



## Planning Rebuttal Evidence

Mark Connell

Transport and Works Act 1992

Transport and Works (Inquiries Procedures) Rules 2004

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

Department of Transport References TWA/21/APP/01/OBJ/8; TWA  
23/APP/02

On behalf of Bellaview Properties Limited

## Introduction

- 1.1 This rebuttal (the '**Rebuttal**') is written in response to the proof of evidence submitted by Colin Field on behalf of Network Rail [**W3.1**] ( '**CF Proof**').
- 1.2 For brevity, I have not sought to repeat points made by others in separate rebuttals by Mr Chris Gent (Traffic & Transport), Mr Nick Gallop (Railway Matters) and Mr Adam Rhead (Funding & Deliverability).
- 1.3 This rebuttal also appends the following
  - Appendix 1R : Horn Lane Draft Mobilisation and Construction Programme 26/09/23 provided to Colas Rail 27.9.23
  - Appendix 2R : Sketch of Works provided by Richard Abbott of Stace to Colas Rail 27.9.23 and shown on site visit to Colas Rail 26.9.23
  - Appendix 3R Jewson Layout Plant by Colas Rail to Richard Abbott of Stace provided 27.9.23
  - Appendix 4R 1217 Rev03 Site Hoarding provided by Richard Abbott of Stace to Colas Rail 16.10.23 with DWG version provided 24.10.23
  - Appendix 5R 181602-SRS-AZ03-MLN1-DRG-ECV-136002/P01.4 provided by Colas Rail to Richard Abbott of Stace 27.10.23
  - Appendix 6R Network Rail Correspondence 29 November 2022

### Terms of this Rebuttal

- 1.4 This Rebuttal has been prepared under the same terms as my main proof of evidence [**OBJ-8.5.1**]. I have not sought to rebut all areas of disagreement between the parties, and so the failure to identify any matter in this Rebuttal should not be taken as signalling my agreement to it.

## Response to CF Proof

- 1.5 Mr Fields evidence does not address the fundamental objections from Bellaview and those identified in my proof of evidence. Namely, that the duration of works proposed in the Order goes beyond the 5 year time limit of the draft BPL planning permission. Furthermore, the proposed access to a permanent Road Rail Access Point (RRAP) runs through the footprint of proposed development.

### The Need for the whole site

- 1.6 The Draft Order [**CD01**] and application for deemed planning permission are all predicated on the need for the entirety of both the existing builders' merchant warehouse and open areas to deliver 'the project'.

- 1.7 The Draft Order before the Secretary of State includes provisions to remove buildings<sup>1</sup>. Furthermore, one of the conditions<sup>2</sup> proposed references demolition; it reads: “*prior to commencement of any demolition or any works*” [Sphere25 underline]<sup>3</sup>. However, Mr Field’s evidence does not identify any need to demolish the existing warehouse (or any other structures). Quite the contrary, he writes: “*...the Project constitutes only a temporary change of use whilst the Order Land is used in connection with construction activity*.” Similar statements are repeated elsewhere in Mr Field’s evidence<sup>5</sup>.
- 1.8 It is clear from Mr Field’s evidence that there is no need or indeed any apparent intention upon the part of NR to demolish (in whole or part) the existing warehouse (or any other structures) to facilitate the works. The Order therefore goes beyond what is required.
- 1.9 Having stated that there is no need to demolish the warehouse, Mr Field’s evidence advises that there is also the prospect that possession of the warehouse may not be needed either<sup>6</sup>.
- 1.10 This reads:

*At the time of the submission of this Order the proposal was to use the existing former railway warehouse building (currently used as a builders merchant) on the Order Land to accommodate office and mess facilities for Network Rail’s contractors, with the outdoor space used for materials and vehicle storage. On this basis the actual development for which planning permission would have been required would not have included any temporary buildings (which the exception of a security hut). **However, following continuing negotiations with the agent of the owner of Plots 2, 3 and 4, Network Rail has looked at the implementation of the Project to see if the logistics compound can operate without taking possession of the warehouse.** Should the warehouse not be used, a temporary modular building would be required for site offices and staff welfare. The temporary design and siting of a modular building as being uncontentious can be controlled by the inclusion of a planning condition to be discharged by the LPA to ensure the building does not adversely the impact of any residential accommodation in the vicinity of the Order Land. “ [Sphere25 Emphasis]*

- 1.11 The suggestion that the warehouse may not be necessary is welcomed. Indeed, it has been Bellaview’s case (and one supported by the local authority) that possession of the builders’ merchant is not necessary.

---

<sup>1</sup> See 7.1(b) and 7 (4) of Part 3 of the Draft Order.

<sup>2</sup> Proposed Condition 8, see Paragraph 6.6(c) of CF Proof.

<sup>3</sup> It is acknowledged that the correspondence from NR’s legal representative (27 October) removes the reference to demolition in proposed Condition 8 amendments. [See Appendix 1]

<sup>4</sup> See Paragraph 9.13 of CF Proof.

<sup>5</sup> See Paragraphs 3.5, 9.5, 9.10 of CF Proof.

<sup>6</sup> See Paragraph 5.5 of CF Proof.

- 1.12 This is demonstrated with the following key sentence in Condition 28 of the BPL resolution to grant<sup>7</sup>. *“For the avoidance of doubt, works phased on the footprint of the existing warehouse building will be assumed to provide no impediment on Network Rails works.”*
- 1.13 There is an obvious conflict between NR requiring the entire site but then also having accepted in principle site sharing with BPL (see in particular paragraphs 5.5, 6.4, 7.4, 7.6, See also 9.10 and 9.11 of Mr Fields’ Evidence.

#### Ongoing discussions

- 1.14 It should also be noted that ongoing discussions between the parties that Mr Field alludes to have shown that there is no need to take possession of the warehouse building.
- 1.15 Appended to this rebuttal (1R to 5R) are plans exchanged between Mr Richard Abbot of Stace with Colas Rail, reflecting what I understand the parties have agreed to on site. Further plans provided by Colas Rail to BPL on 9 October 2023 are included as Mr Gent’s Appendices C and D to his main proof of evidence.
- 1.16 The conclusion of these statements can only be that if there is no need to demolish or take possession of the warehouse building, then it has not been demonstrated by Network Rail that all the land in the Order is needed.

#### **Local Planning Policy**

- 1.17 Mr Field states that the proposal accords with national and local policy<sup>8</sup>. It does not. Mr Field fails to identify a single local policy from the London Borough of Ealing that the development accords with. There is an adopted site specific allocation for the land (ACT6), which Mr Field is silent on, and which was pointed out to Network Rail by the local planning authority in their pre-application meeting<sup>9</sup>. Furthermore, in Mr Field’s appendices [W3.2], email correspondence with Ealing Council reveals the case officers’ judgement that the scheme *“would not be in accordance with our Development Plan”* [see CF3]. This is a view that I also clearly share in my evidence at Paragraph 4.30. The Network Rail proposals do not accord with the development plan.

#### **The Application of Planning Policies to Temporary Works**

- 1.18 Mr Field dismisses the relevance of London Plan Policies D14 (Noise) and SI1 (Air Quality) as being only applicable to permanent works<sup>10</sup>. He also dismisses policies T4 (assessing and mitigating transport impacts) and T6 (car parking) as only applicable to permanent works<sup>11</sup>. This is not correct. The London Plan does not make the distinction sought by Mr Field. D14 A (5) makes reference to rail transportation as a major noise source. Moreover, the supporting text also cross-refers to policy SI1 (Air Quality) which refers to the impact of construction

---

<sup>7</sup> See Appendix 1 of my Proof of Evidence (Supplementary Report to Planning Committee)/

<sup>8</sup> See Paragraph 5.4 of CF Proof.

<sup>9</sup> See Appendix 3 of my Proof of Evidence (OBJ/08/05/Appendices).

<sup>10</sup> See Paragraph 9.15 of CF Proof.

<sup>11</sup> See Paragraphs 9.5 and 9.6 of CF’s proof.

works and non-road mobile machinery. T6 specifically refers to “Construction Logistics Plans” making it clear that it is relevant to construction phase works.

- 1.19 Adding additional concern, is that the proposed conditions do not have a time limit to the permission. There is nothing in the deemed permission that creates an expiry, ensuring a temporary duration. Indeed, work could persist way beyond the 21 December 2029 currently envisaged by Network Rail [CD13].

### **The Deemed Planning Application**

- 1.20 Mr Field does not dispute the minimum requirements for the planning application if submitted to the Local Planning Authority (LPA). Instead, Mr Field relies upon the fact that the application is submitted to the Secretary of State<sup>12</sup> as his explanation for the absence of certain plans and assessments.
- 1.21 Be that as it may, the Secretary of State should still be informed of the impacts of what is being proposed. The decision maker needs to understand the impact before an assessment of mitigation can be agreed. The growing list of conditions proposed by Mr Field require approval of reserved details by the LPA. Practically, it will be difficult for the LPA to discharge a condition without reference to an agreed assessment that made the principle of development acceptable in the first place.
- 1.22 Rather than secure these details, the offers of new conditions (CTMP, CEMP, Layout & Amenity) seek to cover the inadequacies of the original assessments or lack thereof.
- 1.23 It is noteworthy that the conditions proposed relate to the temporary RRAP. No conditions are offered for the operation of the Permanent RRAP in perpetuity. Yet the permanent RRAP also bounds the existing rear gardens of properties on Lynton Road. It will also bound the new homes at Podium level of the Bellaview development, and vehicles using plot 3 will pass close to Acton House to access. This raises matters relating to The Agent of Change (Policy D13 of the London Plan). Here it is stated that:

*“New noise and other nuisance-generating development proposed close to residential and other noise sensitive uses should put in place measures to mitigate and manage any noise impacts for neighbouring residents and businesses<sup>13</sup>”*

- 1.24 Methods of silent working and light pollution should be specified for the permanent RRAP and suitably conditioned. I note that Network Rail’s reply to Bellaview’s consultation response states (in relation to the temporary works). *“NR understands it’s impact within the community, being a considerate contractor and mitigation measures will be in place; such as using white noise reversing alarms on machines where possible, no idling of vehicles and daily briefings for site staff.”* [Full letter provided in Appendix 6R]
- 1.25 I am advised that at the Urgent Pre-Inquiry Meeting held on 27 October 2023, the Inspector announced his intention to schedule a specific session during the Inquiry that would focus on

---

<sup>12</sup> See Paragraph 9.8 of CF Proof.

<sup>13</sup> Policy D13 of London Plan (2021) Page 150.

the draft planning conditions. This proposal is welcomed, and I look forward to participating in the session.

### **Hours of Activity**

- 1.26 Mr Field states that the “...additional HGV movements on the road network as a result of the Project will be modest, and primarily linked to possession on the GWML to support overnight weekend works on the railway (in addition to occasional overnight mid week possessions).<sup>14</sup>” The addition of mid-week possessions has not featured in the evidence until now. No further information is provided.
- 1.27 It should also be noted that it is the nature of the movements that will determine the impact of the project. Activity at night and the use of substantial non-standard vehicles can be expected to give rise to notable impact. Again, there has not been any appropriate environmental information to take into account overnight mid-week possessions, as discussed in paragraphs 5.23 to 5.36 of my evidence.

### **The Resolution to Grant Permission for Bellaview**

- 1.28 Mr Field repeats the statement that Bellaview’s resolution to grant planning permission was subject to “...any land use planning considerations identified by the Health and Safety Executive have been adequately addressed”<sup>15</sup>. As referenced in my evidence<sup>16</sup>, this is not correct.
- 1.29 The HSE responded prior to the committee, acknowledging the fire statement and commenting that it was ‘comprehensive’. This was documented in the supplementary report to members and the recommendation was duly amended (a copy the supplementary report is appended to my proof as Appendix 1).

### **“Minimising Interference with Bellaview’s proposals”**

- 1.30 Mr Field states that “With a view to minimising its interference with Bellaview’s proposals, and looking to be as accommodating [as] it could be, Network Rail agreed the wording of the above condition [Phasing]. The effect of that condition, combined with the proposed 5 years’ implementation period (instead of the usual 3 years implementation period), is that whilst the proposed residential development of the Order Land is likely to be delayed, it would not be prevented”<sup>17</sup>.

It is difficult to contend that interference has been minimised, and that Network Rail have been as accommodating as it could be. The Draft Order seeks to take possession of the warehouse in defiance of the agreed condition. Moreover, Network Rail have, despite removing their original objection, now sought to impose additional conditions from the LPA

---

<sup>14</sup> See Paragraph of 8.5 of CF Proof.

<sup>15</sup> See Paragraph 7.2 of CF Proof.

<sup>16</sup> See Appendix 1.

<sup>17</sup> See Paragraph 7.4 of CF Proof.

after the Council have resolved to approve permission.<sup>18</sup> Neither Bellaview nor their agents were notified of NR approaches to the Council on these requests for additional conditions. I am advised that the emails contained in Mr Fields proof were the first time Bellaview have been made aware of the correspondence<sup>19</sup>.

- 1.31 Above all, the Order seeks access through the footprint of the proposed building. If the Order is not amended, this plainly interferes with Bellaview's proposals. There is a clear conflict with access to a permanent RRAP. The route shown is not necessary and there is no justification for it.
- 1.32 The evidence presented by Network Rail is inconsistent and demonstrates that the Draft Order being sought goes substantially beyond what is needed to deliver the Old Oak Common RRV Access Point, and the possession of Bellaview's land is not required nor desirable from a planning perspective.

Mark Connell  
Sphere25 LLP  
3 November 2023

---

<sup>18</sup> See Appendix CF3 to CF Proof

<sup>19</sup> The final paragraph of email October 4, 2023, at 5.37pm states that NR will notify Bellaview of their request.