to existence of contractual obligations, estoppel and post-valuation damage).  
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- 1.8 My Expert Witness Declaration in accordance with the RICS Practice Statement “Surveyors Acting as Expert Witnesses” (Fourth Edition) 2014 is included at the end of this Proof.

## **2 INTRODUCTION**

- 2.1 I am asked to provide expert evidence on behalf of the University in respect of the basis for and the potential quantum of statutory ‘code’ compensation payable in the event the Order is confirmed and the scheme pursuant to the Order (“**Scheme**”) is implemented.
- 2.2 The affected land and property comprise the Anne McLaren Building (“**AMB**”) and the adjoining (undeveloped) area of land known as “**Plot 9**”. A summary of the affected land interests is appended to the proof of Paul Milliner.
- 2.3 The AMB is occupied by both the University as long leasehold owner and by AstraZeneca (“**AZ**”) which has a sub-leasehold interest in part of the AMB. AZ’s lease is for 10 years and was entered into in October 2019. The demise is defined to include holding rooms on Level 2 and laboratory space on Level 4.
- 2.4 The AMB premises were first occupied in 2019.
- 2.5 For Business Rates the premises comprise a single Assessment: ‘University of Cambridge Anne McLaren Building Francis Crick Avenue Cambridge CB2 0AZ’ 15<sup>th</sup> March 2019 – RV £1.65m – University and Premises.
- 2.6 I was instructed in this matter by the University in August 2021. I visited the premises and made an external inspection (accompanied by a member of the University property team) on 23<sup>rd</sup> August, at which time I familiarised myself with the immediate locality and the wider Cambridge Biomedical Campus.
- 2.7 The main purpose of my evidence is to explain 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. I also identify how some of the losses which may be borne by the University and other occupiers and users of the AMB are potentially beyond compensation (and thereby should be taken into account when assessing the merits of the Order itself).

2.8 During the period since mid-September, I have had several email exchanges with personnel at Bruton Knowles (“**BK**”), Network Rail’s statutory compensation adviser. In late September I responded to an invitation to engage about statutory compensation and the terms for acquiring the interest in land. I proposed a basis for us to agree how matters would be dealt with within the Code. Those exchanges were not productive. The most recent meeting with Chris Renshaw from BK took place on 25<sup>th</sup> November at AMB, with Paul Humphrey (PH, Network Rail) and a representative from Murphy’s (Network Rail’s appointed contractor) also present. At the meeting and subsequently I again made proposals to Chris Renshaw regarding the need to seek to agree a basis of approach on compensation. His substantive response is still awaited and I have sent further emails (13<sup>th</sup> December 2021 and 3<sup>rd</sup> January 2022). A summarised chronology of my exchanges with Bruton Knowles is as follows:

### **September**

- Opening email contact from Rachel Holland ‘seeking to progress discussions’
- A ‘Teams’ meeting ‘seeking to progress discussions’ arranged by Rachel Holland at BK for 24<sup>th</sup> September
- Agreed at meeting and in agreed minutes that Chris Renshaw (‘CR’ BK) would progress compensation heads of terms however it was subsequently confirmed by Paul Humphrey that Bill Simms (BK) would be the point of contact for compensation discussions. That transpired to be incorrect.

### **October**

- Draft minutes of 24th September received by me on 7th October revised and returned to CR on 13th October
- On 28th October I emailed CR setting out my view on compensation matters and issues to be discussed and hopefully agreed

### **November**

- Email response from CR on 1st November, ‘Thanks for the Note, I will revert shortly’
- 25th November site visit (to AMB and environs) with PH, CR and Andrew Ratcliffe (Murphy’s NR contractor)
- Agreed with CR at meeting that we would progress a joint statement on compensation, urgently.

## December

- Having heard nothing I chased CR by email on the 13<sup>th</sup> December
- CR telephoned me on the 20<sup>th</sup> December to say that Network Rail has decided to 'take no action on compensation and wait to see how the chips fall'. A note has been prepared and will be sent 'tomorrow or the next day at the latest'.
- Nothing was received before the start of the Christmas holiday.

2.9 This lack of engagement by an acquiring authority seeking compulsory purchase powers is in my view contrary to MHCLG Guidance on the use of compulsory purchase.<sup>6</sup> Under question 2 ("When should compulsory purchase powers be used?") within the general overview, the guidance states that:

*"The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement".*

*"Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects".*

2.10 In my experience such a complete lack of engagement is unprecedented and in view of the particular challenges and issues arising with application of the Code in respect of these premises there has been a particular need for engagement and discussion. In these circumstances I shall set out my current views briefly, in the expectation that any note from BK will require further consideration as necessary in advance of the inquiry. I also bear in mind that it is not the purpose of my evidence to establish the level of compensation that would be available to the University, as this is outwith the scope of the inquiry. My evidence is limited to demonstrating the potential issues with losses which do not appear to have been considered by Network Rail in promoting the Order.

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<sup>6</sup> August 2019 – Guidance on Compulsory Purchase and The Crichel Down Rules.  
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### **3      COMPENSATION: OVERVIEW**

#### **AMB**

- 3.1      These highly specialist premises comprise a purpose built secure medical research facility and described in the Business Rates List as 'University and Premises'. The layout and floor areas within the AMB are specific to the use requirements with a significant amount of floorspace devoted to air handling and heating/cooling plant. Occupied 'operational' floors being separated by 'plant' floors.
- 3.2      In circumstances where a landowner is faced with the partial acquisition of its property, it may seek the acquisition of the whole of its land (where an acquiring authority proposes to take part of a property the Upper Tribunal may require them to purchase the whole if part cannot be taken without causing material detriment to the remainder: see eg S8 of the Compulsory Purchase Act 1965) In respect of compulsory purchase statutory compensation, the usual market value basis for assessing the value of land taken, within rule 2 of the six rules (Land Compensation Act 1961 section 5), would be unlikely to apply, because the premises are devoted to a purpose for which there is no general market or demand.
- 3.3      In some cases where compensation is not assessed based on the value of land acquired, another rule (rule 5) may be relevant, with the basis of compensation being 'equivalent reinstatement', broadly to cover the cost of reinstating on other land.
- 3.4      A further rule, (rule 6), provides for compensation for 'disturbance or any other matter not directly based on the value of land'. Broadly speaking, this can cover losses suffered by a landowner which would not figure in any ordinary assessment of the value of land (in particular under rule 2). This can include, for example, costs of relocation or loss of income resulting from disturbance.
- 3.5      In this case the issues, in terms of potential adverse impacts on operations, arise from the construction and/or subsequent operation of the Scheme. My understanding of these operations is derived from visiting the premises, extensive discussions with University personnel and the evidence provided by my fellow experts whose proofs of evidence I have read. These experts are Mr Karl Wilson (UoC/AMB), Rupert Thornely-Taylor (Vibration and Noise), Paul Milliner (Planning), Graham Hughes (Transport), John McAuley (EMI) and Paul Jenkin (Drainage).



- 3.6 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 premises being impaired damaging the University's (and other occupiers users) ability to operate within and use the premises. For present purposes I have assumed that if compensation is payable this could arise in relation to 'equivalent reinstatement' under rule 5 and/or 'disturbance' to occupation leading to additional costs and loss of income, falling under rule 6.
- 3.7 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. Even impacts on the AMB as retained land could on their own amount to a disturbance claim of significance under rule 6.

#### **Plot 9**

- 3.8 This plot of land situated next to the AMB is referred to in Mr Paul Milliner's proof of evidence (at paragraph 2.12). In summary, the University obtained Outline Planning Permission for the development of Plot 9 (application reference 16/1078/OUT) in February 2017. Whilst that consent has now expired, the established principle of the use remains via the terms of Policies 17 and 43 of the Cambridge Local Plan.
- 3.9 As explained by Paul Milliner, it is the University's view that material effects upon Plot 9, alongside the AMB, should be accounted for to ensure that any proposals do not prejudice the proper planning of the Biomedical Campus.
- 3.10 Plot 9 is potentially subject to use constraints if the Scheme causes vibration, noise and/or EMI, such that future use and hence development options are constrained. I refer to the basis of compensation in respect of Plot 9 below.

## **4      CONTEXT OF COMPENSATION WITHIN THE ORDER APPLICATION**

4.1      The University's Statement of Case, at paragraph 13, states as follows:

*"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      It remains the case that as matters stand and as explained fully in the evidence provided by several of my fellow experts, the University has not yet been provided with information to demonstrate that impacts on the AMB have been properly addressed or can (will) be satisfactorily mitigated whether by design and specification of the works and/or provision of accommodation works.

4.3      In these circumstances, it is difficult to assess what the broad scope of losses, or therefore, of compensation might be. However as I explain further below, if the effects of the Scheme cannot be satisfactorily understood or mitigated, the operations at the AMB may, in one eventuality, need to be paused or repeated if research work has been invalidated even temporarily. This could involve losses from aborted research work, loss of rental income and fees, loss of direct and indirect grants and commercial income. As I explain further below, there is no doubt that such losses caused by adverse effects from the NR works are potentially significant. Overall in my view these

costs may be greater than the sum of £7.67m (identified in the Estimate of Costs) which has been allowed for compensation in respect of the entire Scheme .

- 4.4 The ultimate ‘worst case’ would be that the effect of the Scheme works, not properly mitigated, is so severe that continuation of the University’s operations at AMB becomes unviable. If this eventuality were to arise, then the potential losses to the University, whether arising from the cessation of its operations at the AMB, or any potential relocation of those operations, would be even greater and very considerable indeed, as I explain further below.
- 4.5 It is of course necessary to ensure that sufficient funding has been provided to ensure viability (deliverability) of the Scheme. The ability to show adequate funding to ensure deliverability of the Scheme is a key requirement to justify the use of compulsory purchase. It is within this context it is necessary to examine and ensure that the Property Cost Estimate (“**PCE**”) is adequate. However as matters stand, and subject to reviewing any evidence submitted by Network Rail on this issue, I have seen no evidence that the potential risk of substantial losses to the University, along with any compensation which might arise as a result, have been considered adequately or at all by Network Rail.

## **5      COMPENSATION ISSUES**

- 5.1      The potential impact on the operations at the AMB have been explained by other witnesses, including Karl Wilson. If for present purposes it is assumed that compensation would be payable in respect of an eventuality whereby research work must be aborted and/or repeated, one possibility would be that the AMB was no longer viable for its current operations. Based on the cost incurred in respect of the current AMB premises (constructed and equipped during the period 2017-19) the compensation for equivalent reinstatement would be close to if not in excess of the whole of the Scheme cost. A similar position would arise if compensation had to be paid in respect of the extinguishment of the operations at the premises.
- 5.2      If, as another possibility, even the cost of refunding ineffective work covered by grants with an annual value of circa £41.5m potentially had to be met, this alone would legitimately call into question the progress of the Scheme. I accept that as with any compensation claim it would, in broad terms, be necessary for the University to establish its basis for compensation. Further, all compulsory purchase claimants are required to 'mitigate loss' and alongside this obligation acquiring authorities are able to undertake works and provide measures to reduce compensation otherwise payable. Typical examples of such accommodation works on railway projects are noise attenuation fencing, isolating floors or equipment plinths, track bed mitigation to reduce or eliminate vibration, or similar. However in my view the possible scale of the issue highlights the potential risk facing the Scheme.

### **Plot 9**

- 5.3      Compensation in respect of this yet to be developed 'research premises' development land, would in my view be determined by (if any) the costs of ensuring the 'scheme world' situation is no worse than the current 'no scheme world' situation. The basis of approach being to require there is no additional or exacerbated adverse effects in terms of vibration, noise or EMI.
- 5.4      The quantum of such compensation would include the additional costs of construction, mitigation and/or specialist fit out requirements. Again in the absence of information relating to impacts it is not known at this stage how extensive those costs might be, however they would arise in addition to those I consider above.

## **Potential losses beyond compensation**

- 5.5 It is a general principle that a claimant for compensation should not be better nor worse off as a result of being subject to compulsory purchase – the principle of equivalence. However, if not properly mitigated, there is the potential that damage and impairment to the operational capability of AMB may result in costs and or losses beyond the ambit of the statutory compensation code. These may include the impacts on, for example, delays to the careers of academic staff waiting to publish important results, or the wider effects on the reputation of the University if the results of research work are adversely affected, delayed, or even aborted. These are significant matters which do not lend themselves readily to compensation assessment and they highlight the difficulties with a scheme which does not, as I understand the rest of the University's evidence, provide adequate information or mitigation for its impacts.
- 5.6 Further, as I have explained, I do not know even the broad approach that Network Rail is taking to assessing any compensation in relation to the impacts on the University, or therefore the nature or extent of any difference between the parties on how losses to the University would be compensated. The University is therefore not in a position, without adequate mitigation being secured, to conclude that its position would in overall terms be adequately protected. These are factors which underscore the need to provide adequate assurances on the future construction and operation of the Scheme before any Order is confirmed.

## **6 SUMMARY AND CONCLUSIONS**

- 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 During the period since mid-September, I have had several email exchanges with personnel at BK, Network Rail's statutory compensation adviser. In late September I responded to an invitation to engage about statutory compensation and the terms for acquiring the interest in land. Despite repeated requests for substantive response, none has been forthcoming. In my view the lack of engagement is contrary to government guidance on compulsory purchase and in my experience it is unprecedented.
- 6.3 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 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.
- 6.4 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.
- 6.5 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.
- 6.6 Without proper mitigation, therefore, there is in my view a clear risk of that compensation would be in excess of Network Rail's estimate which has been identified in its 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.

**7      WITNESS DECLARATION**

7.1      I hereby declare as follows:

7.1.1      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.

7.1.2      I believe the facts that I have stated in this proof of evidence are true and that the opinions expressed are correct.

7.1.3      I understand my duty to the inquiry to help it with matters within my expertise and have complied with that duty.

**Colin Smith**

**Senior Director**

**CBRE**