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Draft Network Rail (Old Oak Common Great Western Mainline Track
Access) Order

**Proof of Evidence
of**

Adam Rhead BSc (Hons) MRICS

On behalf of Bellaview Properties Limited

16 October 2023

ARHE/U0017558

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1 Qualifications and Experience

- 1.1 My name is Adam Philip Rhead. I am a Member of the Royal Institution of Chartered Surveyors (RICS) and a partner in the Planning and Development team of Gerald Eve LLP, Chartered Surveyors and Property Consultants, of One Fitzroy, 6 Mortimer Street, London W1T 3JJ, with offices at City of London, Birmingham, Cardiff, Glasgow, Leeds, Manchester, Milton Keynes, and West Malling.
- 1.2 I hold a Bachelor of Science degree in Investment and Finance in Property from the University of Reading, and I am a RICS Registered Valuer with 20 years' experience of undertaking statutory and non-statutory valuations across the United Kingdom and the Channel Islands.
- 1.3 I am a member of the Compulsory Purchase Association and have completed the RICS's Expert Witness Certificate course which provided training in all aspects of expert witness work.
- 1.4 I specialise in matters relating to compensation and compulsory purchase and land assembly, advising both claimants and acquiring authorities. I lead Gerald Eve's specialist compulsory purchase and compensation advisory team. My existing clients include: The Arch Company Properties Limited, Berkeley Group, British Salt Limited (Tata), DB Cargo (UK) Limited, HS1 Limited, Homes for Lambeth, London Borough of Brent, London Borough of Lambeth, National Exhibition Centre Limited, SUEZ Recycling and Recovery UK Limited, Transport for London (TfL) and Wolseley UK Limited.
- 1.5 Prior to joining Gerald Eve LLP, I worked for Deloitte LLP in its London based Development Advisory business between 2014 and 2017. I advised acquiring authorities and claimants in respect of compulsory purchase and compensation matters. At the time my key clients included High Speed Two (HS2) Ltd, the Co-operative Group, and Three Rivers District Council. I was part of a cross supplier team



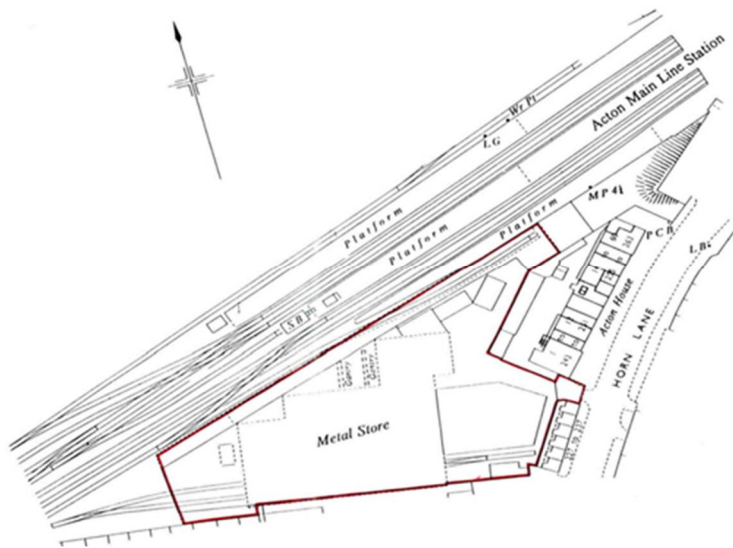
responsible for updating HS2's Property Cost Estimate for Phase 1 of the scheme.

- 1.6 Prior to this I worked for Drivers Jonas LLP/Deloitte LLP in its Birmingham based valuation department. I carried out a broad range of valuation assignments for purposes including loan security, financial statements, option pricing, matrimonial disputes, and assurance for a range of Deloitte's audit clients. This advice included the valuation of industrial property and development land for clients including Barclays, Chancerygate, Prologis, PruPIM, HSBC, and Scottish Widows Investment Partnership.
- 1.7 A copy of my CV is at **Appendix AR1** to this report.

2 The Property

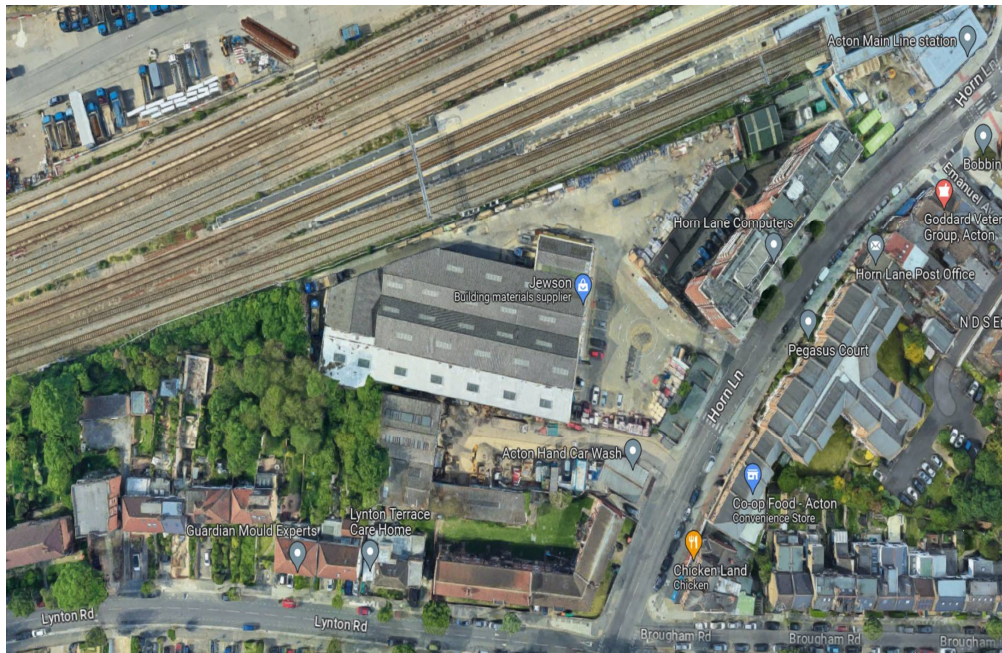
- 2.1 Bellaview Properties Limited (“**BPL**”) is the freehold owner of land known as 239 Horn Lane, London W3 9ED, registered at the Land Registry under Title Number AGL22605 (“**the Property**”). The boundary of the Property is shown by a red verge in Figure 1 below:

Figure 1: Extract from Title Plan (AGL22605)




- 2.2 The Property is located on the western side of Horn Lane, Acton and adjoining and to the south-east of the Great Western Mainline (“**GWML**”) railway. The Property comprises a warehouse building, offices, storage yard, parking, and hardstanding, with vehicular and pedestrian access off Horn Lane. The floor area of the warehouse building is 26,660.9 sq. m. (28,643 sq. ft.). An aerial photograph of the Property is at Figure 2 below:

Figure 2: Satellite Image (source: Google Maps)



- 2.3 The whole of the Property is let on a lease to Saint-Gobain Building Distribution Limited – now STARK Group, trading as Jewson (“**STARK**”) – dated 16 March 2009 for a term of 9 years commencing on 10 April 2016. This lease is registered at the Land Registry under Title Number AGL199709. STARK occupies the Property as a Jewson depot for the sale of building materials to trades persons and the public.
- 2.4 BPL’s sister company, Builder Depot Limited (“**BDL**”), is an independently owned builder’s merchants operating throughout branches across London. BDL currently has a depot in West Hampstead (“14 Blackburn Road”) but may need to relocate due to a redevelopment; if this need arises the business may take occupation of the existing building at the Property or of a new building constructed as described below.
- 2.5 On 1 December 2022 BPL and BDL submitted an application for full planning permission to the London Borough of Ealing (reference 225069FUL) to redevelop the Property, as well as other land within BPL’s ownership as follows: *“Construction of a building ranging in height from 6 to 15 storeys, to provide builders merchants (Use Class*



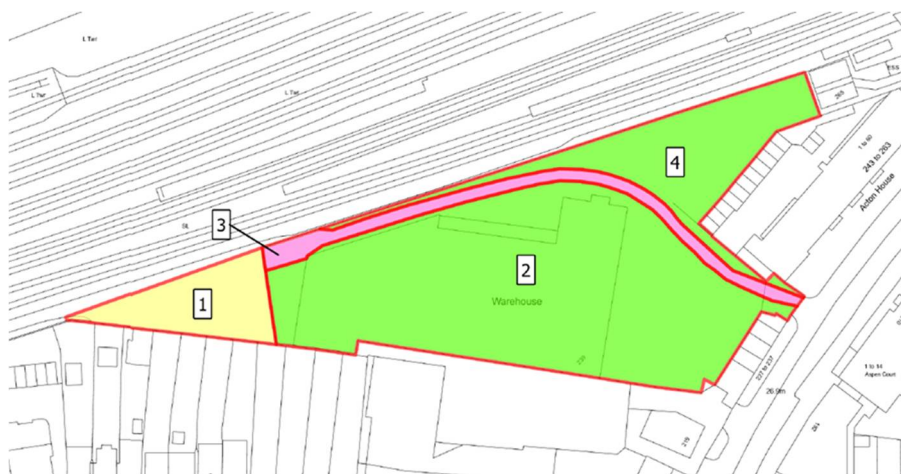
Sui Generis) at ground floor level, and 185 self-contained residential units (Use Class C3) and associated amenity space at first floor level and above; hard and soft landscaping works; provision of car and cycle parking; works to provide means of access for both pedestrians and vehicles from Horn Lane and all other works incidental to the development. (Following demolition of existing builders merchants)”
(“BPL’s Scheme”).

- 2.6 On 19 July 2023 London Borough of Ealing’s Planning Committee resolved to grant planning permission subject to completion of a section 106 agreement and Stage II referral to the Greater London Authority.

3 The Draft Order

- 3.1 Network Rail Infrastructure Limited (“**NRIL**”) seeks rights to use the whole of the Property 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 would be across the Property. The permanent RRAP would be located on the adjoining triangle of land to the west of the Property (“**the Triangle Site**”); however, to enable the use of the permanent RRAP NRIL also seeks a permanent easement across the Property to allow access to the Triangle Site.
- 3.2 NRIL has applied, pursuant to section 6 of the Transport and Works Act 1992, for an order under section 1 and section 5 of that Act.
- 3.3 NRIL seeks powers in respect of the Property via the draft Network Rail (Old Oak Common Great Western Mainline Track Access) Order (“**the Draft Order**”), submitted on to the Secretary of State on 17 April 2023. The Explanatory Note to the Draft Order states that:
- “This Order confers powers on Network Rail Infrastructure Limited 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.”*
- 3.4 The rights sought by the Draft Order relate solely to the Property although I understand that, to secure the permanent access referred to in the Draft Order, NRIL also needs to reach agreement with the Crown Estate as owner of the Triangle Site to the west of the Property. A copy of the Draft Order Plan is at Figure 3 below:

Figure 3



3.5 Plots 2 and 4 in Figure 3 are defined in the Draft Order as land to be occupied temporarily and Plot 3 is land over which both a temporary and permanent right of way are sought. Plot 1 is the Triangle Site owned by the Crown Estate.

3.6 Article 7 of the Draft Order seeks rights for NRIL, in connection with its proposed development, to:

“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);

Remove any buildings and vegetation from that land;

Construct temporary works (including the provision of means of access) and buildings on that land;

Temporarily occupy and use airspace for the purposes of the operation of a crane in connection with the construction of the development;

Construct any permanent works specified in relation to that land in column (3) of the Schedule 2 or any mitigation works on that land.”

3.7 Article 6(1) provides that:

“Network Rail may acquire compulsorily such rights of access or other easements specified in column (2) of Schedule 1 (land in which only new rights etc. may be acquired) for the purpose specified in relation to that land in column (3) of that Schedule by creating them as well as by acquiring rights of access or other easements already in existence.”

3.8 Schedules 1 and 2 are set out below:

SCHEDULE 1

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED


<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purpose for which rights may be acquired</i>
London Borough of Ealing	3	Permanent maintenance access for road rail vehicles onto the Great Western Mainline

SCHEDULE 2 **Error! Reference source not found.**

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
London Borough of Ealing	2, 3, 4	Temporary construction compound

3.9 The effect of the temporary rights sought would be that NRIL would take exclusive occupation of the Property (including the warehouse and



other buildings and land) for the duration of its works. In addition, NRIL would have a permanent right of way over Plot 3.

- 3.10 It is to be noted that Article 7(b) of the Draft Order would give NRIL the right to demolish the building currently occupying the greater part of the Property.

4 The consequences of the Draft Order

- 4.1 The immediate and obvious consequence of the Draft Order, if made, would be that STARK would be dispossessed of its lease and therefore of the Property. Powers would also be available to remove buildings and hardstanding areas but there is nothing in the Draft Order or the deemed planning permission to suggest that NRIL needs to clear the Property.
- 4.2 Appendix NR14 to NRIL's Statement of Case in relation to the Draft Order – "Timetable of proposed works" – gives a start for the work of 6 January 2024 (although it is not clear whether possession of the Property would be taken on that date or in February) and a completion date of 21 December 2029, a total period of six years. I consider it likely that this would be the minimum period of occupation of the Property as there must be a possibility that the timescale for the work would be extended, and in addition Article 7(3) gives NRIL the power to remain in possession for up to a "*period of one year beginning with the date of completion of the works for the purposes of which temporary possession of that land was taken.*" Some continued occupation following completion of NRIL's works is very possible in view of the obligation for NRIL to reinstate. As Mr Connell's Proof of Evidence notes, NRIL is seeking in the deemed planning permission a three year period to implement the permission, which could also extend the period of possession.
- 4.3 NRIL is not able to use compulsory purchase powers to acquire the Triangle Site from the Crown Estate, which NRIL states is "critical" to its scheme (paragraph 1.17d) of its Statement of Case) but is instead dependent on agreeing a private treaty purchase. This agreement has not been achieved. There can consequently be no certainty that the project can be commenced or completed in the timescale or budget envisaged.
- 4.4 NRIL advised that it did not object to the granting of planning permission to redevelop the Property provided that the permission included a

condition to the effect that the redevelopment work should not interfere with its Old Oak Common Station works but confirmed that development confined to the footprint of the existing building would not be an interference (paragraph 5.37 of its Statement of Case). However, I note from Christopher Gent's Proof of Evidence¹ that the alignment of both the temporary and the permanent access easement sought in the Draft Order cuts across the footprint of the building in BPL's Scheme including the proposed residential block situated towards the northern boundary of the Property, which would prevent the development being implemented. In my opinion it is also entirely unrealistic to assume that BPL would be able to undertake any substantive redevelopment if NRIL exercised its temporary possession powers in the terms sought under the Draft Order (if made) to the full extent and occupied the whole of the Property.

4.5 BPL's settled intention is to proceed with the BPL Scheme as soon as possible, and its aim had been to do this on expiry of STARK's lease on 9 April 2025. However, BPL does have options, with STARK having indicated a desire to renew its lease, and the existing warehouse also possibly being required to relocate BDL's operation from 14 Blackburn Road. The longer-term consequences of NRIL's taking possession of the Property would therefore be that either:

- a) BPL would not be able to grant, and STARK would be unable to take, a new lease of the Property for at least six years, and it is conceivable that the warehouse building could by then have been demolished, given the powers that NRIL has sought through the Draft Order; alternatively STARK may be unable to re-occupy if it had been deprived of occupation for that period; or
- b) the implementation of BPL's Scheme would be delayed for at least six years; or

¹ Paragraph 4.24 and Appendix I

- c) if for any reason STARK would not have wished to take a new lease on expiry of the existing term (although I believe that this would be unlikely), BPL would be unable to seek a new tenant for at least six years; or
- d) BDL would be prevented from taking occupation of the Property as a relocation site for 14 Blackburn Road if its leasehold interest is compulsorily acquired by London Borough of Camden for the re-development of the 02 Centre, Finchley², or if 14 Blackburn Road is sought to be redeveloped to provide a new store by BDL's landlord. BPL is entitled to oppose the grant of a new lease to STARK under ground (g) of section 30(1) (landlord's intention to occupy) of the Landlord and Tenant Act 1954 ("the 1954 Act") to enable BDL to relocate to the existing building; this would be prevented were NRIL to take possession. I am instructed that, under section 42(3) of the 1954 Act, references to the landlord's occupation in section 30(1)(g) are construed as references to the occupation of any company within the same group.

4.6 In considering whether the six-year period I refer to is realistic it should also be borne in mind, in addition to the factors which I refer to in paragraphs 4.2 and 4.3 above, that:

- i) BPL would be unlikely to be able to secure a new tenant (save for a group company) until it had certainty as to the date on which NRIL would be vacating the Property;
- ii) if BPL were to decide to implement the BPL Scheme it would not be able to finalise and enter into any contracts without certainty as to NRIL's vacation date.

² See paragraph 8.8

5 Compensation provisions

5.1 The Draft Order makes provision for the rules of compulsory purchase compensation to apply, with adaptation where necessary, to the acquisition of land and rights. I set out the principal relevant provisions in the following paragraphs:

5.2 Article 4(1)

Part 1 of the 1965 Act, [the Compulsory Purchase Act 1965] in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of any interests in land under this Order—

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981 applies; and

(b) as if this Order was a compulsory purchase order under that Act.

5.3 Schedule 3 paragraph 1

The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interest in land.

5.4 Schedule 3 paragraph 4

Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by article 4 (application of Part 1 of the 1965 Act), applies to a compulsory acquisition of rights under article 6 (power to acquire new rights)—

(a) with the modification specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.5 Schedule 3 paragraph 5

The modifications referred to in paragraph (a) are as follows.

(2) References to the 1965 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired; or

(b) the land over which the right is, or is to be, exercisable.

5.6 NRIL will therefore be under an obligation, if the Draft Order is implemented, to pay compensation in accordance with the usual provisions.

6 NRIL's Statement of Case

- 6.1 In the Estimate of Costs, Appendix NR06 to its Statement of Case (attached as **Appendix AR2**), NRIL has identified the land acquisition costs associated with the Draft Order to be £7,413,206. No breakdown or methodology has been provided other than to state that the costs have been estimated by its advisers. I assume, however, that this relates primarily to compensation payable to BPL and STARK for temporary occupation of the Property and presumably the purchase price payable to the Crown Estate for the purchase of its land.
- 6.2 For the reasons set out in the following paragraphs and in Section 7 below I consider this estimate of the land acquisition costs to be inadequate considering the circumstances.
- 6.3 In the absence of the Draft Order I consider it likely that one of the following scenarios would occur, following the potential consequences which I outline in paragraph 4.5 above:
- a) STARK, having a lease of the Property expiring in April 2025, protected under the 1954 Act, could serve notice on BPL under section 26 of the 1954 Act requesting a new tenancy. If BPL did not intend to go ahead with the BPL Scheme it is highly likely that STARK would be granted a new lease.
 - b) Unless vacant possession is required for BDL's business instead, BPL could serve a notice under section 25 of the 1954 Act to terminate the tenancy and oppose a new tenancy under s30(f) of the 1954 Act on the basis that it wishes to bring forward redevelopment (BPL's Scheme). I believe this to be the most likely scenario as it is BPL's current intention and maximises the value of the Property and provides accommodation for BDL.
 - c) STARK vacates the Property on expiry of the lease or earlier surrender (although I consider this unlikely) leaving BPL free to re-let to another tenant.

- d) BPL successfully opposes the grant of a new lease to STARK to enable BDL to occupy (although, again, this at present appears unlikely).

6.4 The compensation payable by NRIL under each of these scenarios would reflect the following losses:


a) BPL unable to grant new lease to STARK:

- i) BPL is unable to grant the new lease and therefore is deprived of the rent paid by STARK and, following the lease expiry, the full market rental value of the Property until after the end of NRIL's occupation.
- ii) BPL faces the potential risk of being unable to find a replacement tenant once NRIL gives up possession of the Property.
- iii) Similarly, BPL will be required to pay the costs of re-letting the Property at this time.
- iv) It is asserted by STARK in its objection to the Draft Order that the loss of possession of Plot 2 will *"give rise to the extinguishment of STARK's business."*

b) No new lease granted to STARK and BPL redevelops:

- i) BPL is deprived of the profit from redeveloping the Property for at least six years.
- ii) STARK is deprived of the 1954 Act compensation to which it would otherwise be entitled and is also deprived of the profit that its business would have generated for the period between the commencement of NRIL's occupation and the date up to which it would otherwise reasonably have expected to remain in occupation.

c) STARK vacates on expiry of the lease or earlier surrender – i.e. 'walks away':

- 
- i) BPL is unable to seek a new tenant and offer a lease and therefore is deprived of the full market rental value of the Property until after the end of NRIL's occupation.
 - ii) BPL incurs letting fees (agent and legal) on re-letting the Property.
 - iii) faces the potential risk of being unable to find a replacement tenant once NRIL gives up possession of the Property.
- d) BPL obtains possession on expiry of STARK's lease and leases the Property to BDL
- i) BPL is unable to re-let for at least six years and is deprived of receipt of the full market rental value of the Property from BDL throughout that period.
 - ii) STARK is deprived of the 1954 Act compensation to which it would otherwise be entitled. This would have been paid by BPL in the circumstances.
 - iii) STARK is deprived of the profit that its business would have generated up to expiry of STARK's lease.

6.5 I set out in the following section my estimates of the compensation and other costs potentially payable by NRIL under each of these four scenarios.

7 Estimate of potential compensation payable by NRIL

- 7.1 This section sets out my high-level estimates of the compensation due to claimants in the circumstances where the Order is confirmed and compulsory purchase / temporary possession powers are exercised by NRIL.
- 7.2 The estimates are based on the four scenarios outlined in paragraph 6.4 above which would potentially occur in the absence of NRIL's scheme.
- 7.3 Finally, this section considers two scheme impacts:
- a) The acquisition of the Crown Estate owned Triangle Site; and
 - b) The impact of the permanent easement over the Property.

Scenario a): BPL unable to grant new lease to STARK

- 7.4 Loss of rental income to BPL
- 7.5 BPL receives a rent of £436,425 per annum from STARK until expiry of its lease on 9 April 2025.
- 7.6 On lease expiry, BPL can expect to achieve a rent of £269.11 per sq. m. (£25 per sq. ft.) which is in line with the rent paid by BDL at its Park Royal branch. This equates to £716,075 per annum (£269.11 x 26,660.9 sq. m.) The justification for £269.11 per sq. m. (£25 per sq. ft.) is as follows:
- a) In November 2022, STARK offered BPL £247.58 per sq. m. (£20 per sq. ft.) for a new 15-year lease outside of the 1954 Act. This was STARK's opening bid and was made subject to some landlord works being carried out. The agent's offer – attached at **Appendix AR3** – confirms that STARK was reluctant to undertake further negotiation until the threat of the Draft Order had disappeared. I consider that a higher rent would have been secured in the 'no-scheme world'.

b) In accordance with a lease dated 4 April 1997 and a reversionary lease dated 20 November 2008, Windacre Properties Limited, a Group company of BPL, agreed a 29 September 2021 rent review with STARK in respect of 36 Lombard Road, Battersea³ at a new rent of £444,590 per annum. I am advised that the floor area of the unit extends to circa 1,858 sq. m. (20,000 sq. ft.). The agreed rent equated to approximately £239.29 per sq. m. (£22.23 per sq. ft.) per annum.

7.7 The loss of six years of rental income equates to between **£2,450,000 to £3,520,000** as at 'today' (future rent discounted at 6%) depending on when NRIL's temporary possession commences.

7.8 Potential additional loss – risk of not finding a replacement tenant

7.9 The risk to BPL of being unable to secure a replacement tenant for the Property upon NRIL handing back the Property, assuming that STARK would not be in a position to re-occupy, is significant as the current supply constraints may not feature in the occupational market at that time.

7.10 An appropriate allowance to make to reflect this risk is six months of rental income i.e. £358,000.

7.11 Present valuing this allowance at 6% suggests a figure in the order of **£252,000**. This is the sum that NRIL would need to allocate now to meet the future liability.

7.12 Costs of re-letting

7.13 The cost of reletting the unit, would be in the order of:

Agent fee: 10% of the Market Rent.

³ SW11 3RP

Legal fee: 5% of the Market Rent.

7.14 The total costs of letting would therefore be in the order of £107,000. I estimate that NRIL would therefore need to set aside approximately **£75,700** as at 'today' to meet this future liability.

7.15 Extinguishment of STARK's business

7.16 I do not have information on STARK's trading performance at the Property. I expect, however, that it trades well which is supported in part by STARK's 'starting offer' to take a new lease of the Property in November 2022.

7.17 I understand from BPL that a builder's merchants in this location could easily achieve a pre-tax profit of between £1.5m to £2m per annum. In terms of STARK's business, the extinguishment value of the STARK branch on the assumption that STARK's lease was renewed would need to be assessed by a forensic accountant but could realistically be reflected by a multiple of 5-7 which suggests an extinguishment value of **between £7,500,000 and £14,000,000** plus costs.

7.18 Based on the amounts I have estimated above I consider that this scenario would result in an entitlement to compensation for BPL and STARK combined in the order of **£10,277,700 to £17,847,700**.

Scenario b): No new lease granted to STARK but BPL unable to redevelop

7.19 Deferment of developer's profit

7.20 The temporary possession of Plots 2 and 4 by NRIL will delay the delivery of BPL's Scheme by at least six years.

7.21 I have undertaken a development appraisal of the Property based on BPL's planning permission: this is enclosed at **Appendix AR4**.

- 7.22 BPL acquired the Property on 11 November 1997 for £1,467,348. I have indexed the purchase price using the Savills Multi-use index to today which gives a land value in the order of £4,750,000 and incorporated this into the appraisal. The development appraisal targets the level of profit that BPL expects to achieve on delivery of its policy compliant scheme which delivers 35% affordable housing.
- 7.23 In terms of sales values, I have applied an average value of £8,611 per sq. m. (£800 per sq. ft) to the private residential elements: this is based on the data as submitted in the Friary Park Financial Viability Assessment (FVA) which was submitted to Ealing Council in 2022. An average rate of £809 per sq. ft. was agreed by the developer with the Council. In terms of the sales programme, I have assumed 70% off plan sales, and seven units sold per month following completion. Affordable units are assumed to be sold to a Registered Provider (RP) at the beginning of construction⁴.
- 7.24 I have assumed a build programme of 6 months pre-construction and 24-months construction in line with the RICS Build Cost Information Service (BCIS) Duration Calculator. Construction costs are based on £2,476 per sq. m. (£230 per sq. ft.) for the residential element and £1,206 per sq. m. (£112 per sq. ft.) for the commercial.⁵
- 7.25 Overall, I assess the developer's profit to be released by BPL's Scheme to be in the order of £21,363,713. Deferring this developer's profit for six years at a discount rate of 10% suggests a loss in the order of **£9,500,000**.

⁴ "Golden Brick" is a mechanism which enables a developer to complete a sale of VAT elected land to a Registered Provider (RP) before practical completion of the affordable housing dwellings. This enables the sale to be treated as zero-rated supply for VAT purposes.

⁵ BCIS median construction costs for Residential (flats) 6+ stories, and Retail Warehouses, re-based for LB Ealing, and applied on the different uses.

7.26 Loss of profit incurred by STARK

7.27 STARK will lose future profit from its occupation of the Property if temporary possession of the Property is taken by NRIL before the expiry of STARK's lease.

7.28 It is foreseeable that – at the point that STARK is timetabled to give up possession of the Property⁶ – there will be approximately six months remaining on its lease, which is due to expire in April 2025.

7.29 Therefore, I estimate that STARK may suffer a loss of profits between the commencement of NRIL's occupation and the date up to which it would otherwise reasonably have expected to remain in occupation. I estimate this to be in the order of **£500,000 to £1,000,000**.

7.30 Loss of 1954 Act compensation to STARK

7.31 STARK will be entitled to compensation if BPL proceeds with its redevelopment of the Property as it would be denied this if possession were taken by NRIL.

7.32 Based on STARK's period of occupation of the Property the compensation will be twice the rateable value⁷ of the Property of £202,000, so a sum of £404,000 is the compensation that STARK would have expected to receive in April 2025 if BPL successfully opposed the grant of a new lease under section 30(f).⁸ However, for the purpose of assessing the compensation potentially payable by NRIL this is a neutral factor as it would be likely to be deducted from BPL's compensation as a 'saving' of a payment that it would otherwise have had to make itself.

⁶ October 2024

⁷ Summary valuation - Valuation Office Agency - GOV.UK (tax.service.gov.uk)

⁸ Landlord and Tenant Act 1954

7.33 Conclusion

7.34 In summary, I consider that this scenario would result in an entitlement to compensation for BPL and STARK combined in the order of **£10,000,000 to £10,500,000**.

Scenario c): STARK vacates on expiry of the lease – i.e. ‘walks away’

7.35 Loss of rental income to BPL

7.36 In this scenario, STARK decides to walk away from the Property on expiry of its lease. I consider this to be a very unlikely scenario as there is evidence of STARK offering a significant uplift in rent in return for a new lease, but I have nevertheless considered the financial consequences of occupation by NRIL.

7.37 STARK would be required to ‘yield up’ the premises. Either the dilapidations would need to be undertaken before the expiry of the lease or a payment would be made in lieu to comply with the tenant’s covenants.

7.38 The principal loss to BPL would be the loss of approximately six years’ rental income – being unable to re-let the Property for the duration of occupation by NRIL. This would be between **£2,450,000 to £3,520,000** as at ‘today’, assessed as in paragraphs 7.5 - 7.7 above and on the basis that the dilapidations have been undertaken by STARK.

7.39 Letting costs

7.40 In addition, BPL would incur 15% of fees on reletting the Property. I calculate that approximately **£75,700** would need to be set aside for the costs as at ‘today’.

7.41 Letting risk

7.42 It is possible that BPL could face a more challenging occupational market at the point at which it re-lets the Property.

7.43 I estimate that six months' rent should be set aside for this cost: this in the order of **£252,000** as at 'today', assessed as in paragraphs 7.10 and 7.11 above.

7.44 Loss of profit incurred by STARK

7.45 STARK would suffer a loss of profit for the residue of the lease whilst NRIL is in occupation. I assess this to be between **£500,000 to £1,000,000** as in paragraph 7.29 above.

7.46 Conclusion

7.47 In summary, I consider that this scenario would result in an entitlement to compensation in the order of **£3,277,700 to £4,847,700**.

Scenario d): BPL obtains possession on expiry of STARK's lease but is unable to lease the Property to BDL

7.48 In this scenario, the financial consequences and potential compensation are, in part, similar to those in scenario c) above.

7.49 Loss of rental income to BPL

7.50 BPL would lose out on a minimum of six years' rental income, some of which would be at Market Rent. NRIL would need to set aside between **£2,050,000 to £3,120,000** as at 'today': this represents the present value of rental income (again assessed as in 7.5 to 7.7 above) after a deduction of 1954 Act compensation which would need to be paid by BPL to STARK.

7.51 Letting risk & fees

7.52 Again, BPL could face more challenging occupational market when it seeks to relet in six years' time. Therefore, in this scenario, it is appropriate to make an allowance of **£252,000** as in paragraph 7.11. In addition, an allowance of **£75,700** should again be made for a letting fee as in paragraph 7.14.

7.53 Loss of profit for STARK

7.54 Again, under this scenario STARK would be likely to suffer losses, estimated at **£500,000 to £1,000,000** as explained in paragraphs 7.27 to 7.29 above, due to NRIL taking possession before expiry of STARK's lease. In addition STARK would be entitled to The 1954 Act compensation of approximately **£400,000** that it would have been entitled to receive from BPL.

7.55 Conclusion

7.56 In summary, I consider that this scenario would result in an entitlement to compensation in the order of **£3,277,700 to £4,847,700**.

Conclusion on likely compensation

7.57 I believe that the most likely scenarios, in the absence of the Draft Order, are either that BPL would grant a new lease to STARK on expiry of the existing term (Scenario a)) or that, as is its intention, BPL would implement its planning permission and construct BPL's Scheme (Scenario b)). I estimate the total burden of compensation on NRIL to be somewhere between £10,277,700 and £17,847,700 for Scenario A and between £10,000,000 and £10,500,000 for Scenario b).

Loss of the building

- 7.58 I should emphasise that my assessments under scenarios a), c) and d) above do not reflect the possibility of NRIL removing, and consequently having to replace, the existing building at the Property. Were this to occur I estimate that the rebuilding cost (including professional fees) could be in the order of **£3,500,000 to £4,000,000⁹** in addition to the compensation that I have already assessed.

Loss of planning permission

- 7.59 For the reasons explained in paragraph 4.4 above I consider that NRIL's occupation of the Property would make it impossible for BPL's Scheme to be constructed for at least six years. The likelihood is consequently that BPL would have to prepare and submit a fresh planning application, the cost of which would in my opinion be recoverable from NRIL as compensation. The liability for this is not factored into my estimates of compensation.

Cost of acquiring the Triangle Site

- 7.60 As far as I am aware, the Crown Estate has not yet formally agreed to sell its interest in the Triangle Site and no purchase price has been agreed. The cost of acquisition, which must be added to the compensation estimated above, is therefore at present unknown.
- 7.61 NRIL is not able to exercise compulsory purchase powers over the Triangle Site. Consequently, there is no certainty that the land can be acquired within NRIL's budget and NRIL would, on a private treaty sale in the absence of the Draft Order, be competing with owners of adjoining land, a factor which would need to be reflected in the 'compensation' to be paid by NRIL.

⁹ Based on BCIS "341.1. Retail Warehouses" build cost data

7.62 NRIL explains the position in paragraphs 8.2 to 8.4 of its Statement of Case. It appears that three adjoining landowners have expressed interest in buying the Triangle Site and that no decision on the sale – presumably including whether or not to sell it to NRIL – is to be made until after the confirming minister’s decision on the Draft Order has been made. This not only makes the potential cost of buying the land uncertain; it also casts doubt on whether or not NRIL will be able to acquire it at all.

7.63 Permanent Easement

7.64 The impact of the access easement across the Property to allow access from the public highway to the Triangle Site has yet to be assessed.

7.65 BPL’s Scheme¹⁰ incorporates a 7m wide access to the rear boundary of the Property for the purpose of reserving an access route for NRIL, albeit not on the route shown in the Draft Order.

7.66 BPL’s architect is considering the design implications of removing the permanent access route and the increased development that could be implemented in the absence of NRIL’s scheme. Therefore, the estimate of compensation in scenario b) is likely to increase once the full impact of reserving a permanent access easement across the Property is known.

¹⁰ Planning reference 225069FUL

8 The public interest case for taking the Property

- 8.1 I have been instructed, in addition to providing my opinion of potential compensation, to give my view on the ‘public interest’ grounds for the Draft Order and the consequent taking of possession of the Property.

Government guidance

- 8.2 The underlying principles which are to be followed if compulsory purchase powers are to be used, and the key criteria to be considered by the confirming minister in any decision as to whether or not to confirm a compulsory purchase order (including a transport and works act order which incorporates compulsory purchase powers), are set out in the Government’s guidance, revised in 2019: *Guidance on Compulsory purchase process and The Crichel Down Rules* (“**the Guidance**”).
- 8.3 The key principle, stated in paragraph 2 of the Guidance, is that “*a compulsory purchase order should only be made where there is a compelling case in the public interest.*” The requirement is re-stated in paragraph 12. I believe that this is to be interpreted as applying the requirement for such a case to both the use of compulsory purchase powers and the purchase of each plot included in the Draft Order.
- 8.4 At paragraph 13 of the Guidance it is stated that “*The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest.*” The minister will therefore consider the balance of the benefit – i.e. the ‘public interest’ case – of the order against the consequences and prejudice to owners and occupiers of the interests or rights proposed to be acquired.
- 8.5 In this section of my proof, I examine the issue of whether or not there is “*a compelling case in the public interest*” for NRIL’s compulsorily

acquiring the temporary and permanent rights over the Property included in the Draft Order.

Reasonable steps to acquire by agreement

- 8.6 Paragraph 2 of the Guidance makes it clear that: *“Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects.”* It also states that: *“The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement.”*
- 8.7 In the case of the Draft Order, BPL entered into negotiations with NRIL with the intention of accommodating the rights reasonably required over the Property and mitigating the impact of the taking of those rights. NRIL states in its Statement of Case (paragraph 6.17) that: *“it has engaged with Bellaview and STARK to negotiate by agreement the right to acquire the necessary rights”* in order to *“minimise the need to exercise the compulsory acquisition powers being sought in the Order.”*
- 8.8 Discussions with NRIL have, however, been protracted as it has been unclear in its requirements for accommodation at the Property. BPL has invested significant energy and resources into designing BPL’s Scheme which, at the same time, addresses NRIL’s requirements for a temporary RRAP and a permanent easement allowing access to the Triangle Site. It has drafted heads of terms for an advance agreement and has formulated site-sharing arrangements necessary for 14 Blackburn Road to be relocated to the Property in circumstances where the branch is compulsorily acquired by London Borough of Camden, or relocation is required for redevelopment. To date, however, an agreement has yet to be signed between the parties although BPL’s lawyer, Stephenson Harwood LLP, is progressing the drafting of legal documents.
- 8.9 For these reasons I do not consider that NRIL has taken reasonable steps to acquire the rights it needs by agreement or, consequently, that

it can demonstrate a compelling case in the public interest for acquiring them compulsorily.

Alternative locations for a temporary and permanent RRAP

- 8.10 The acquisition by NRIL of a permanent easement over the Property to provide access to the permanent RRAP will adversely affect BPL's ability to implement its planning permission for redevelopment of the Property.
- 8.11 In paragraph 7.6 of its Statement of Case NRIL sets out the alternative locations that it has explored and the reasons why it does not consider them to be suitable. In view of the prejudice that the imposition of the easement will cause to BPL and the doubt as to whether or not NRIL will actually be able to acquire the Triangle Site needed for the RRAP (paragraph 7.43 above), I believe that it is appropriate for me to mention this issue.
- 8.12 As set out in BPL's Statement of Case, there are alternative means by which temporary and third permanent access to the GWML can be secured other than interfering with the Property and other third-party interests. These are addressed in detail in the evidence of Nicholas Gallop and Christopher Gent.

Temporary occupation of the Property

- 8.13 NRIL explains at paragraph 6.12 of its Statement of Case that the Property: *"is required for a temporary worksite to facilitate the works, which will include construction of the temporary RRAP."* It acknowledges at paragraph 5.38 that: *"the proposed residential development of the Order land is likely to be delayed..."* I consider that in practice NRIL's occupation pursuant to the powers contained in the Draft Order will prevent any substantive element of the development from being undertaken.

- 8.14 As I have explained in paragraph 7.59 above, it is likely that it will not be possible to implement BPL's Scheme for at least six years and that BPL will have to make a fresh planning application. This carries the associated risk that planning policy may change, and that planning permission for the same or a similar development may not be granted.
- 8.15 NRIL's proposal to take 'full-time' temporary possession of the existing warehouse building and car parking at the Property, as well as install welfare facilities, is unjustifiable when considered alongside its proposed infrequent use of the RRAP over the course of Saturday nights from 10pm to 10am Sunday.
- 8.16 I consider that it is appropriate to consider whether other sites are available which would fulfil NRIL's requirement for a temporary worksite. I also address the question of whether NRIL has properly considered the impact of the use of the Property on the occupiers of neighbouring properties.
- 8.17 NRIL is the unregistered freehold owner of Acton Goods Yard which is, in turn, let to DB Cargo (UK) Limited. This is an established rail facility offering a range of functions and is the most geographically proximate location to accommodate these uses. Nicholas Gallop in his proof, at paragraph 7.3, expresses the opinion that this would be suitable for NRIL's use. However, although DB Cargo (UK) Limited – a client of mine – would be amenable to exploring options at the Acton Goods Yard, it has confirmed that it has not been approached. Nicholas Gallop and Christopher Gent also describe other sites which they consider are available and suitable.
- 8.18 NRIL has accepted the principle of site-sharing at the Property in its Statement of Case and condition no.28 of BPL's planning permission¹¹ where it has confirmed there is no impediment to BPL implementing the BPL Scheme within the footprint of the existing building

(notwithstanding that this would not be practicable). Therefore, NRIL appears not to need to take temporary occupation of the whole of the Property as:

- a) 'Just in time' deliveries are possible with provision of a set down area at the Property; and
- a) In the event that a compound and ancillary accommodation is needed, alternative options exist including possession of part of Acton Goods Yard or the Secretary of State for Transport's demise at Willesden Euro Terminal.

Impact on BPL's Scheme

- 8.19 BPL's Scheme will bring forward much needed housing to the borough across a mixture of tenures (including social rent and intermediate options at policy level). NRIL's occupation of the Property will delay this by at least six years.
- 8.20 As I explain in paragraph 4.4 above, BPL's Scheme cannot be implemented in circumstances where NR acquires a temporary or permanent access easement (Plot 3) as identified in Figure 3. If BPL's Scheme cannot be delivered, the value of the Property and the profit that can be realised by BPL is severely impacted. Furthermore, BPL will need to undertake re-design work which will incur professional fees. Any future planning application will be subject to risk and the possibility that the London Borough of Ealing (as local planning authority) will look unfavourably on the prospect of residential led development on Plots 2 and 4 or the inclusion of the commercial element.

Loss of relocation option for BDL

- 8.21 BPL is the freehold owner of 14 Blackburn Road, which is leased to BDL and is required for Land Securities' comprehensive redevelopment of the O2 Centre, Finchley providing 1,800 new homes and 180,000 sq. ft of retail, leisure, and community space. Planning permission was

resolved to be granted on 30 March 2023 for the 14-acre site including 14 Blackburn Road.

- 8.22 The London Borough of Camden will make a compulsory purchase order for the purpose of acquiring third party interests for Land Securities. BPL and BDL will object to a compulsory purchase order (CPO) requiring the permanent acquisition of 14 Blackburn Road owing to the scarcity of such properties in the market.
- 8.23 With no suitable alternative premises identified, BPL needs to retain the prospect of BDL relocating to the Property – either to the existing building or, as BPL intends, in a new building in BPL’s Scheme – if compulsory purchase powers are exercised in respect of 14 Blackburn Road. This is to ensure that BDL can retain its staff and mitigate its losses which may otherwise result in extinguishment of the branch at 14 Blackburn Road. Alternatively, if BDL’s landlord at 14 Blackburn Road is able to redevelop the property including a new store for BDL, then BDL would need to temporarily relocate to the Property during that redevelopment.
- 8.24 Furthermore, it is unclear whether NRIL has properly considered all ‘receptors’ other than residents in Acton House and residents in Lynton Road who overlook the Property. For example, Pegasus Court – a four storey retirement scheme on the opposite side to the Property’s entrance on Horn Lane – will experience noise from vehicular movements to and from the Property during weekend working and the impact of NR’s use.
- 8.25 Also unclear is the extent to which NRIL needs all the powers that it has sought in the Draft Order: see Article 7 referred to at paragraph 3.6 above. The full suite of works for which powers are sought is not referred to in any of the documents supporting the TWAO application, e.g. demolition of buildings on the Property. This calls into question whether there is a compelling case in the public interest for all the powers sought in the Draft Order.



9 Conclusion

9.1 Funding matters

9.2 NRIL's funding statement identifies the land acquisition costs associated with the Draft Order to be £7,413,206. No detail is provided as to how the estimates are arrived at.

9.3 The Draft Order, if confirmed, will significantly impact both BPL and STARK's business as it will permit the temporary possession of the Property and prevent use by the parties for more than six years.

9.4 Table 1 below sets out my estimate of compensation that NRIL will be liable to pay according to the most likely scenarios on which compensation is to be based:

Table 1: Summary of likely compensation

Scenario	BPL	STARK	TOTAL (say)
a) <u>BPL unable to grant a new lease:</u>	£32,777,700 - £3,847,700	£7,500,000 - £14,000,000	£10,277,700 - £17,847,700
b) <u>No new lease granted to STARK and BPL redevelops:</u>	£9,500,000	£500,000 - £1,000,000	£10,000,000,000 - £10,500,000
c) <u>STARK vacates on expiry of its lease i.e. 'walks away':</u>	£2,777,700 - £3,847,700	£500,000 - £1,000,000	£3,277,700 - £4,847,700
d) <u>BPL obtains possession but is unable to re-let to BDL:</u>	£2,377,700 - £3,447,700	£500,000 - £1,000,000	£3,277,700 to £4,847,700

- 9.5 The estimates of compensation in Table 1 assume that the existing warehouse remains in situ during NRIL's occupation. If the building were to be removed by NRIL then the compensation payable under scenario a) would be likely to increase significantly, or NRIL would have to bear the cost of reinstating it. Further, the estimate for scenario b) is exclusive of the impact that the permanent access easement will have on the implementation of BPL's Scheme: this is currently being assessed in conjunction with BPL's architects.
- 9.6 My estimates make no allowance for the cost of BPL having to apply for a fresh planning permission and of potentially having to redesign its proposed scheme.
- 9.7 The above estimates in Table 1 also exclude the price to be paid by NRIL for the freehold interest in the Triangle Site. Compulsory acquisition powers cannot be used against the Crown Estate in the acquisition of the Triangle Site and this casts further doubt on NRIL's ability to deliver the Scheme within its land acquisition budget.
- 9.8 Network Rail's budget land acquisition cost estimates are consequently in my opinion insufficient compared with the compensation which I consider is likely to be payable to BPL and STARK. This raises significant questions around NRIL's ability to fund delivery of the Scheme.
- 9.9 Public Interest Test
- 9.10 As highlighted in paragraph 8.3, "*a compulsory purchase order should only be made where there is a compelling case in the public interest.*"
- 9.11 During negotiations, NRIL has been unclear in its requirements for use of the Property and has failed to demonstrate a clear need for a temporary RRAP and the use of ancillary accommodation and parking at the Property. NRIL's decision-making process as to why established rail locations such as Acton Goods Yard and Hitachi's North Pole depot are unsuitable has been unclear and opaque. BPL has

scrutinised NRIL's case for use of the Property and this has resulted in NRIL accepting that site sharing arrangements at the Property can be achieved.

9.12 NRIL has failed to take reasonable steps to acquire by agreement and has left BPL to invest significant resources into developing a site sharing solution.

9.13 As explained in paragraph 3.10, the temporary possession powers sought by NRIL in the Draft Order permit the clearance of the Property. No justification is provided as to the need for such wide-ranging powers. Further, the alignment of the permanent access easement to the Triangle Site (as identified in Figure 3) will prevent BPL's Scheme being delivered as approved.

9.14 In terms of other impacts, it is unclear as to the extent of NRIL's consideration of receptors other than those who are immediately adjacent. This is important given the proposed use of the Property during late at night and weekend working and Bank Holiday working.

9.15 The Draft Order also creates uncertainty for BPL's Group company BDL by removing the Property as a key relocation option if 14 Blackburn Road is compulsorily acquired. This puts 65 jobs¹² needlessly at risk and removes the prospect of key housing delivery in the borough.

9.16 Overall conclusion

9.17 I therefore conclude that the Order should not be made.

¹² Paragraph 2.1 of Michael Aaronson's Statutory Declaration

10 Statement of Truth and Declarations

Statement of truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of Court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Declaration

1. I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
2. I confirm that I understand and have complied with my duty to the Inspector as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
3. I confirm that I am not instructed under any conditional or other success-based fee arrangement.
4. I confirm that I have no conflicts of interest.
5. I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the inquiry procedure
6. I confirm that my report complies with the requirements of the RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses.

A handwritten signature in black ink, appearing to read 'AR', with a stylized flourish extending from the end.

Signed

Adam Rhead BSc (Hons) MRICS, RICS Registered Valuer

Date 16 October 2023