

TRANSPORT AND WORKS ACT 1992
TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004

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

STATEMENT OF CASE ON BEHALF OF BELLAVIEW PROPERTIES LIMITED

**DEPARTMENT FOR TRANSPORT REFERENCES: TWA/21/APP/01/OBJ/8;
TWA/23/APP/02**

 **NORTON ROSE FULBRIGHT**

1 Introduction

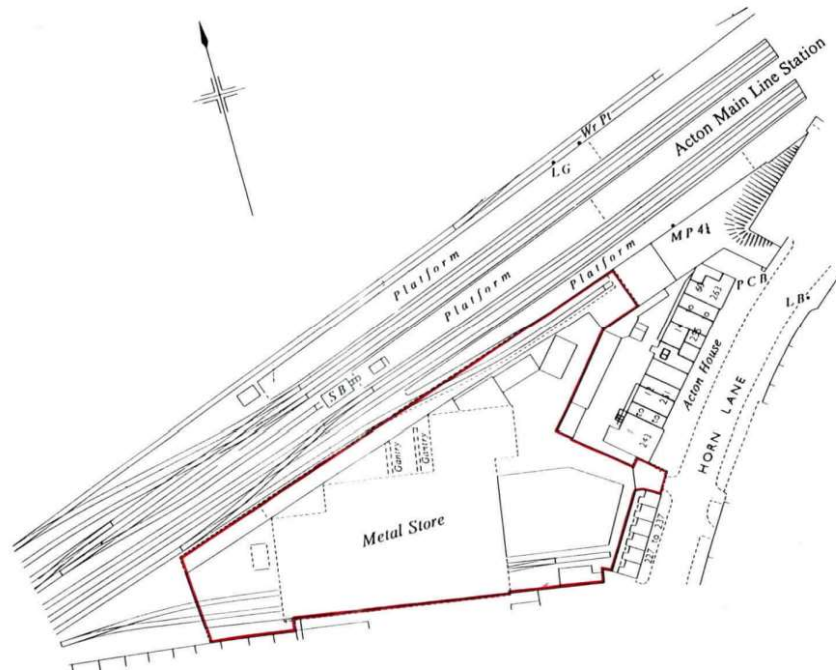
- 1.1 By application made to the Secretary of State (**SoS**) on 17 April 2023 Network Rail Infrastructure Limited (**NR**) has applied pursuant to section 6 of the Transport and Works Act 1992 (the **1992 Act**) for an order under section 1 and section 5 of that act (the **TWAO Application**). Specifically, 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
- 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).
- 1.3 Bellaview Properties Limited (**BPL**) is the freehold owner of land affected by the draft Order. By way of background:
- (a) on 5 June 2023 BPL submitted an objection to the Order (the **Objection**). A copy of the Objection is included at **[APP-1]**. As the freehold owner of land which is the subject of proposed compulsory acquisition pursuant to the draft Order, BPL is an objector within the scope of s.11(4) of the 1992 Act;
 - (b) on 23 June 2023 the SoS announced his intention to hold a Public Inquiry to consider the TWAO Application (the **Public Inquiry**). The date(s) of the Public Inquiry have yet to be announced;
 - (c) on 11 July 2023 NR provided BPL with its response (dated 30 June 2023) to the Objection (the **Rebuttal**) (see **[APP-2]**).
- 1.4 In accordance with Rule 7 of The Transport and Works (Inquiries Procedure) Rules 2004 this document constitutes BPL’s statement of case (**SoC**), being the full particulars of the case that BPL proposes to put forward at the Public Inquiry. This SoC is structured as follows:
- (a) Section 1: Introduction;
 - (b) Section 2: BPL’s interest in the land affected by the Order;
 - (c) Section 3: Powers under the draft Order affecting the Property;
 - (d) Section 4: S90 Direction;
 - (e) Section 5: Grounds of objection;
 - (f) Section 6: Ground 1: Absence of a compelling case in the public interest;
 - (g) Section 7: Ground 2: Implications for BPL;
 - (h) Section 8: Ground 3: Inadequate assessment;
 - (i) Section 9: Ground 4: Inadequate funding;
 - (j) Section 10: Conclusion.
- 1.5 In addition, the SoC includes at **Schedule 1** a list of the documents that BPL intends to refer to or to put into evidence at the Public Inquiry, copies of which are provided as appendices to this SoC. References in this SoC to ‘**APP-**’ followed by a number are references to the relevant appendix, as listed at Schedule 1.

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

- 2.1 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**). Title AGL22605 is included at **[APP-3]** and **[APP-4]**. The Property is located on the western side of Horn Lane in Acton, within the London Borough of Ealing (**Ealing**).

¹ Explanatory Note to the draft Order.

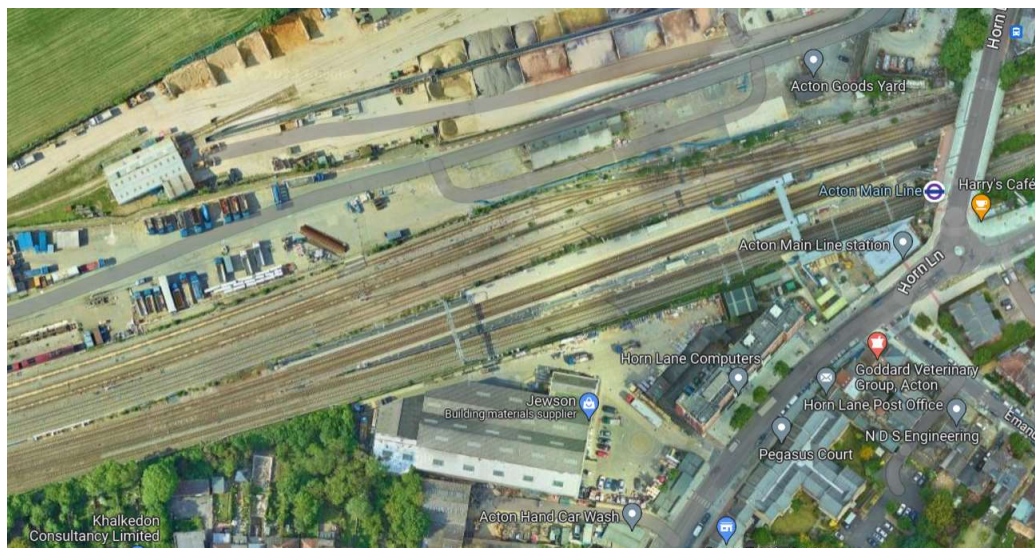
Figure 1



Extract from Title Number AGL22605

- 2.2 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 2009 for term of 9 years commencing from 10 April 2016 and registered at the Land Registry under Title Number AGL199709 (a copy of the lease and Title Number AGL199709 are included at **[APP-5]** to **[APP-7]**). The leased land is occupied by Jewson Builders Merchants, which sells building materials to professional builders and tradespersons.

Figure 2



The Property (GoogleMaps)

- 2.3 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.
- 2.4 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 known as 227-237 Horn Lane (see further details below). The proposed development is 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**).
- (a) While NR (as an interested party) had initially objected to BPL's Scheme, NR later withdrew its objection (see paragraph 6.17 for further details).
- (b) On 19 July 2023 Ealing's Planning Committee resolved to grant application 225069FUL subject to completion of a section 106 agreement and Stage II referral to the Greater London Authority.
- 2.5 Copies of the Planning Committee Report, Planning Committee Briefing Notes and the draft Planning Committee Minutes are included at **[APP- 16]** to **[APP-18]**.
- 2.6 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)

3 Powers under the draft Order affecting the Property

- 3.1 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 boundary of 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.
- 3.2 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.
- 3.3 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.
- 3.4 BPL objects to the draft Order including on the grounds set out below in this SoC.

4 S90 Direction

- 4.1 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).
- 4.2 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 3.3 (a) above). It is these works in respect of which deemed planning permission is sought.

5 Grounds of Objection

- 5.1 BPL's grounds of objection to the Order are as follows:
- (a) Ground 1: Absence of compelling case in the public interest;
 - (b) Ground 2: Implications for BPL;
 - (c) Ground 3: Inadequate assessment;
 - (d) Ground 4: Inadequate funding.
- 5.2 Each of the above grounds is considered in further detail at sections 6 to 9 below.

6 Ground 1: Absence of a compelling case in the public interest

Overview

- 6.1 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.
- 6.2 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 (a) the GWML railway and/or (b) land for a temporary construction compound, 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.
- 6.3 In its Rebuttal, NR writes that it *"believes there is a compelling case in the public interest for compulsory acquisition. The Order has been submitted as there is no other alternative means that*

Network Rail can secure access to the GWML. Network Rail has been and will continue to negotiate with stakeholders to prevent the requirement of the Order but will continue both methods in parallel to ensure its essential need for the Road Rail Access Point (RRAP) is obtained [underlining added] (paragraph 17 of [APP-2]). NR's Rebuttal comments takes its case no further:

- (a) as detailed in this SoC, there are indeed alternative means by which NR could secure both access to the GWML railway and land to facilitate the Project that would avoid interfering with BPL or any other third parties' property rights;
- (b) NR's comment above only seeks to justify the rights sought by the Order by reference to access to the GWML railway. Assuming NR can somehow demonstrate that the Property is the only suitable location to provide NR with railway access, this does not justify taking possession of all of the Property. In practice, railway access would only involve a limited number of rights over a small proportion of the Property. Railway access aside, NR has also failed to respond to BPL's contention that there are other suitable locations that could accommodate NR's construction compound, welfare facilities and parking requirements;
- (c) NR has not articulated why there is a compelling case in the public interest to interfere with BPL's rights to deliver the permanent RRAP. There is no permanent RRAP currently in this section of the GWML railway, yet there appears to be no apparent impact on NR's ability to maintain the infrastructure of the railway line.

Site selection

- 6.4 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 land already in railway / public ownership or private rent, and which can be used for the purposes of the Project (including a temporary construction compound). For example, office space, storage space and/or space for 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, the Triangle Site, other land owned by BPL and the North Pole Depot (owned by the Secretary of State for Transport). These sites and others are considered further below.

Acton Goods Yard

- 6.5 Acton Goods Yard has a similar location to the Property (see **Figure 4**), and represents a more suitable location for a temporary construction compound. It has not been shown that NR has fully explored the opportunities that Acton Goods Yard presents, including 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. In particular, NR has not articulated exactly why Acton Goods Yard is unsuitable for the purposes of providing access to the GWML railway to construct the temporary RRAP and the permanent RRAP. Even if NR is able to ultimately demonstrate that access to the GWML railway must be taken from the Property to deliver the temporary RRAP and the permanent RRAP, Acton Goods Yard could still provide land to satisfy NR's office, storage, welfare and parking requirements.

Figure 4



GoogleMaps image showing the Property and Acton Goods Yard with annotations

6.6 In its Rebuttal NR writes:

“The Acton Goods Yard is located on the north side of the railway alignment (providing Reliefs access only) it is not suitable as a replacement to the Jewson’s site (which provides access to the Mains lines).”

Please see points below which sets out the rationale for site selection;

- *Access to the railway is split into ‘mains’ and ‘reliefs’ access blocks, generally alternating each weekend.*
- *This is to allow 2 of the 4 lines to remain operational each weekend to maintain a train service for Heathrow Express, Crossrail and Great Western Railway (the Train Operating Companies – TOCs)*
- *The two tracks to the south are the ‘mains’ and as such any access point to the north/east of the tracks cannot be used as these would be on the live railway*
- *The HS2 project requires extended ‘mains’ blocks to deliver their works, running from Saturday night through to Monday morning” (paragraph 18(a) at [APP-2]).*

6.7 In reply, BPL notes that:

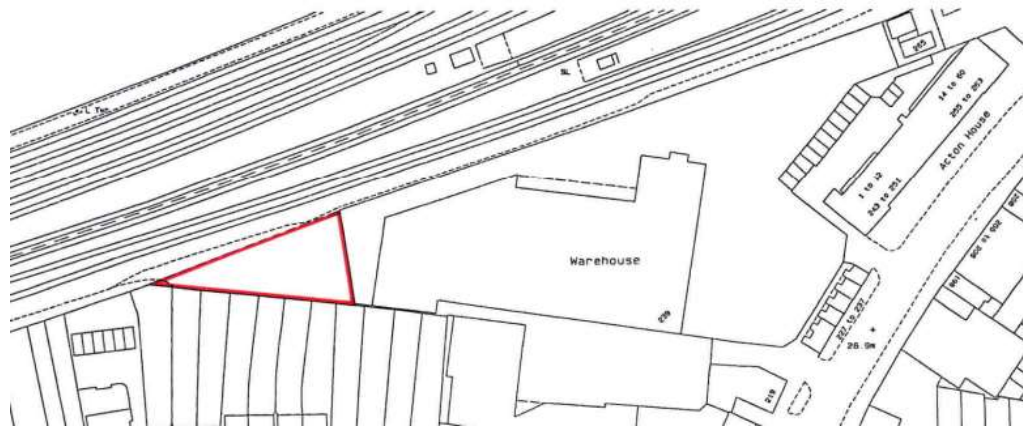
- (a) it is possible to construct a temporary RRAP that accesses the Relief Lines at Acton Goods Yard. To the extent that works at the Old Oak Common site would require access to the Main Lines, then during blockades of all four main line tracks access could be achieved by the installation of temporary hardstanding across the Main Lines and the Relief Lines to allow the RRVs to use their road wheels to cross both sets of lines;
- (b) NR has yet to clarify exactly why it needs access to the GWML railway from the South both for the purposes of the temporary RRAP and/or the permanent RRAP. If NR only requires permanent access to the Northern Relief (or Slow) Lines (and not the Southern Main (or Fast) Lines) for maintenance, then a permanent RRAP could be located at Acton Goods Yard;

- (c) if NR can show that permanent access to the Main Lines from the South is required and that the Property is the only suitable location to provide that access (which BPL does not accept), NR has not responded to BPL's argument that Acton Goods Yard could at least accommodate NR's office, storage, welfare and parking requirements for the temporary works, thereby minimising the extent of the rights sought over the Property.

The Triangle Site

- 6.8 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. Like the Property, the Triangle Site is located immediately adjacent to the GWML railway (see the land edged red on **Figure 5**) and includes adequate space for car parking, as well as temporary office and other accommodation (if such elements can be demonstrated by NR as necessary).

Figure 5



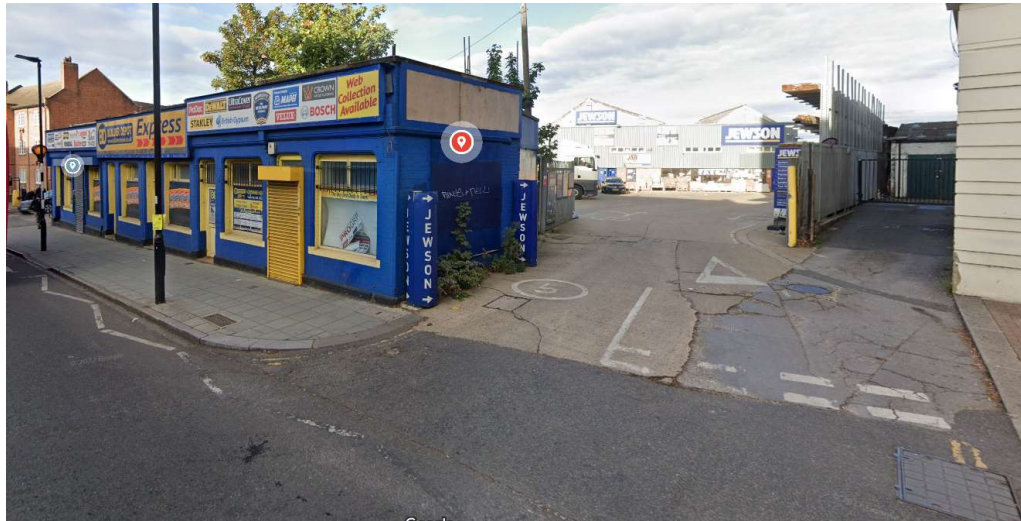
Extract from Title Number AGL51330

- 6.9 The Triangle Site is presently unoccupied and held by The Crown Estate *bona vacantia*. Given its status and location, the Triangle Site therefore represents a suitable alternative site to the Property in terms of (a) access to the GWML railway, as required to facilitate the construction of either the temporary RRAP and/or the permanent RRAP; and (b) the provision of land for ancillary offices, welfare facilities, parking and the storage of materials.
- 6.10 In its Rebuttal, NR confirmed that the Triangle Site was “*being pursued*”. It also advised that “*unless and until this land is secured, Network Rail has no access to and/or rights over this land. In any case, however, the land does not provide enough space to operate the proposed logistics compound and additional land take is, therefore, required*” (paragraph 18(b) [APP-2]). While BPL accepts that NR has yet to acquire the Triangle Site, it must be the case that NR is confident that it will ultimately secure the Triangle Site given the powers it seeks via the draft Order. Specifically, NR seeks temporary and permanent rights over the Property to construct and later access the permanent RRAP, which it wishes to locate on the GWML railway adjacent to the Triangle Site. If for some reason NR considers it unlikely that it will ultimately secure the Triangle Site, then it is difficult to see how NR can credibly argue that the public interest test has been satisfied and that the SoS should grant the draft Order in its current form. One of NR's justifications for interfering with BPL's property rights is that the permanent RRAP is required to facilitate the future maintenance of the GWML railway. NR must also respond to BPL's arguments regarding the use of the Triangle Site. Even if NR is able to show that it is too small to accommodate every requirement sought to be met by the Order, it could be used in conjunction with other land to meet NR's construction compound, parking, temporary office and welfare facility needs.

227-237 Horn Lane

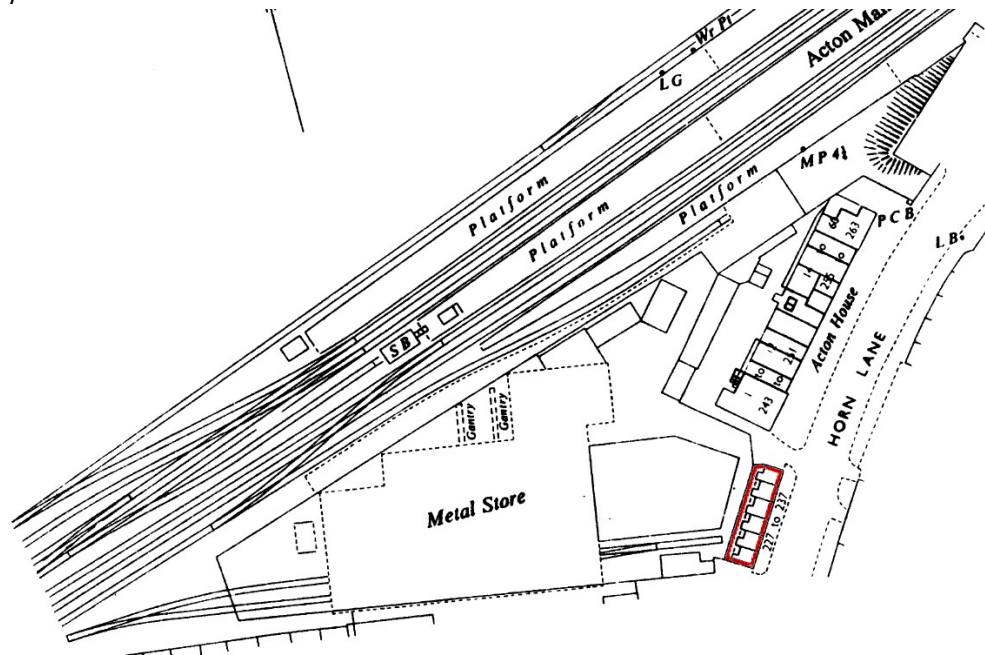
- 6.11 In addition to the Property, BPL is the owner of a small parade of shops located at 227 to 237 (odd) Horn Lane, Action, London (227-237 HL) (see **Figure 6**), the freehold title of which is registered at the Land Registry under Title Number NGL506157 (see **[APP-9]** and **[APP-10]**). 227-237 HL abuts Horn Lane and is located immediately adjacent to the Property, as shown edged red on **Figure 7** below. Access to the Property from Horn Lane is to the right of 227-237 HL, as shown in the GoogleMap images below.

Figure 6



GoogleMap images of 227-237 HL

Figure 7



Extract from title NGL506157

- 6.12 The units at 227-237 HL are either vacant or subject to leases where the term has expired and the tenant is holding over under an implied periodic tenancy. While 227-237 HL would not provide NR with access to the GWML railway, BPL would be willing to grant a lease of these units for ancillary office and welfare facility purposes (possibly even storage) in connection with the Project. Should NR take a lease of 227-237 HL on commercial terms, it would reduce the amount of land NR could legitimately seek to occupy pursuant to the Order.

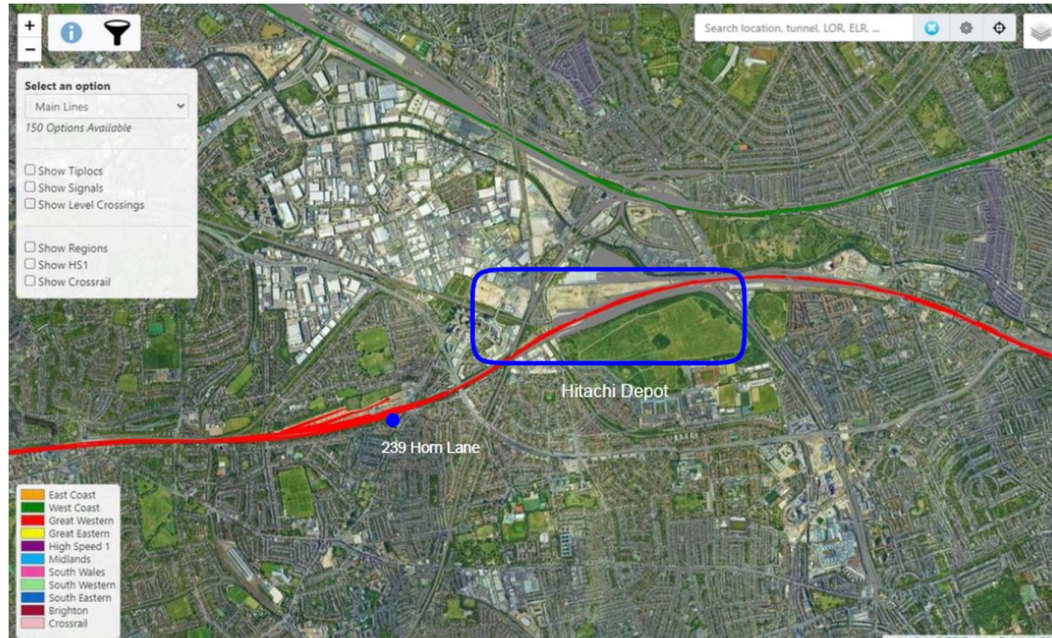
North Pole Depot

- 6.13 The North Pole Depot is located to the East of the Property, as indicatively shown edged blue in **Figure 8** below. The North Pole Depot is owned by the Secretary of State for Transport and occupied by Hitachi Rail Europe Limited and Agility Trains West Limited for the purposes of the rolling stock contract for Great Western Railway though a franchise agreement determined by the Secretary of State. The North Pole Depot has several features which makes it a particularly suitable alternative location for the delivery of a temporary RRAP and a permanent RRAP:

- (a) First, the North Pole Depot already has the infrastructure required to facilitate rail access, as well as access to both Main and Relief Lines at the Eastern end of the site. It also has sufficient frontage onto the Main Line facing the Old Oak Common site to permit the installation of a RRAP;
- (b) Second, the North Pole Depot is a secure site originally built to Channel Tunnel security standards (it originally maintained the Eurostar train fleet) with CCTV cameras, anti-climb fencing and it is already manned by railway personnel around the clock. Critically for achieving unfettered overnight access to the Main Line, it is also located in a non-residential area. Accordingly, either constructing a new temporary RRAP and/or a permanent RRAP or utilising existing railway infrastructure at this location would not have any adverse impact on residential amenity. In this regard, we note NR's comments in its Rebuttal about the need to carry out works from Saturday nights through to Monday mornings in connection with the HS2 project (see above);

- (c) Third, the North Pole Depot already benefits from ample parking and welfare facilities (with space to expand these as required), which could be further supplemented by NR as necessary.

Figure 8



Annotated extract from Railmap website (<https://railmap.azurewebsites.net/>)

Other sites

- 6.14 Whilst other sites may also be suitable, at a minimum, the use of either Acton Goods Yard, the Triangle Site, 227-237 HL and/or the North Pole Depot would avoid the need for any or at least as extensive an area of the Property to be taken temporarily pursuant to the Order. In particular, the use of Acton Goods Yard, the Triangle Site or the North Pole Depot 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. In response to similar arguments in BPL's Objection, in its Rebuttal at paragraph 19 NR writes that:

- (a) it has "considered alternative locations for the scheme and has not identified any suitable alternative";
- (b) NR "has identified the need to provide welfare and office facilities which can be delivered in the existing warehouse. In any event, during the works it is not considered that the continued operation of the builder's merchant would be compatible with the use of the site for as a temporary RRAP;"
- (c) "Materials & plant need to be brought to the compound so that they can access the railway from the temporary RRAP. There are two ways which this can be done 'just-in-time' or by using storage areas. 'Just-in-time' delivery involves delivering all plant and materials exactly at the time they need to get onto track (direct from supplier or a hub site). This imparts more risk and cost to our programme but more importantly, it would increase the levels of vehicle movements significantly during night-time hours increasing noise and light pollution. It is preferred to use storage on site with deliveries made ahead of time in quieter

periods during the day. Therefore, with a preference to deliver and store materials on site, the existing warehouse is a natural place to utilise. The existing Jewson's business could not operate as it does today during the construction period due to the removal of their car parking and outdoor storage areas and the interface between our construction site and a public facing enterprise as such it is proposed the shed is also vacated and used for the storage area."

6.15 BPL notes that:

- (a) NR has failed to provide any evidence of the alternative sites that it has considered;
- (b) While BPL accepts the principle that welfare and office could be required, NR has not justified why those facilities must be located in the existing warehouse and not at some alternative location within the vicinity;
- (c) NR does not properly address the option of using sites within the immediate vicinity (such as Acton Goods Yard) as a staging area/main construction compound from which materials could be supplied to the Property daily during low traffic hours;
- (d) NR's comments about the use of the warehouse do not align with its position in relation to planning application 225069FUL. See paragraph 6.16 below for further comments;
- (e) "preference" or convenience is not an adequate justification for interfering with BPL's property rights. NR misses that one of BPL's key arguments is that NR has not justified the extent of the rights it seeks via the draft Order.

6.16 NR also makes several assertions in its Rebuttal that the continued operation of the builders merchants' would be incompatible with the use of the Property as a temporary RRAP (see paragraph 19). NR explains that this is *"due to the removal of [the builders' merchants] car parking and outdoor storage areas and the interface between [NR's] construction site and a public facing enterprise"*. For this reason, NR proposes to use the warehouse building as a storage area. BPL strongly disagrees with NR's assessment. First, as detailed in this SoC, NR has failed to justify why both access to the GWML railway to facilitate the construction of the RRAPs and land for storage, welfare facilities and car parking must be provided at the same location i.e. the Property. Railway access aside, there are a variety of alternative sites that NR could use for these "back office" purposes, in which case the proportion of the Property required to facilitate NR's works is vastly reduced. With NR's car parking, storage and welfare requirements provided in part or entirely off-site (a non-exhaustive list of alternative locations and options is included above), the builders merchants business could continue to use a significant proportion of the existing yard and parking spaces in connection with its business. Second, as is evident from NR's Rebuttal, NR persistently conflates its "preference" or "convenience" with its actual "need". NR has not demonstrated that the proposed use of the warehouse building for storage is anything more than a "nice-to-have", which does not satisfy the public interest test. This is neatly illustrated by the agreed wording of draft condition 28 to be imposed to planning permission 225069FUL for BPL's Scheme. This condition reads:

"Condition 28 – Network Rail – Phasing Plan

The developer shall not commence construction of the development (which excludes demolition, site clearance, site investigation, site remediation, and ground works) unless either:

*(a) the developer has submitted to the Council for approval a phasing plan which demonstrates the phases of the development, and how the phases can be constructed to ensure that Network Rail's Old Oak Common Station works and its proposed construction and use of a temporary Road Rail Vehicle Access Point (RRAP) on the site are not impeded; **For the avoidance of doubt, works phased on the footprint of the existing warehouse building will be assumed to provide no impediment to Network Rail's works.** The phasing plan will demonstrate, in particular, how Network Rail's access to the site and turning of vehicles, storage requirements, parking requirements for RRVs and*

track plant, and access to the temporary RRAP will be accommodated and not impeded. Construction management measures may be included in the phasing plan to demonstrate lack of impediment to Network Rail's works. The phasing plan may include an early works phase, that may include setting out, and substructure works; or

(b) the Secretary of State has refused to make the proposed Network Rail (Old Oak Common Great Western Mainline Track Access) Order promoted by Network Rail and either Network Rail has confirmed in writing to the Council that it will not seek a statutory review of the refusal to make the Order, or the period of 6 weeks has expired from the Secretary of State's decision without a statutory review having been commenced against the Secretary of State's decision in which case the requirement in (a) shall no longer apply.

If a phasing plan is submitted to the Council for approval pursuant to (a) above, the developer will observe the phasing plan throughout the construction of the development. A phasing plan submitted pursuant to (a) above need not cover all phases of the development, and more than one phasing plan can be submitted for approval. Any phases that are planned to follow either the completion of Network Rail's Old Oak Common Station works or follow reinstatement of the land used for the temporary RRAP if earlier need not be the subject of a phasing plan.

Reason: To ensure that both the intentions of the developer and network rail for the application site can be delivered should the Secretary of State grant approval for Network Rail works" [emphasis added] (see [APP-17]).

- 6.17 NR was consulted on the drafting of condition 28, which it expressly approved. The Planning Committee Briefing Notes for planning application 225069FUL record: *"Based off agreement to amended condition 28 (and the above condition 18), Network Rail (as an Interested Party) have withdrawn their objections to the proposed scheme, in particular the concerns relating to noise and the potential for phasing of the development should Network Rail's TWAO be successful"* (see [APP-17]). The fact that NR has agreed via the wording of condition 28 that phased works within the footprint of the existing warehouse building is assumed *"to provide no impediment to Network Rail's works"* evidences that NR's proposals for the warehouse building in connection with the TWAO Application are entirely discretionary. These points will be elaborated on further at the Public Inquiry.

Scope of powers sought

- 6.18 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.

Welfare facilities

- 6.19 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.
- 6.20 In the Rebuttal, NR writes that *"Network Rail has to follow CDM (Construction Design Management) places responsibility on both Client (Network Rail) (Regs 4 (2) b) and Principal contractor (SRSA) (regs 13 (3) a,b,c and regs 13 (4) a,b,c) to ensure suitable welfare facilities are provided as dictated by CDM Schedule 2 – welfare facilities. Network Rail has identified that these facilities need to be located at the temporary RRAP"* (see paragraph 20(a)). BPL notes these requirements but disagrees that the welfare facilities must be located at the Property. The Construction (Design and Management) Regulations 2015 (the **CDM Regulations**) require a client and a principal contractor to ensure that adequate welfare facilities are provided during construction works (Regulations 4(2)(b) and 13(4)(c)). Welfare facilities are considered adequate if they comply with the requirements under Schedule 2 to the CDM Regulations, which in turn

specify that welfare facilities must be provided or made available at 'readily accessible places' (extracts from the CDM Regulations can be found at **[APP-19]**). It is possible to provide such adequate welfare facilities without taking occupation of the whole of the Property. In addition, NR has failed to:

- (a) explain why adequate welfare facilities cannot be provided trackside or at the end of the platform on a temporary basis;
- (b) provide details of the welfare facilities available to NR at Acton Mainline Station and an explanation as to why these facilities are not suitable;
- (c) explain the type of welfare facilities it requires so BPL can establish how these facilities might be accommodated without NR taking possession of the whole of the Property. Immediate options include:
 - (i) the provision of welfare facilities in a temporary building located on part of the Property;
 - (ii) granting NR permission to use the facilities within the warehouse building when the builders merchants is closed;
 - (iii) the provision of welfare facilities at 227-237 HL.

Car parking spaces

- 6.21 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.
- 6.22 In its Rebuttal NR writes: "*The railway will be closed during hours of work due to No Book Service (NBS) Periods. Parking Spaces are required for Road and Rail Vehicles (RRV) parking, Deliveries of materials etc.*" BPL notes that:
- (a) Parking for RRVs and one space for deliveries can be accommodated at the Property without the need to take occupation of the entire site. At the moment, NR also seeks 12 parking spaces for staff, but these could be commercially leased;
 - (b) if, as NR say, the main lines through Acton Station will be closed to facilitate the works, then construction workers could use other transport options, including buses. Plus, as advised above, NR could rent or otherwise secure staff car parking spaces within the vicinity of the Property.

Temporary access

- 6.23 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.
- 6.24 In its Rebuttal at paragraph 20(c) NR asserts that "*during the period of use of the temporary RRAP, the land is required for the purposes described including storing materials and providing associated construction facilities. The temporary acquisition is appropriate in the circumstances.*"

NR has not in fact shown that the full extent of the Property is required for storage and the provision of construction facilities. It has simply reiterated that such use of the Property would be convenient or desirable. Please BPL's comments above in this regard.

Permanent RRAP

- 6.25 With regard to the proposed permanent RRAP, BPL contends that alternative means of permanent access have not been shown to be unavailable to NR. Please see, for example, the comments above regarding Acton Goods Yard and the North Pole Depot. 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 powers of possession sought.
- 6.26 In its Rebuttal, NR has advised: *"Permanent rights of access would be required post construction once the temporary compound has been demobilised. Permanent RRAP is only sufficient to support maintenance of the railway post OOC station construction, not to support the construction of OOC station itself. The reasons why permanent RRAP cannot be used for construction delivery are;*
- *Additional enabling works required that would make us miss construction delivery timescales;*
 - *the size of the compound and access route between the warehouse & track are insufficient to use the larger volume and physical size of machines & equipment we need to deliver the OOC station works"* (paragraph 20(d) [APP-2]).
- 6.27 In response, BPL would reiterate that the North Pole Depot already offers the infrastructure required to satisfy NR's permanent RRAP requirements. As advised, Acton Goods Yard and other sites may also be suitable.

Ground 1 conclusion

- 6.28 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.

7 Ground 2: Implications for BPL

Overview

- 7.1 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.
- 7.2 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 as 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 in April 2025.

Ground 2 conclusion

- 7.3 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.

8 Ground 3: Inadequate assessment

Overview

- 8.1 By way of background, the development for which NR is seeking deemed planning permission is as follows:
- (a) erection and construction of a temporary worksite, including lay down and storage areas, yards, slab, cranes, plant and machinery, apparatus, fencing and other works and conveniences; and
 - (b) provision of temporary haul routes.²
- 8.2 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 properly consult on and assess:
- (a) 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. These points are considered further below at paragraphs 8.4 to 8.11 under the heading 'Absence of scheme details and proper assessments';
 - (b) the effect on the operation and safety of users of the local highway network, as well as the actual use of the local highway network, as a result of the proposed use of the Property (temporarily and permanently), including for access to the operational railway. See paragraphs 8.12 to 8.13 under the heading 'Highway impacts' for further details.
- 8.3 Moreover, the works proposed on the Property are inconsistent with the adopted site allocation which concerns this land within the Ealing Site Allocations DPD (Policy ACT6) and the emerging site allocation AC12 (Acton Crossrail Station and Sidings) within the Draft (Regulation 18 Local Plan. See further comments at paragraphs 8.12 to 8.13 under the heading 'Site allocation'.

Absence of scheme details and proper assessments

- 8.4 BPL's planning consultants, DP9, have advised that for an application for planning permission for development on similar terms to that proposed by NR, an applicant would normally be expected to provide Ealing with the supporting documents listed in Table 1 below as a minimum.

² Document NR13 (Request for deemed planning permission and statement of proposed conditions), paragraphs 5 and 8.

Table 1: Minimum application documentation

	Document	National, Ealing or London Plan requirement	Provided by NR
1.	Detailed drawings: <ul style="list-style-type: none"> Existing and proposed site plan Existing and proposed elevations Existing and proposed sections Landscaping plans 	National requirement	In part.
2.	Design and Access Statement	National requirement	Yes
3.	Planning Statement	Ealing requirement	Yes
4.	Statement of Community Involvement	Ealing requirement	Yes
5.	Transport Assessment	Ealing requirement (required if proposal is likely to have significant transport implication) London Plan (Policy T4)	No
6.	Travel Plan	Ealing requirement (required if proposal is likely to have significant transport implications) London Plan (Policy T6)	No
7.	Parking Design and Management Plan	London Plan (Policy T6)	No
8.	Construction Logistics Plan and Delivery and Servicing Plan	London Plan (Policy T4)	No
9.	Air Quality Assessment	London Plan (Policy T6)	No
10.	Noise Impact Assessment and Insulation Mitigation	London Plan (Policy D14)	No

- 8.5 NR has failed to provide the documents listed at 5-10 above in support of the S90 Direction. In its Rebuttal NR has sought to justify its approach on the following grounds:

“As described in the planning statement the actual construction works linked to the use of the site are very limited. The existing warehouse will remain as it is, the existing hardstanding will remain as it is with some new painted lines on the surfacing and the existing vehicular access will remain as it is albeit with a new security hut at the entrance.

Network Rail may need to install some temporary lighting and temporary hoardings which detail is yet to come but this has been suggested by planning condition.

Network Rail has outlined clearly in the planning statement that their construction activities at the site are very limited to facilitate the temporary use of the site as a lineside logistics compound which will include alterations to the fence line between the existing builder's merchant and the railway to allow road rail vehicles to access the railway from the adjoining land.

There will be deliveries of railway materials during daytime hours by HGV but all materials leaving the site will be along the railway to the construction site and not on the road network.

The deliveries of rail associated materials will be significantly less than the amount of construction materials currently being delivered by HGV and then collected by customers in a combination of vans, cars and HGV's associated with a retail / trade builders merchant.

The actual construction activities on the railway itself are proximately 1km to the east so the main construction activities associated with altering the mainline railway will not disturb adjoining properties. The site will purely be used to store materials within the existing warehouse, parking for RRVs, parking for operative's cars, small amount of support offices within the existing building and the loading of materials onto RRVs to then travel down the railway to the east where the main construction activities will take place.

[...]

Therefore, based on the existing use on site and the compared to proposed temporary use of site further assessment by Network Rail is not required as we believe we will cause less traffic and less disturbance than the existing busy builder's merchant" [underlining added] (paragraph 25 [APP-2]).

- 8.6 NR's response focuses on the physical works to be carried out at the Property and does not address how the anticipated effects of the proposed use of the Property have been properly assessed and mitigated. For the reasons detailed below, the Rebuttal does not adequately respond to BPL's point that NR has failed (in non-compliance with local and London Plan policies) to provide the SoS with proper details about its proposed scheme, with corroborating assessments detailing the impact on amenity and the highway network, to allow the SoS to reach an informed decision.

Transport & Parking

- 8.7 The nature of NR's proposed operation is likely to have significant transport implications, yet inexplicably NR has not provided a Transport Assessment or Travel Plan. NR has also failed to submit a parking management plan, despite the fact its proposals seek to increase the levels of parking at the Property. The upshot is that NR has not complied with the requirements of London Plan policies T4 and T6 (see [APP-26] and [APP-27]):
- (a) Policy T4 stipulates that "When required in accordance with national or local guidance, transport assessments/statements should be submitted with development proposals to ensure that impacts on the capacity of the transport network (including impacts on pedestrians and the cycle network), at the local, network-wide and strategic level, are fully assessed. Transport assessments should focus on embedding the Healthy Streets Approach within, and in the vicinity of, new development. Travel Plans, Parking Design and Management Plans, Construction Logistics Plans and Delivery and Servicing Plans will be required having regard to Transport for London guidance." Part B of Policy T4 identifies that Travel Plans, Parking Design and Management Plans will be required having regard to Transport for London guidance. Part F of the policy identifies that development proposals should not increase road danger. Without a Transport Assessment, NR cannot demonstrate compliance with London Plan Policy T4 and other relevant development plan policies;
 - (b) Policy T6 specifies that a Parking Design and Management Plan should be submitted alongside all applications that include car parking provision, indicating how the car parking will be designed and managed. Again, no such plan has been provided.
- 8.8 Ealing's adopted list of requirements for full planning applications also specifies that a Transport Assessment is required if the "proposal is likely to have significant transport implications" (a copy of this checklist is included at [APP-28]). The guidance notes to the checklist explain:

"....a Transport Assessment (TA) should be submitted as part of any planning application where the proposed development has significant transport implications. The coverage and detail of the TA should reflect the scale of the development and the extent of the transport

implications of the proposal. For smaller schemes the TA should simply outline the transport aspects of the application, while for major proposals, the TA should illustrate accessibility to the site by all modes of transport, and the likely modal split of journeys to and from the site. It should also give details of proposed measures to improve access by public transport, walking and cycling, to reduce the need for parking associated with the proposal, and to mitigate transport impacts. Further guidance will be found in Guidance on Transport Assessment, (March 2007) published by the Department for Transport."

Noise & Air Quality

- 8.9 NR's application for deemed planning permission refers to the installation of "*plant and machinery, apparatus, fencing and other works and conveniences*," yet NR has omitted to provide details of the type of plant, machinery and apparatus proposed and their location. Nor, has NR submitted a noise assessment relating to the proposed plant and machinery. NR's failure to carry out or to provide an assessment of noise impacts from operations on the site does not accord with the following Ealing and London Plan policies:
- (a) Policy 1.1 'Spatial Vision for Ealing 2026' within Ealing's 'Development Strategy 2026' (2012) DPD identifies the need to reduce the environmental impact of activities within the borough, protecting and improving air quality and ambient noise levels **[APP-20]**;
 - (b) Policy D14 of the London Plan identifies that where it is not possible to achieve separation of noise-sensitive development and noise sources without undue impact on other sustainable development, then any potential adverse effects should be controlled and mitigated through applying good acoustic design principles **[APP-24]**.
- 8.10 In terms of air quality, NR has failed to submit an Air Quality Assessment to demonstrate that its proposals would be Air Quality Neutral. Again, NR's approach conflicts with Ealing and London Plan policies, as detailed below:
- (a) Policy SI 1 of the London Plan states that development proposals must be at least Air Quality Neutral **[APP-25]**. Supporting text at paragraph 9.1.7 of the London Plan identifies that the impacts of a scheme on local air pollution "*should include fixed plant, such as boiler and emergency generators, as well as expected transport sources. The impact assessment part of an Air Quality Assessment should always include all relevant pollutants. Industrial, waste and other working sites may need to include on-site vehicles and mobile machinery as well as fixed machinery and transport sources;*"
 - (b) Policy 7A 'Ealing Local Policy – Amenity' of Ealing's Development Management DPD (at **[APP-22]**) stipulates that development, which in the course of its operations will cause emissions of any sort, must:
 - (i) not erode the amenity of surrounding uses or the site itself;
 - (ii) take all reasonable steps to ameliorate these emissions;
 - (iii) provide all necessary evidence of mitigation that is requested by the local planning authority.
- 8.11 The Ealing and London Plan policies are therefore clear that noise and air quality effects must be appropriately assessed and, to the extent necessary, mitigated. In this case, the absence of appropriate details and assessments relating to noise and air quality means that the SoS cannot reach an informed conclusion as to the impacts of NR's proposals.

Highway impacts

- 8.12 Given the absence of any form of Transport Assessment, NR has failed to properly assess the effect of the proposed use of the Property on the operation and safety of users of the local highway network, as well as the use of the local highway network generally. Instead, it makes the following unsubstantiated assertions in its Rebuttal regarding trip generation and transport impacts as associated with the proposed use of the Property:
- (a) just-in-time deliveries “*would increase the levels of vehicle movements significantly during night-time hours increasing noise and light pollution*” (paragraph 19);
 - (b) “*...deliveries of rail associated materials will be significantly less than the amount of construction materials currently being delivered by HGV and then collected by customers in a combination of vans, cars and HGV’s associated with a retail/ trade builders merchants*” (paragraph 25);
 - (c) “*...based on the existing use on site and the compared to proposed temporary use of site further assessment by Network Rail is not required as we believe we will cause less traffic and less disturbance than the existing busy builder’s merchant*” (paragraph 26).
- 8.13 Without any evidence in the form of a Transport Statement or Transport Assessment, as well as information about proposed HGV construction traffic routes and servicing and deliveries, the SoS cannot attach any weight to the bare assertions made by NR in relation to highway impacts and safety.

Site allocation

- 8.14 The works proposed at the Property are inconsistent with the site allocation which concerns this land within the Ealing Site Allocations DPD (Policy ACT6) (a copy of which is included at **[APP-21]**). The allocation identifies that south of the railway (i.e. on the Property) the site should be developed for commercial and residential uses and that in this part of the allocated site proposals are expected to contribute to an improved sense of place around the redeveloped station through delivery of a high density, high quality mixed use development which optimises the development potential of the allocated site.
- 8.15 The works are also inconsistent with the emerging site allocation under Ealing’s Draft Local Plan (Regulation 18). Emerging allocation AC12 builds on the adopted site allocation and provides additional clarity on the potential redevelopment of the site relative to the adopted allocation. The emerging allocation refers to the retention or relocation of the waste and aggregate capacity on the northern side of the railway, with the Property on the southern side of the GWML railway allocated for a residential-led, mixed-use development with the possibility of community space and ground floor retail. The allocation also identifies that the site falls within an area that is potentially appropriate for tall buildings, with an indicative height of 6-18 storeys. A copy of Policy AC12 is included at **[APP-23]**.
- 8.16 Following Ealing’s resolution to grant planning permission pursuant to application 225069FUL, 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 be to significantly delay the completion of this development and thereby the significant public benefits that policy compliant development would deliver.
- 8.17 In its Rebuttal, at paragraph 26 NR writes: “*The allocation in Ealing DPD envisaged the redevelopment of this site between 2016 – 2021 which clearly has not been achieved within the timeframe identified. The temporary use of the site does not mean that the site can never be redeveloped but any redevelopment of the whole site would need to be delayed. Network Rail have previously suggested that there could be potential for both uses to come forward at the same time with a carefully planned phased development and negotiations are ongoing between the parties in this regard*” [underlining added]. While BPL welcomes NR’s acknowledgement that

both schemes could come forward together, the fact remains that the operation of a temporary logistics compound at the Property does not accord with the adopted Policy ACT6 site allocation and would delay the delivery of BPL's scheme, which is fully in accordance with the vision and principles of the adopted site allocation.

Ground 3 conclusion

- 8.18 The deemed application for planning permission via the S90 Direction should not, and indeed cannot, be granted given NR's abject failure to properly assess its scheme in terms of highway and amenity impacts. In the absence of further details and assessments regarding transport, parking, noise, air quality and servicing and deliveries, the SoS is unable to reach an informed decision in relation to NR's proposals. The absence of details and the approach NR has adopted in terms of assessments, as well as the adequacy of its public consultation, will be considered by BPL in detail at the Public Inquiry.

9 Ground 4: Inadequate funding

- 9.1 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 following a preliminary assessment Gerald Eve (BPL's surveyors) estimates the value of the Property, based solely on its existing use, to be approximately £12.7 million. Further details are provided below.
- 9.2 In its Rebuttal, NR writes that it:
- (a) *"has sought external advice in relation to this [BPL's preliminary estimate] but would welcome the sharing of information so that the difference in value can be clarified"* (paragraph 28);
 - (b) *"has a quality assessment of acquisition costs from external consultants and these costs are available to Network Rail as confirmed in the Funding Statement submitted with the application for the Order NR05. The Implementation Partnership Agreement was worked up prior to submission of the Order application on the 17th April 2023 and was signed off as stated in NR05 Funding Statement on 15th June 2023 due to governance panels Network Rail had to go through"* (paragraph 29).
- 9.3 The above reply in no way explains how NR has arrived at the figure of £7,413,206 for land acquisition costs. Gerald Eve's own preliminary assessment considers the value of the freehold interest comprising both the value of the existing Saint-Gobain lease and the market value of its reversion.

Existing Saint-Gobain lease

- 9.4 In terms of the existing Saint-Gobain lease:
- (a) the Property has a gross internal area of 28,643 square feet (**sq. ft.**);
 - (b) based on the last rent review held on 10 April 2021 (a copy of the Rent Memorandum is included at **[APP- 8]**), the current passing rent is £436,425 per annum. This equates to approximately £15.25 per sq. ft.;
 - (c) at the time of Gerald Eve's preliminary assessment (June 2023), Saint-Gobain's lease was due to expire in circa 22 months in April 2025;
 - (d) under Saint-Gobain's lease, BPL is entitled to a dilapidations settlement. An interim dilapidations schedule was recently served on Saint-Gobain. The initial estimated cost of the dilapidations works is expected to be in the region of £850,000 to £950,000 plus VAT. These costs will be formally budgeted in due course.

Reversion

- 9.5 Following the expiry of Saint-Gobain's lease in April 2025, BPL expects achieve a significant rent increase to at least £25 per sq. ft. The predicted rent figure of £25 per sq. ft. is based on comparable market evidence, including a recent 2022 rent review of a property occupied by Saint-Gobain, pursuant to which Saint-Gobain agreed to pay BPL a rent of £23 per sq. ft for a similar site with a smaller yard.
- 9.6 The above elements together feed through into the capital value of the Property, which as outlined above, is significantly higher than the circa £7.4m estimate by NR.
- 9.7 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.

10 Conclusion

- 10.1 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.
- 10.2 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.

Norton Rose Fulbright LLP

4 August 2023

Schedule 1

BPL's LIST OF DOCUMENTS

The following is a list of the documents that BPL intends to refer to or to put into evidence at the Public Inquiry, copies of which have been provided as appendices to this SoC. Please note that BPL reserves the right to refer to further documents.

REFERENCE	LIST OF DOCUMENTS
	BELLAVIEW PROPERTIES LIMITED (BPL'S) OBJECTION AND NETWORK RAIL INFRASTRUCTURE LIMITED'S (NR'S) REBUTTAL
APP-1	BPL's objection dated 5 June 2023
APP-2	NR's rebuttal to BPL's objection dated 30 June 2023
	TITLE DOCUMENTS
	239 Horn Lane
APP-3	Title Number AGL22605 (Freehold) - Registered Title
APP-4	Title Number AGL22605 (Freehold) – Registered Plan
APP-5	Title Number AGL199709 (Leasehold) – Registered Title
APP-6	Title Number AGL199709 (Leasehold) – Registered Plan
APP-7	Lease between BPL and Saint-Gobain Building Distribution Limited (Saint-Gobain) dated 16 March 2009
APP-8	Rent Review Memorandum between BPL and Saint-Gobain dated 6 August 2021
	227-237 Horn Lane
APP-9	Title Number NGL506157 (Freehold) – Registered Title
APP-10	Title Number NGL506157 (Freehold) – Registered Plan
	Land adjoining 239 Horn Lane (the Triangle Site)
APP-11	Title Number AGL51330 (Freehold) – Registered Title
APP-12	Title Number AGL51330 (Freehold) – Registered Plan
	DOCUMENTS RELATING TO BPL'S PLANNING APPLICATION 225069FUL
APP-13	Design & Access Statement dated November 2022
APP-14	Design & Access Statement Addendum dated June 2023
APP-15	Proposed Plan – Ground Level (reference 1217_GA-100 (Rev P7)) dated May 2023
APP-16	Planning Committee Report dated 19 July 2023

REFERENCE	LIST OF DOCUMENTS
APP-17	Briefing Notes – Planning Committee dated 19 July 2023
APP-18	Draft Minutes of Planning Committee dated 19 July 2023
	LEGISLATION
APP-19	Extracts from Construction (Design and Management) Regulations 2015 – Regulations 4, 13 and Schedule 2
	POLICIES AND STRATEGIES
APP-20	Policy 1.1 - Development Strategy 2026 Development Plan Document adopted April 2012
APP-21	Policy ACT6 - Ealing Development Sites Development Plan Document adopted December 2013
APP-22	Policy 7A - Ealing Development Management Development Plan Document adopted December 2013
APP-23	Policy AC12 - Ealing's Draft Local Plan (Regulation 18) dated November 2022
APP-24	Policy D14 – The London Plan adopted March 2021
APP-25	Policy SI1 – The London Plan adopted March 2021
APP-26	Policy T4 - The London Plan adopted March 2021
APP-27	Policy T6 – The London Plan adopted March 2021
	OTHER
APP-28	Ealing's planning application requirements for applications for full planning permission