

**THE NETWORK RAIL (OLD OAK COMMON GREAT WESTERN MAINLINE TRACK ACCESS)
ORDER 202[]**

OBJECTION ON BEHALF OF BELLAVIEW PROPERTIES LIMITED

Introduction

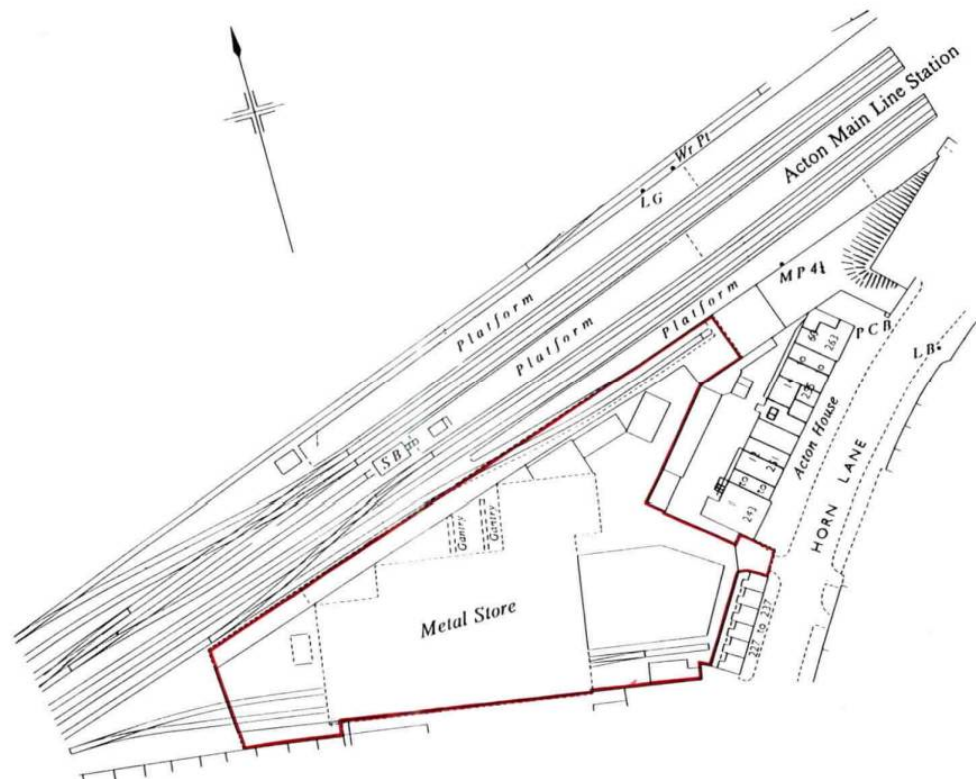
1. By application made to the Secretary of State on 17 April 2023 Network Rail Infrastructure Limited (“**NR**”) has applied pursuant to section 6 of the Transport and Works Act 1992 (the “**1992 Act**”) for an order under section 1 and section 5 of that act (the “**TWAO Application**”). Specifically, NR seeks powers via the draft Network Rail (Old Oak Common Great Western Mainline Track Access) Order 202[] (the “**draft Order**”), submitted in support of its TWAO Application, to *“acquire compulsorily rights over land and to use land temporarily, as well as to undertake certain ancillary works, all in connection with the development of a temporary road rail vehicle access onto the Great Western Main Line railway to enable delivery of the Old Oak Common station and provision of a permanent maintenance access point for road rail vehicles onto the Great Western Mainline.”*¹
2. In parallel to the TWAO Application, NR seeks to acquire land registered at the Land Registry under Title Number AGL51330 from the Crown Estate (the “**Triangle Site**”). The Triangle Site is marked as Plot 1 on the draft Order Land Plan (see Figure 3 below).
3. Bellaview Properties Limited (“**BPL**”) is the freehold owner of land affected by the draft Order and objects to the draft Order on the grounds set out below.
4. BPL, as the freehold owner of land which is the subject of proposed compulsory acquisition pursuant to the draft Order, is an objector within the scope of s.11(4) of the 1992 Act.

BPL’s interest in the land affected by the draft Order

¹ Explanatory Note to the draft Order.

5. BPL is the freehold owner of land known as 239 Horn Lane, London W3 9ED and registered at the Land Registry under Title Number AGL22605 (the “**Property**”) (see Figure 1 and Figure 2). The Property is located on the western side of Horn Lane in Acton, within the London Borough of Ealing (“**Ealing**”).

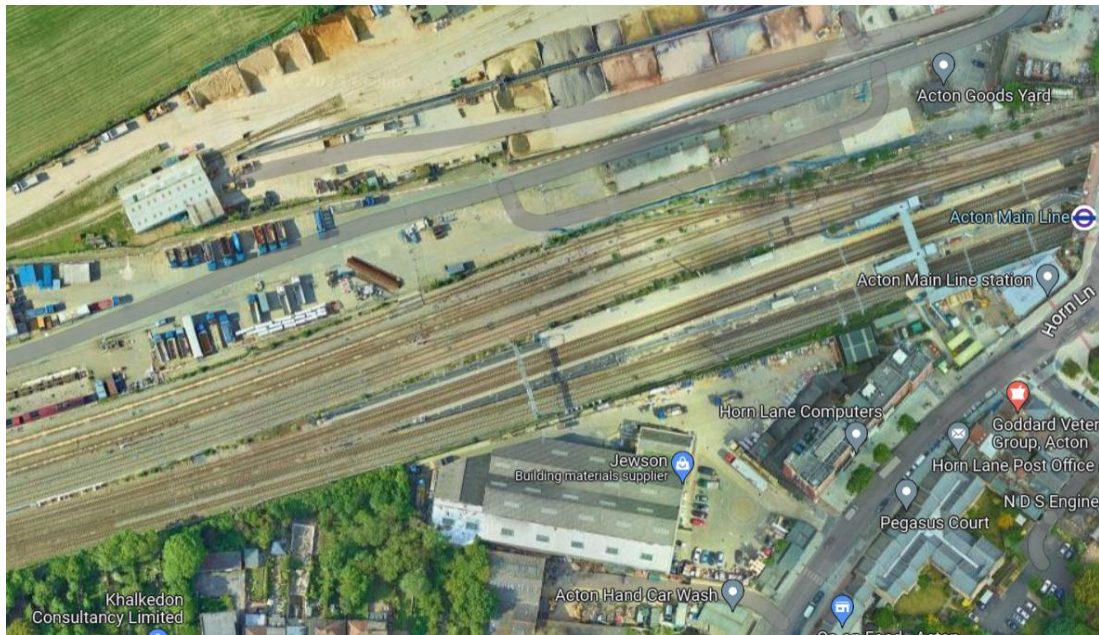
Figure 1



Extract from Title Number AGL22605

6. The Property comprises a warehouse building, offices, storage yard, parking, hardstanding and access off Horn Lane. The whole of the Property, including the warehouse and associated space, is the subject of a lease to Saint-Gobain Building Distribution Limited (“**Saint-Gobain**”) dated 16 March 2016 for term of 9 years commencing from 10 April 2016 and registered at the Land Registry under Title Number AGL199709. The leased land is occupied by Jewson Builders Merchants, which sells building materials to professional builders and tradespersons.

Figure 2



The Property (GoogleMaps)

7. The Property is located to the south of the Great Western Mainline (“**GWML**”) railway. It is also located less than 200 metres from Acton Main Line Station entrance. NR and Transport for London (“**TfL**”) have recently completed works to upgrade Acton Main Line Station to accommodate Elizabeth Line services, which started running in 2022. In addition, the Property benefits from frequent buses along Horn Lane, with the closest bus stop a 3 minute walk away on Horn Lane/Faraday Road (served by the 266 440 and N266 bus routes). Heavy goods vehicles (“**HGVs**”) travelling to and from the Property over Horn Lane bridge may not exceed a 18 tonne Gross Vehicle Mass (“**GVM**”) restriction.
8. On 1 December 2022 BPL and Builder Depot Limited (“**BDL**”) (a related company) submitted an application for full planning permission to Ealing (reference 225069FUL) to redevelop the Property, as well as other land within BPL’s ownership, on the following terms: *“Construction of a building ranging in height from 6 to 15 storeys, to provide builders merchants (Use Class Sui Generis) at ground floor level, and 185 self-contained residential units (Use Class C3) and associated amenity space at first floor level and above; hard and soft landscaping works; provision of car and cycle parking;*

works to provide means of access for both pedestrians and vehicles from Horn Lane and all other works incidental to the development. (Following demolition of existing builders merchants)" (**"BPL's Scheme"**).

9. The Property is identified as Plots 2, 3 and 4 on the draft Order Land Plan (see extract below at Figure 3).

Figure 3



Draft Order Land Plan (Drawing reference NR_OOC_LP_1250 (Version 1.0) dated 12 April 2023)

Powers under the draft Order affecting the Property

10. In summary, NR seeks rights to use the Property (including the warehouse, office, etc.) temporarily in connection with the carrying out of works at Old Oak Common Station. The Old Oak Common Station works include construction of a temporary Road Rail Access Point (**"RRAP"**) and a permanent RRAP to the GWML railway for future maintenance purposes. The temporary RRAP is located on the rear boundary of the Property. The permanent RRAP is located on the Triangle Site. To facilitate use of the permanent RRAP, in addition to any temporary rights over the Property to be secured

by the draft Order, NR seeks a permanent easement across part of the Property to allow access to the Triangle Site.

11. The effect of the temporary rights sought would be that NR would take exclusive occupation of the Property (including the warehouse and other buildings and land) for the duration of the works.

12. In terms of the specific powers NR seeks under the draft Order:

a. Article 3 grants NR powers to carry out and maintain such works on Plots 2, 3 and 4 (all forming part of the Property) as are required for the purpose of carrying out the “development” to: (i) erect and construct temporary worksites, including lay down and storage areas and other buildings, yards, slab, cranes, plant and machinery, apparatus, fencing and other works and conveniences; and (ii) provide temporary haul routes.

i. The “development” means, broadly, the works and operations authorised by the draft Order and any other works and operations incidental or ancillary to the development of a new lineside logistics compound which is required for the construction of the NR infrastructure supporting the Old Oak Common station, as well as provision of a permanent RRAP onto the GWML permitted by: (a) The Town and Country Planning (General Permitted Development) (England) Order 2015 (including Part 18 of the Schedule 2) and (b) The High Speed Rail (London – West Midlands) Act 2017 (the “**2017 Act**”);

b. Under Article 6(1) NR may acquire compulsorily such rights of access or other easements in respect of Plot 3 (forming part of the Property) by creating them, as well as by acquiring rights of access or other easements already in existence. The identified purpose for which new rights in respect of Plot 3 may be acquired is for a “permanent maintenance access for road rail vehicles” onto the GWML railway;

c. By Article 7 NR may in connection with the development:

- i. Enter upon and take temporary possession of Plots 2, 3 and 4 (all forming part of the Property). The identified purpose for which temporary possession may be taken is “Temporary construction compound” (see Schedule 2);
- ii. Remove any buildings and vegetation from that land;
- iii. Construct temporary works (including the provision of means of access) and buildings on that land;
- iv. Temporarily occupy and use airspace for the purposes of the operation of a crane in connection with the construction of the development;
- v. Construct any permanent works specified in relation to that land in column (3) of the Schedule 2 (we note that no such permanent works are listed in the draft Order) or any mitigation works on that land.

13. BPL objects to the draft Order including on the grounds set out below.

Article 90 Direction

14. NR has also submitted a request for a direction from the Secretary of State under section 90(2A) of the Town and Country Planning Act 1990 (a “**S90 Direction**”) that planning permission be deemed granted for the development sought to be authorised by the draft Order (within any limits included within the draft Order and shown on the accompanying plans).

15. NR’s request for a S90 Direction advises that:

- a. the draft Order authorises (among other things) (i) a temporary RRAP onto the GWML railway to enable delivery of the Old Oak Common Station; (ii) a permanent RRAP onto the GWML railway to enable future maintenance of the railway and the Old Oak Common Station (together, the “**Project**”);

- b. the draft Order would provide NR with statutory powers to (i) temporarily use Plots 2, 3 and 4 for the construction of the temporary RRAP, road vehicle parking and material lay down areas; and (ii) secure a permanent right of access to the permanent RRAP located at Plot 1 and through Plot 3;
- c. the majority of the works required in connection with the Project would be authorised by permitted development rights and the 2017 Act, save that certain elements are considered to go beyond the scope of those rights and statutory powers. This includes the works described in Article 3 of the draft Order (see paragraph 12(a) above). It is these works in respect of which deemed planning permission is sought.

Grounds of Objection

Ground 1 (Absence of a compelling case in the public interest)

- 16. Consistent with BPL's rights protected under Article 1, Protocol 1 of the European Convention on Human Rights and the Government's Guidance on the Compulsory Purchase Process, a compelling case in the public interest is required to be demonstrated before any acquisition or material interference with property rights can be justified, including through the exercise of powers of compulsory acquisition.
- 17. NR has not shown such a compelling case in the public interest for the compulsory acquisition of rights over the Property to the extent sought through the draft Order. Moreover, BPL submits that there is no such compelling case. In particular, BPL contends that there are reasonable alternative means by which NR could secure access to the GWML and land for a temporary construction compound in connection with the Project, which would either remove the need for temporary rights over the Property entirely; or, as a minimum, reduce the extent of the rights sought by the draft Order.

18. In terms of site selection, NR has not provided any material evidence that no other land adjacent to or within the vicinity of the GWML railway is suitable, including by way of private rent, for the purposes of the Project (including a temporary construction compound). For example, office space, storage space and/or space of welfare facilities is readily available for rent on commercial terms within the vicinity of the Property at Horn Lane. Examples of reasonable and better alternative sites for the purposes of the Project (including a temporary construction compound) include “Acton Goods Yard” to the north of the Property and the GWML railway, as well as the Triangle Site. In particular,

- a. Acton Goods Yard has a similar location to the Property, and arguably represents a more suitable location for a temporary construction compound. It has not been shown that NR has fully explored the opportunities which Acton Goods Yard presents, specifically leasing a portion of Acton Goods Yard by private treaty, thereby negating the need for the exercise of statutory powers in relation to the Property. Acton Goods Yard could provide for NR’s office, storage, welfare and parking requirements even if access to the GWML was still required from the Property.
- b. The Triangle Site represents another or additional site suitable for the purpose of providing (among other things) a temporary construction compound in connection with the Project as well as a temporary RRAP. Like the Property, the Triangle Site is located immediately adjacent to the GWML railway and includes adequate space for car parking, as well as temporary office and other accommodation (if such elements can be demonstrated as necessary). Given the Triangle Site is presently unoccupied and held by the Crown Estate *bona vacantia*, it has not been shown that NR has fully explored temporary use of the Triangle Site, and from BPL’s perspective there are no apparent barriers which would prevent NR from ultimately securing that land for the purposes of the Project.

19. Whilst other sites may also be suitable, at a minimum, the use of either Acton Goods Yard and/or the Triangle Site would avoid the need for any or at least as extensive an area of the Property to be taken temporarily. In particular, the use of Acton Goods Yard or the Triangle Site would avoid the need for NR to take temporary possession of the existing warehouse building at the Property, which NR has not adequately demonstrated is even required for the purposes outlined in the draft Order.

20. Site selection aside, the scope of the rights to be secured by the draft Order also go far beyond what is reasonably required by NR.

- a. Even if NR is able to show that access to the operational GWML railway is required via the Property for the purposes of the temporary aspects of the Project, on the basis no other site is suitable then any associated floorspace required for office or welfare purposes etc. can still be secured elsewhere and without the need to acquire or to take possession of the whole of the Property for such purposes. There is no indication within NR's supporting material that this has been considered. Moreover, NR has not demonstrated that it is essential that all these facilities need to be co-located.
- b. NR seeks consent via the Order and the S90 Direction for development which goes beyond what is necessary to facilitate the Project. For example, taking temporary possession of land to provide car parking spaces cannot be readily justified when the Property, as well as alternative sites within the locality, benefit from good transportation links, with easy access to rail services at Acton Station as well as bus links. Further, car parking spaces are available for commercial rent within the locality, thereby avoiding the need for compulsory powers of acquisition. It is surprising that NR's supporting material makes no reference to sustainable transport and encouraging those who might otherwise use the private car to make sustainable travel choices;
- c. In terms of any rights of temporary access to facilitate the construction of the two RRAPs (but not land for a temporary construction compound), these

access rights may be secured: (a) without the need for the more extensive powers of temporary possession proposed by the draft Order; and (b) without excluding BPL or its tenant from occupation of the warehouse building and associated space. Indeed, NR's evidence in support of its application, such as it is, demonstrates as much;

- d. With regard to the proposed permanent RRAP, BPL contends that alternative means of permanent access have not been shown to be unavailable to NR. If it transpires that access to the permanent RRAP can only be achieved via part of the Property, then only limited rights over the Property (and any corresponding interference with BPL's legal rights) are required. NR has not justified the range of temporary powers of possession sought.

21. In summary, it is submitted that the extent of acquisition proposed by the draft Order has not been shown to be necessary or, as such, it has not been shown that there is a compelling case in the public interest for the extent of acquisition proposed in terms of permanent and/or temporary possession and rights.

Ground 2 (Implications for BPL)

22. The proposed acquisition of rights from BPL will have a particularly onerous consequence in that the current retail operation from the Property will cease for the period of NR's occupation.

23. Moreover, BPL is confronted with a potential need to relocate BDL, a related company, from a site in West Hampstead. BDL is one of the leading independent builders' merchants in the UK. It operates from four sites across London and employs around 400 people. One of the sites BDL occupies is located at 14 Blackburn Road, London NW6 1RZ in West Hampstead ("**14BR**"), which is owned by Hampstead Asset Management Limited (another company related to BPL and within a family-owned group of businesses). On 31 March 2023, the London Borough of Camden ("**Camden**") resolved to grant planning permission for an urban regeneration scheme, promoted

by the property developer Land Securities, known as the O2 Masterplan. 14BR has been included within the application redline for the O2 Masterplan and is to be demolished at part of the scheme. The O2 Masterplan does not provide replacement space for BDL, which will need to permanently relocate if the scheme proceeds. Accordingly, if the associated compulsory purchase order is made, and 14BR is compulsorily acquired by Camden to facilitate the O2 Masterplan (or if the parties reach a private agreement), then BDL will need to relocate its operation. The Property has been identified as a relocation option given that it is owned by a family company, has a lawful use as a builders' merchants, and the Saint-Gobain lease will expire reasonably soon.

24. The proposed relocation would be to the existing warehouse building at the Property, which NR now seeks to take temporary possession of through the draft Order. As such, the powers sought by NR, if confirmed, will give rise to a particularly onerous and disproportionate effect on BPL. This is particularly the case given the alternatives reasonably available to NR to the acquisition proposed affecting the Property.

Ground 3 (Inadequate assessment)

25. NR has singularly failed to assess, properly or at all, the planning and wider environmental effects of the use of the Property, as proposed via the draft Order and the S90 Direction. In particular, NR has failed to assess:

- a. the effect on the operation and safety of users of, and the use of the local highway network as a result of the use as proposed (temporarily and permanently) of the Property (including for access to the operational railway);
- b. the wider amenity impact of the works on and facilitated by NR's proposed use of the Property. Notably, the works proposed include "installation of plant and machinery, apparatus and other works and conveniences" none of which have been the subject of any assessment in terms of amenity and other impacts. In the absence of even basic information the application for deemed planning permission cannot reasonably or sensibly be allowed, not least given the

requirement of planning policy at all levels to assess such impacts in relation to any proposed development.

26. Moreover, the works proposed on BPL's land are inconsistent with the site allocation which concerns this land within the Ealing Site Allocations DPD (Policy ACT6). BPL is in a position to deliver development on its land, including residential development, in a form consistent with development plan policy aspirations (see details of BPL's Scheme above). The effect of the draft Order, if made and implemented, would jeopardise and at best significantly delay the carrying out of this development and thereby the significant public benefits that policy compliant development would deliver.

27. The deemed application for planning permission via the S90 Direction should not, and indeed cannot, be granted.

Ground 4 (Inadequate funding)

28. NR has produced an Estimate of Costs of implementing the draft Order. Within its Estimate, NR has identified the land acquisition costs to be £7,413,206. This is considered to be wholly inadequate and insufficient, not least since Gerald Eve, BPL's surveyors, estimate the value of the Property, based solely on its existing use, to be approximately £12.7 million.

29. Absent a realistic assessment of acquisition costs and confirmation that those costs are available to NR, it has not been shown that there is no impediment to the delivery of that which is sought by and through the proposed draft Order. This provides a further basis why the proposed Order cannot and should not be confirmed.

Conclusion

30. For the reasons set out above the draft Order should not be made or should not be made in its draft form and without modifications in respect of its scope as it affects the Property.

31. The material provided by NR in support of the application for deemed planning permission is limited. As such, BPL reserves the right to supplement or modify its grounds of objection if (or, more likely, when) NR seeks to further supplement its case.

The Need for a Public Inquiry

32. The matters raised by the draft Order, in particular to the extent that these affects BPL and the Property, are such that a public inquiry is required before the application is determined and the draft Order made.

33. In any event, BPL as a statutory objector, requests, pursuant to s.11(2) of the Transport and Works Act 1992, that its objection is referred to a public inquiry.

Administration

34. All correspondence relating to BPL's objection should be addressed as follows:

Norton Rose Fulbright
3 More London
London
SE1 2AQ

35. And marked for the attention of Carina Wentzel. BPL are happy to receive documents and correspondence electronically, which should be sent to: carina.wentze [REDACTED] and copied to ellie.cooper [REDACTED]

Norton Rose Fulbright LLP

5 June 2023