

TRANSPORT AND WORKS ACT 1992

TRANSPORT AND WORKS (INQUIRIES PROCEDURES) RULES 2004

NETWORK RAIL (CAMBRIDGE SOUTH INFRASTRUCTURE ENHANCEMENTS) ORDER

REBUTTAL PROOF OF EVIDENCE

ON MATTERS OF TOWN & COUNTRY PLANNING

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ESTATES DIVISION

**ON BEHALF OF THE CHANCELLORS, MASTERS AND SCHOLARS OF THE
UNIVERSITY OF CAMBRIDGE**

Inquiry Document Reference	OBJ-08-W6/REB
Author	Paul Milliner
Date	17 January 2022

1 **INTRODUCTION**

- 1.1 This Rebuttal Proof of Evidence has been prepared in response to matters raised in the evidence of Network Rail witnesses John Pearson on Planning (NRE 9.1, 9.2 and 9.3) and Mr Andy Barnes (NRE 1.1, 1.2 and 1.3).
- 1.2 In this Rebuttal Proof, I set out the current position of the University of Cambridge with regard to Planning in the light of the evidence submitted by Network Rail on 7 January 2022.
- 1.3 Where I have not addressed specific points from the Network Rail evidence, this should not be taken to mean that I accept this evidence. Where Network Rail or other parties produce further evidence by way of rebuttal, I reserve the right to comment on this as necessary.

2 **MY RESPONSE TO NETWORK RAIL'S PLANNING EVIDENCE**

Mitigation of Adverse Environmental Effects

- 2.1 John Pearson states in his Main Proof of Evidence at paragraph 7.2.50 that:

*The proposed planning conditions have been discussed with the GCSP and revised drafting is included in Appendix A. **Network Rail do not believe it is appropriate to mitigate the effects of their development on the AMB or Plot 9 directly through these mechanisms** and have been seeking to agree protective provisions through a private agreement with the University of Cambridge to provide details of their construction methodology and drainage prior to starting relevant works. These will require Network Rail to agree relevant mitigation with the UoC to ensure the impacts of the CSIE Project are acceptable. It will also ensure that existing land drainage assets serving the UoC area are maintained and/or re-provided and any rights are reprovided. (**My emphasis**)*

- 2.2 That is a change to Network Rail's previous position. It was stated in the Environmental Statement (Volume 2, Chapter 6 'Acoustics Assessment Part 2 – Vibration', Section 6.4 'Design and Mitigation', paragraphs 6.4.4 and 6.4.5) that:

6.4.4 On the CBC site, Moderate impacts are predicted for the ...Anne McLaren building...for works that are in close proximity. This results in a significant effect in accordance with the Significance Matrix...

6.4.5 Construction vibration will be mitigated through the use of Best Practicable Means which will be set out in the outline Code of Construction Practice (CoCP) Part A (see Appendix 2.4) with further detail of the measures below provided in the CoCP Part B to be submitted to the Local Planning Authority for approval.

2.3 Similarly, it was stated in the Environmental Statement (Volume 2, Chapter 5 'Acoustics Assessment Part 1 – Noise', Section 5.5 'Design and Mitigation', paragraph 5.5.1 that:

5.5.1 Working practices will be agreed with the appointed principal contractor within detailed Construction Method Statements to be secured as part of the CoCP Part B to reduce the predicted worst-case noise levels and impacts to NSRs.

2.4 I conclude that, in effect, Network Rail's position now is that it has assessed adverse environmental effects on the Anne McLaren Building arising from noise and vibration, but proposes no mechanism to mitigate those effects through an approved Order or through the associated deemed planning consent. Instead, it proposes to rely solely on a private agreement with the University.

2.5 My view is that Network Rail's current position is not consistent with a fundamental principle of planning that the adverse impacts of development should be mitigated through controls that are enforceable through the operative consent.

2.6 In my main Proof of Evidence I identify an alternative mechanism to the planning process of mitigating adverse effects through controls that are enforceable by way of conditions in any planning consent, namely, the inclusion of Protective Provisions on the face of the Order, supported by a Land and Works Agreement between Network Rail and the University. The University is in a similar position to other asset holders who operate infrastructure that will be affected by a proposed development and who, to safeguard their operations, often seek Protective Provisions to be included in an Order under the Transport and Works Act 1992 (or similar legislation such as a Development Consent Order under the Planning Act 2008), Protective Provisions would be enshrined in legislation and would be an effective control mechanism in an

approved Order to provide the greatest assurance of mitigation of adverse effects to the University's research and estate operations at the Anne McLaren Building and Plot 9, relating to noise, vibration, electro-magnetic compliance and drainage.

- 2.7 Network Rail itself seeks Protective Provisions in similar Orders and I see no reason why it should be unable to propose them here. The evidence of Mr Pearson refers to "*protective provisions through a private agreement*", however in my experience I have never come across any agreement described in this way. This suggestion appears to confuse differing means by which objections to an Order may be resolved.
- 2.8 My conclusion, therefore, is that the Order should be approved only with the inclusion of Protected Provisions for the Anne McLaren Building and for Plot 9, supported by a Land and Works Agreement between Network Rail and the University.

University's Obligations in Relation to the Extant Consent for the Anne McLaren Building

- 2.9 As stated in Section 5 of my Main Proof of Evidence, the Anne McLaren Building development is subject to landscaping conditions 43 and 46 for outline planning permission 06/0796/OUT (varied by S73 permission 14/2094/S73), which require any trees or plants which die, are removed or become seriously damaged or diseased within a period of 5 years from the completion of the development to be replaced in the next planting season with others of similar size and species as those originally planted, unless the Local Planning Authority gives written consent to any variation.
- 2.10 John Pearson identifies measures to be applied under paragraph 8 of Schedule 1 to the Transport and Works Act to exclude AstraZeneca from any liability that might result from being unable to implement their permission in accordance with the conditions.
- 2.11 The University is in a slightly different position to AstraZeneca in that it has implemented its permission for the Anne McLaren Building; nevertheless, it is still liable to enforcement action for any breach of planning control relating to landscaping conditions. The University requires a similar level of protection to that being offered to AstraZeneca, to exclude the University from any liability that might result from being unable to comply with the landscaping conditions.

Future Development of Plot 9

- 2.12 Mr Andy Barnes includes the previously approved land use parameter plan that was approved as part of the planning permission for Plot 9 (permission reference 16/1078/OUT, details of which are set out in my Main Proof of Evidence at paragraph 2.12) at paragraph 418 of his Main Proof of Evidence (NRE 1.2). A copy of the land use parameter plan is at Appendix 1.
- 2.13 Network Rail propose permanent land acquisition from within the structural landscaping area, although it is still not clear exactly how much land would be taken, or how much of the acquired land would be reinstated as structural landscaping.
- 2.14 There is a risk to the University that the local planning authority may require some of the land previously approved as developable area to be used for structural landscaping in any future permission, to compensate for the loss of structural landscaping to the railway, and thereby reducing the developable area.

University Land Interests Affected by the Order

- 2.15 The Appendix to my Main Proof of Evidence set out concerns regarding the ability to fully understand the impact of the Scheme on its property interests at CBC, in particular the need for a revised Book of Reference and related revisions to the Draft Order to be issued to correspond with the revised land plans received to date. I append an update at the Appendix to this Rebutal Proof (Appendix 1 below).

3 CONCLUSIONS

- 3.1 The University seeks Protective Provisions to be included in any approved Order, to protect its research and its estate interests at the Anne McLaren Building and Plot 9. Protective Provisions would be supported by a Land and Works Agreement between Network Rail and the University.
- 3.2 The University seeks exclusion from any liability that might result from being unable to comply with landscaping conditions 43 and 46 for outline planning permission 06/0796/OUT (varied by S73 permission 14/2094/S73).
- 3.1 The University is concerned about the potential loss of future development capacity for Plot 9 resulting from the proposed permanent acquisition of land previously approved

for structural landscaping outline planning permission 06/0796/OUT (varied by S73 permission 14/2094/S73).

4 WITNESS DECLARATION

I hereby declare as follows:

- 4.1 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.
- 4.2 I believe the facts that I have stated in this proof of evidence are true and that the opinions expressed are correct.
- 4.3 I understand my duty to the inquiry to help it with matters within my expertise and have complied with that duty.

Paul Milliner MRTPI

Head of Estate Planning, Estates Division, University of Cambridge

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APPENDIX 1 TO REBUTTAL PROOF OF PAUL MILLINER

- 1 In the Appendix to the Main Proof of Evidence of Paul Milliner (OBJ-08-W6-1–Planning), the University set out its concerns regarding the impact of the Scheme on its property interests at CBC. The University’s primary concern is that a revised Book of Reference and related revisions to the Draft Order have not been issued to allow the University to understand the full extent of land (or rights) being proposed to be used or taken (whether permanently or temporarily and for what purpose).
- 2 The initial Book of Reference contained some factual errors, which the University has sought to address with Network Rail. The clarification issued by email by Paul Humphrey of Network Rail on 26 November 2021 (at 14.50) did not clarify what the precise extent of land take would be, or otherwise resolve the queries raised in the University’s Statement of Case. In addition, the updated land plans do not correlate with the existing Book of Reference. Paragraph 4.2 of NRE 10.2 Proof – Bill Simms – Property refers to the amended deposited plans and updated Book of Reference but, to date, this has not been provided.
- 3 Paragraph 7.1 of NRE 10.2 (Bill Simms’ Proof) identifies some of the areas of objection of the University, but not all, which are set out in more detail in the University’s Proofs.
- 4 With regard to paragraph 10.7.2 of NRE 10.2 (Bill Simms’ Proof), the University asserts that it has not had sufficient engagement from Network Rail nor has sufficient information been provided in order for it to fully understand the extent of land and rights to be acquired by Network Rail and the use to which such land will be put. In particular, the University has repeatedly requested overlay plans showing the impact of the Scheme on the University’s land interests. Whilst the University did receive an approximate overlay plan on 26th July 2021 (produced using a CAD drawing provided by the University), no updated or accurate overlay plans have been provided by Network Rail since that time. This is despite it being acknowledged in the meeting on 24th September 2021 that the overlay plans that had been provided to date by Network Rail were poor (i.e. it is hard to decipher the extent of land that is required and for what purpose) and Network Rail giving the University assurances that further plans would be available in “the next week or so”. The University has sought to engage with Network Rail to clarify the position but without success.

- 5 Paragraph 10.7.3 of NRE 10.2 (Bill Simms' Proof) refers to changes to entries in the Book of Reference being made. However, as the updated Book of Reference has not been issued, it is not correct to say that the University now has sufficient information to determine the impacts on the features of its estate.
- 6 It has not been possible for the University to comprehensively assess its position without a revised Book of Reference. In particular, given the highly sensitive use of the AMB, it is imperative that the University is provided with full details of Network Rail's intention with regard to the plots of land within and surrounding this property.
- 7 Paragraph 7.15 of NRE 1.2 Proof – Andrew Barnes – Construction refers to Haul Road HR7. The University believes that this should refer to Haul Road HR6 which is proposed to be constructed on or adjacent to the AMB and Plot 9. The University requires certainty that the construction, use and reinstatement of the Haul Road will not have an adverse impact on its use and enjoyment of the AMB and that of Plot 9. This is particularly important given the highly sensitive use of the AMB. Sufficient information has not been provided to date in order to allow the University to analyse this impact.
- 8 Figures 58 and 59 in the Appendices to the Andrew Barnes Proof sets out the various utilities that will be affected by the Scheme. There is no reference to the Granta Backbone Network (GBN). The GBN is the University's data network, the cabling for which runs through the services strip to the west of Francis Crick Avenue to the AMB. This must not be disturbed by the Scheme.