

**Objection ref: TWA/21/APP/O1/OBJ/8**  
**Document number: TWA/21/APP/1/OBJ/8/06/05**

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

**Rebuttal Proof of Evidence**

**239 Horn Lane, Acton**

**Adam Rhead**

**On behalf of Bellaview Properties Limited**

3 November 2023

ARHE/U0017558

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ARR3	Letter to Norton Rose Fulbright dated 6 October 2023
ARR4	Letter to Addleshaw Goddard dated 12 October 2023
ARR5	Letter to Addleshaw Goddard dated 26 October 2023 re: Implementation Partnership Agreement

# 1 Introduction

- 1.1 This rebuttal proof of evidence uses the abbreviations previously set out in my proof of evidence (“AR Proof” (OBJ-08.6.1)). In the interests of brevity, I will not set these out in this document.
- 1.2 In this rebuttal proof, I respond to comments contained in the following proofs of evidence submitted on behalf of NRIL:
- Jonathan Sinclair Proof of Evidence dated 16 October 2023 (“**JS Proof**”) (W5.1)
  - Andrew Fleming Proof of Evidence dated 13 October 2023 (“**AF Proof**”) (W1.1)
- 1.3 This rebuttal proof of evidence has been prepared under the same terms as my proof. I have not sought to rebut all areas of disagreement between the parties, and so the failure to identify any matter in the rebuttal proof should not be taken as signalling my agreement to it.

## 2 Points of rebuttal

2.1 The following points are either updated or commented on in this rebuttal proof:

### Outstanding matters yet to be addressed by NRIL

2.2 Paragraph 2.2 of JS Proof suggests that *“all matters which have been raised by either Bellaview or STARK, and I do not believe that at the date of this Proof of Evidence there are any outstanding queries which remain to be addressed by Network Rail.”*

2.3 This statement is incorrect. I attach a schedule of Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**EIR**”) made on behalf of BPL along with NRIL’s responses at **Appendix ARR1**. The FOIA/EIR requests were largely resisted by NRIL for being subject to specified exemptions or ‘too broad’ in nature – even after the request is narrowed.

2.4 More recently, on behalf of BPL, Norton Rose Fulbright (“**NRF**”) submitted a letter to Addleshaw Goddard (“**AG**”) dated 5 October 2023 which contained a list of questions to ascertain the details of NRIL’s proposed occupation of the Property, its consideration of alternative locations for the temporary/permanent RRAP, details of its ability to fund the Scheme and information based on its compensation assessments. I attach a copy of the letter at **Appendix ARR2**.

2.5 Broadly speaking, the letter requested:

- a) Details of NRIL’s requirements for Acton Goods Yard RRAP and construction compound for the Old Oak Common Station works to the relief lines;
- b) Details of NRIL’s floorspace (office/welfare/indoor storage) and external space requirements at the Property;
- c) The number of proposed traffic movements to the Property;
- d) NRIL’s proposed modifications to the Order Land;
- e) Confirmation of the types of vehicles to be visiting and/or be stored at the Property;

- f) Discussions with the Local Planning Authority (if any) in relation to limiting pollution and noise;
- g) Copies of any legal agreements with any TOC / FOC in relation to the Hitachi North Pole Maintenance Depot and / or the existing RRAP at the North Pole Depot, and
- h) a copy of NRIL's Implementation Partnership Agreement with HS2, dated June 2023.

2.6 On 6 October 2023, AG responded on behalf of NRIL and I enclose a copy of the letter at **Appendix ARR3**. Although the letter was positive in tone and acknowledged “good progress” it failed to address the 34 queries raised by NRF. The argument put forward in AG's letter for not answering the questions – both during the 22 September 2023 meeting between the parties and the 6 October 2023 letter – is that the precise details of how NRIL “*seeks in relation to the Order Land are to be exercised, are not known at this stage or may change.*”

2.7 Another reason given by AG in the 6 October 2023 letter<sup>1</sup> was that they wanted our respective clients to focus on progressing the discussions about site sharing arrangements and preparation of evidence<sup>2</sup>.

2.8 I enclose NRF's letter to AG of 12 October 2023 at **Appendix ARR4** which notes the disappointing and unsatisfactory outcome that NRIL:

*“have chosen not to provide any substantive response to the questions we submitted in advance of the upcoming deadline to submit proofs of evidence to the Inspector on 16 October 2023, despite the fact that we allowed 7 days to provide responses. The fact that you responded on 6 October (i.e. a day after our letter) shows that no real effort was made to obtain any information to respond to at least some of our questions.”*

2.9 As the Inquiry is now less than two weeks away, the evidence requested in NRF's letter dated 5 October 2023<sup>3</sup> should have been provided.

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<sup>1</sup> Appendix ARR2

<sup>2</sup> Paragraph 7 of AG letter dated 6 October 2023 (Appendix ARR2)

<sup>3</sup> Appendix ARR1

2.10 In summary, a significant number of questions remain outstanding which NRIL can and should be able to confirm to BPL at this stage of negotiations. I consider a lack of clarity on how the Property is to be used (e.g. the type and frequency of vehicles attending the Property) to be unacceptable at this late stage of the Draft Order. I note from NRF's correspondence that BPL has reserved its right to seek an order for disclosure from the inspector.

### Negotiations

2.11 In paragraph 2.3 of the JS Proof, Mr. Sinclair suggests that he "*has tried to reach an agreed position with both parties [BPL and STARK]*" with the main points to be agreed: relating to site sharing of the Order Land and compensation payable.

2.12 I question the degree to which Mr. Sinclair has engaged with BPL and has pursued a negotiated settlement with BPL for the reasons set out below.

2.13 BPL has taken the lead on negotiations with NRIL. In November 2022, it presented its redevelopment proposals to NRIL and London Borough of Ealing (as local planning authority) which incorporated a 7m wide vehicular access route to satisfy the prospect of NRIL needing access to the rear boundary (for a temporary RRAP) and the Triangle Site. The site sharing proposal was first discussed with NRIL when the parties were negotiating planning condition 28 to BPL's permission – i.e. July 2023. BPL requested feedback from NRIL following this meeting. In terms of NRIL's appetite for site sharing, it has only recently confirmed<sup>4</sup> that a site sharing option in principle is acceptable to NRIL and those discussions are continuing.

2.14 Mr. Christopher Gent's rebuttal proof<sup>5</sup> sets out the latest position regarding site sharing discussions with NRIL.

2.15 In terms of the compensation payable to BPL under a negotiated settlement, I understand that NRIL did not make any financial offer to BPL prior to submission of expert evidence – either outright or on a site sharing basis. The framework for a

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<sup>4</sup> See Pg.33 of NRIL Statement of Case "Ground 2 – Implications for BPL"

<sup>5</sup> Document number: TWA/21/APP/1/OBJ-8.3.4

‘financial package’ under the site sharing basis was proposed by BPL’s advisers on 24 October 2023. On 26 October 2023, NRIL responded on the financial package and there remains a difference at this time.

2.16 Finally, Mr. Sinclair makes a peculiar statement at paragraph 2.4 of the JS Proof that:

*“unless and until an agreement is reached with Bellaview, it is problematic to agree a position with STARK. As such, an agreement with STARK also remains outstanding as at the date of this Proof of Evidence [the JS Proof].”*

2.17 The statement at paragraph 2.4 of the JS Proof is odd for two reasons: firstly, because it contradicts Mr. Sinclair’s subsequent statement at paragraph 11.1 that there is a requirement to seek agreement with those parties with land and property interests; and secondly, NRIL’s discussions with STARK commenced in August 2020 and therefore pre-dated those with BPL (and its advisers) by almost twelve months.

2.18 It is unclear as to why Mr. Sinclair finds it problematic to agree position with STARK because they have an interest in land which needs to be terminated for their proposal to proceed. Termination of STARK’s interest does not necessarily depend on NRIL reaching an agreement with BPL.

2.19 In short, I consider that NRIL’s attempts to engage with BPL have lacked vigour and have required a proactive approach to be taken by BPL to negotiations.

#### BPL’s Intentions

2.20 In paragraphs 9.4 to 9.5 of the JS Proof, Mr. Sinclair suggests that BPL’s *“intention in relation to the Order Land is unclear.”*

2.21 I consider that BPL’s intentions in relation to the Property are entirely clear.

2.22 In paragraph 1.7 of his statutory declaration, Mr. Michael Aaronson of BDL and BPL confirmed that it was necessary for BDL to relocate its operations from West Hampstead (i.e. 14 Blackburn Road) to the Property for a temporary period while the implemented planning permission for a mixed-use scheme (in West Hampstead) is delivered. The relocation of BDL’s West Hampstead operation into the Property is an obvious decision for the family’s group of companies to make to protect jobs. Paragraph 10.18 of the JS

Proof confirms the problems faced by STARK in identifying suitable relocation premises; it therefore makes clear business sense for BPL to protect the opportunity for BDL's West Hampstead branch to be relocated to the Property if necessary.

- 2.23 Mr. Aaronson continues to explain that the Property is to be developed in accordance with planning permission (application reference 225069/FUL) which provides for a mixed-use residential scheme with commercial uses at ground floor level. In paragraph 1.13 of his statutory declaration, Mr. Aaronson refers to the duty of the company to respond to the housing crisis in London.
- 2.24 The only matter which is currently unclear is the timing of the relocation from West Hampstead to the site, which is dependent upon the O2 Masterplan Scheme and any compulsory purchase proposals. However, for the O2 Masterplan Scheme to be delivered in full, it will be necessary for Land Securities to make a compulsory purchase order to acquire BPL's freehold interest in 14 Blackburn Road.
- 2.25 In summary, NRIL is fully aware of BPL's clear requirements for the Property and the opportunity cost to the business and the local community if the Draft Order is confirmed in its current form.

### Funding

- 2.26 In paragraph 8.2 of the AF Proof, Mr. Fleming makes the following statement:

*“As stated in the Funding Statement and reiterated in the Statement of Case, the Project is fully funded by HS2 Limited under the Implementation Partnership Agreement dated 23 June 2023, a cost reimbursable contract between HS2 Limited and Network Rail. This is confirmed in the letter issued by HS2 Limited, which is appended to this Proof of Evidence [AF1].”*

- 2.27 Appendix AF1 (W1.2) of the AF Proof is a copy of the letter from HS2 Limited<sup>6</sup>. This appears to have been issued to the Secretary of State for Transport on 13 October 2023. We have the following questions in relation to the letter:

- i) It suggests that *“the Implementation Partnership Agreement dated June 2023 commits HS2 to reimbursing the Applicant for its costs incurred in exercising the Powers and delivering the GWML Rail Systems Project.”* We have been unable to corroborate this statement as NRF’s request for a copy of this Agreement has been resisted<sup>7</sup>. NRF has again written to AG on 26 October 2023 (see **Appendix ARR5**) urgently requesting for a copy of this agreement to be provided. No response was received.
- j) Secondly, the HS2 Limited letter states that *“the estimated costs for the Works in the Funding Statement of £10,980,270, plus a contingency to cover any reasonably likely increase in such costs, is factored into HS2’s budget for funding the Works.”* The powers sought by NRIL under the Draft Order do not include the compulsory acquisition of the Triangle Site and I therefore have doubts as to whether the Applicant’s budget makes proper allowance for Plot 1 which is currently in the ownership of The Crown Estate. Again, I am unable to corroborate the statement in the HS2 Letter as BPL has not been provided with a copy of the Implementation Partnership Agreement despite repeated requests made by NRF on BPL’s behalf.

### 3 Conclusion

- 3.1 I remain of the firm conclusion that there is no compelling case in the public interest for the confirmation of the Draft Order.

### 4 Statement of Truth and Declarations

#### Statement of Truth

- 4.1 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.



Signed

Adam Rhead BSc (Hons) MRICS, RICS Registered Valuer

Date: 3 November 2023