

Dated 2023

Network rail infrastructure limited

Bellaview Properties Limited

OPTION

relating to property known as 239 Horn Lane, Acton, London W3 9ED

Contents

Clause Page

1 Definitions and Interpretation 2

2 Exercising the option 3

3 Lapse of the option 4

4 Application of the Standard Conditions 4

5 Risk and insurance 4

6 Assignment 4

7 Value added tax 4

8 Title and matters affecting the Property 4

9 Transfer 5

10 Completion 8

11 Entire agreement 9

12 Contracts (Rights of Third Parties) Act 1999 9

Schedule 1

Form of Option Notice 11

PARTICULARS

|  |  |  |
| --- | --- | --- |
| **Date** | **:** | 2023 |
| **The Seller** | **:** | Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at Waterloo General Office, London SE1 8SW |
| **The Buyer** | **:** | Bellaview Properties Limited (Company No. 03402244) whose registered office is at c/o Stephenson Harwood LLP, 1 Finsbury Circus, London EC2M 7SH |
| **Property** | **:** | such right, title or interest as the Seller may acquire from the Buyer pursuant to the proposed TWAO in the land at 239 Horn Lane, Acton, London W3 9ED comprised in the Registered Title as is comprised within (as applicable) the Scenario One Property or Scenario Two Property |
| **Option Fee** | **:** | £1 |
| **Price** | **:** | £1 |
| **Completion Date** | **:** | is calculated under clause 2.7 |
| **Contract Rate** | **:** | 4% above Yorkshire Bank plc's base lending rate |
| **Registered Title** | **:** | AGL22605 |
| **Seller's Solicitors** | : | Addleshaw Goddard LLP of One St Peter's Square Manchester M2 3DE or any other solicitors the Seller appoints for the sale of the Property |
| **Buyer's Solicitors** | : | Stephenson Harwood LLP of 1 Finsbury Circus London EC2M 7SH or any other solicitors the Buyer appoints for the purchase of the Property |

**This Contract** is made between the parties specified in the Particulars.

1. Definitions and Interpretation
   1. The Particulars (on page 1) form part of this Contract and the terms specified there are defined terms in this Contract.
   2. In this Contract:
2. **Actual Completion Date** means the date when completion of the sale of the Property occurs
3. **Incumbrances** means the matters contained or referred to in the property, proprietorship and charges registers of the Registered Title
4. **Maximum Vehicle Size** means up to 18m long, up to 3.2m wide and up to 5m high and carrying up to maximum axle weights, as defined in the Road Vehicles (Authorised Weight) Regulations 1998
5. **Option Notice** means notice in the form of Schedule 1
6. **Option Period** means the period starting on the date on which the Seller acquires from the Buyer pursuant to the TWAO any right, title or interest in the Property and ending at on the date of expiry of compulsory acquisition powers under the TWAO
7. **Plan** means the plan attached and if numbered plans are attached, reference to a numbered plan is to the attached plan so numbered
8. **Scenario One Property** means the parts of the land within the Registered Title shown cross hatched on TWAO Land Plan 9 (and for the avoidance of doubt excluding the Scenario One Retained Land)
9. **Scenario One Retained Land** means such right, title or interest as the Seller may acquire from the Buyer pursuant to the proposed TWAO in the land at 239 Horn Lane, Acton, London W3 9ED comprised in the Registered Title as is shown coloured green and not cross hatched on TWAO Land Plan 9
10. **Scenario Two Property** means the parts of the land within the Registered Title shown cross hatched on TWAO Land Plan 10 (and for the avoidance of doubt excluding the Scenario Two Retained Land)
11. **Scenario Two Retained Land** means such right, title or interest as the Seller may acquire from the Buyer pursuant to the proposed TWAO in the land at 239 Horn Lane, Acton, London W3 9ED comprised in the Registered Title as is shown coloured green and not cross hatched on TWAO Land Plan 10
12. **Standard Conditions** means the Standard Commercial Property Conditions (Second Edition) Part I; references in the Standard Conditions to 'the property' are references to the Property
13. **Transfer** means the transfer in the form agreed or determined pursuant to clause 9
14. **TWAO** means the Network Rail (Old Oak Common Great Western Mainline Track Access) Order if and when made by the Secretary of State for Transport
15. **VAT** means Value Added Tax and includes any future tax of a like nature and
16. **VATA** means the Value Added Tax Act 1994
    1. In this Contract:
       1. references to a statute are references to the statute as amended and include subordinate legislation and guidance made under it;
       2. **including** means "including without limitation";
       3. **person** includes any corporation and unincorporated body of persons;
       4. words importing any gender include every gender; and
       5. headings to clauses, Schedules and Appendices shall not affect their interpretation.
17. Exercising the option
    1. The Buyer shall pay the Option Fee to the Seller on the date of this Contract.
    2. The Seller acknowledges receipt of the Option Fee and gives the Buyer the option to buy the Property.
    3. The Option shall be exercisable in respect of either the Scenario One Property or the Scenario Two Property. If the Buyer has previously exercised the option in respect of the Scenario One Property, it may subsequently exercise the option in respect of such parts of the Scenario Two Property as are not comprised in the Scenario One Property (and the rights referred to in clause 9.4 shall supersede those previously reserved pursuant to clause 9.3).
    4. The Buyer exercises the option by serving the Option Notice.
    5. If the Option Notice is validly served, the Seller shall sell and the Buyer shall buy the Property on the terms of this Contract.
    6. The Option Notice is only validly served if it is:
       1. served on the Seller at its address in the Particulars;
       2. actually delivered to the Seller before the end of the Option Period; and
       3. specifies whether the Option is being exercised in respect of the Scenario One Property or the Scenario Two Property.

Deemed service and service by fax does not apply to service of the Option Notice.

* 1. The Completion Date will be the next working day after the date which is three months after the Option Notice is served on the Seller (or if later five working days after the form of Transfer is determined pursuant to clause 9.7 of this Contract).
  2. The Option Fee does not form part of the Price.

1. Lapse of the option
   1. This Contract ends if the Option Notice is not served within the Option Period (time being of the essence).
   2. If this Contract ends the Seller retains the Option Fee.
2. Application of the Standard Conditions
   1. The Property is sold subject to the Standard Conditions so far as they are:
      1. applicable to a sale by private treaty; and
      2. not excluded by, varied by or inconsistent with the other provisions of this Contract.

Standard Condition 1.1.4(a) does not apply to this Contract.

* 1. Standard Conditions 1.3.3, 1.3.5(c), 1.3.7(d) and 1.3.7(e) do not apply to this Contract.

1. Risk and insurance
   1. The Property will be at the Buyer's risk from the date of service of the Option Notice.
   2. Standard Conditions 7.1.2 and 7.1.3 do not apply.
2. Assignment
   1. The Buyer may assign or charge this Contract either before or after the option is exercised.
   2. The Seller may only be required to transfer the Property, as a whole, to either (i) the Buyer or (ii) its assignee about whom notice of assignment is given to the Seller.
   3. Standard Condition 1.5 does not apply.
3. Value added tax
   1. The Option Fee and the Price, and any other consideration to be given under this Contract, are exclusive of VAT which, if chargeable in respect of any supply by the Seller to the Buyer arising under this Contract, shall be payable by the Buyer in addition to the Price and any other consideration.
   2. Standard Condition 1.4.1 does not apply to this Contract.
4. Title and matters affecting the Property
   1. The Buyer accepts that the Seller has deduced good title to the Property before the date of this Contract. Standard Conditions 6.1, 6.2, 6.3.1 and 6.3.2 do not apply to this Contract.
   2. The Property is sold and transferred, subject to the Incumbrances.
   3. The Property is sold with vacant possession on completion subject to any exercise of the rights reserved to the Seller by clause 9.3 and 9.4 .
   4. The Buyer buys with knowledge and notice of the matters referred to in this clause 8 and in Standard Condition 3.1.2 and it may not raise any requisitions on them except in respect of matters arising from pre-completion searches in the period between the date of this Contract and the Actual Completion Date.
5. Transfer
   1. As soon as reasonably practicable and in any event within [ten] working days after the service of the Option Notice the Seller shall send to the Buyer the form of Transfer proposed by the Seller.
   2. In preparing the proposed form of Transfer the Seller shall act reasonably save in respect of matters relating to the safety and/or operation of the railway the Seller shall have absolute discretion.
   3. If the Transfer is of the Scenario One Property, it shall reserve to the Seller the following rights over the Scenario One Property for the benefit of the Scenario One Retained Land and the Seller's other neighbouring land:
      1. over the part of the Scenario One Property shown coloured pink and hatched on TWAO Land Plan 9:
         1. a right of way at all times with or without vehicles up to the Maximum Vehicle Size; and
         2. a right to install a gate and associated fencing and to operate a gate at all times in a location to be determined by the Seller following consultation with the Buyer and acting reasonably save in respect of the safety and/or operation of the railway and/or operation of the Seller in their capacity as the railway infrastructure manager where the Seller shall have absolute discretion subject to the Buyer being permitted access through such gate; and

PROVIDED ALWAYS THAT the exercise of the rights referred to in (i) and (ii) above will not restrict the Buyer's ability to operate a builders merchant from the building currently present on the Buyer's neighbouring land save where such exercise of this right is required in relation to the safety and/or operation of the railway and/or the operation of the Seller in their capacity as the railway infrastructure manager (as to which the Seller shall have absolute discretion);

* + - 1. a right to park vehicles, reprofile the surface, to undertake utilities works and other associated works for the ground lowering and/or store materials for the purposes of constructing the new road rail access point on the part of such land abutting the railway for a period of up to 4 weeks subject to the Seller giving to the Buyer not less than 10 working days' notice;
      2. a right to park vehicles and to store materials either at any times outside of the hours of 6.30am to 5pm on Mondays to Fridays inclusive and 6.30am to midday on Saturdays and/or within such times where the Seller has obtained railway possessions for the works on its neighbouring railway and gives to the Buyer not less than 6 months' notice of these;
    1. over the part of the Scenario One Property shown coloured green and hatched on TWAO Land Plan 9 either at any times outside of the hours of 6.30am to 5pm on Mondays to Fridays inclusive and 6.30 am to midday on Saturdays and/or within such times where the Seller has obtained railway possessions for the works on its neighbouring railway and gives to the Buyer not less than 6 months' notice of these:
       1. a right of way with or without vehicles up to the Maximum Vehicle Size;
       2. a right to park vehicles; and
       3. a right to store materials;
    2. over the part of the Scenario One Property shown coloured green and hatched on TWAO Land Plan 9 a right to install a fence and a gate and to operate a gate at all times in a location to be determined by the Seller (and for the avoidance of doubt, gate to be installed is not in addition to the gate referred to in clause 9.3(a)(ii)) following consultation with the Buyer and acting reasonably save in respect of the safety and/or operation of the railway where the Seller shall have absolute discretion subject to the Buyer being permitted access through such gate PROVIDED ALWAYS THAT the exercise of this right will not restrict the Buyer's ability to operate a builders merchant from the building currently present on the Buyer's neighbouring land save where such exercise of this right is required in relation to the safety and/or operation of the railway and/or operation of the Seller in their capacity as the railway infrastructure manager (as to which the Seller shall have absolute discretion)
  1. If the Transfer is of the Scenario Two Property, it shall reserve to the Seller the following rights over the Scenario Two Property for the benefit of the Scenario Two Retained Land and the Seller's other neighbouring land:
     1. over the part of the Scenario Two Property shown coloured pink and hatched on TWAO Land Plan 10:
        1. a right of way at all times with or without vehicles up to the Maximum Vehicle Size; and
        2. a right to install a fence and a gate and to operate a gate at all times in a location to be determined by the Seller following consultation with the Buyer and acting reasonably save in respect of the safety and/or operation of the railway and/or operation of the Seller in their capacity as the railway infrastructure manager where the Seller shall have absolute discretion subject to the Buyer being permitted access through such gate; and

PROVIDED ALWAYS THAT the exercise of the rights in (i) and (ii) above will not restrict the Buyer's ability to redevelop the Buyer's neighbouring land pursuant to planning permission to be granted under reference 225069/FUL save where the exercise of such rights is required in relation to the safety and/or operation of the railway and/or operation of the Seller in their capacity as the railway infrastructure manager (as to which the Seller shall have absolute discretion); and

* + - 1. a right to park vehicles, reprofile the surface, to undertake utilities works and other associated works for the ground lowering and/or store materials for the purposes of constructing the new road rail access point on the part of such land abutting the railway for a period of up to 4 weeks subject to the Seller giving to the Buyer not less than 10 working days' notice;
      2. a right to park vehicles and to store materials either at any times outside of the hours of 7am to 6pm on Mondays to Fridays inclusive and 7am to 1pm on Saturdays and/or within such times where the Seller has obtained railway possessions for the works on its neighbouring railway and gives to the Buyer not less than 6 months' notice of these;
    1. over the parts of the Scenario Two Property shown coloured green and hatched on TWAO Land Plan 10 either at any times outside of the hours of 7am to 6pm on Mondays to Fridays inclusive and 7am to 1pm on Saturdays and/or within such times where the Seller has obtained railway possessions for the works on its neighbouring railway and gives to the Buyer not less than 6 months' notice of these;
       1. a right of way with or without vehicles up to the Maximum Vehicle Size;
       2. a right to park vehicles; and
       3. a right to store materials;

PROVIDED ALWAYS THAT the Buyer may, on giving not less than six months' notice to the Seller of each suspension, suspend such rights for up to 4 separate periods each of up to 2 weeks only over such parts of the Scenario Two Property shown coloured green and hatched on TWAO Land Plan 10 as are required by the Buyer for the purposes of constructing the columns comprising part of the redevelopment pursuant to planning permission to be granted under reference 225069/FUL and are approved by the Seller acting reasonably save in respect of the safety and/or operation of the railway and/or operation of the Seller in their capacity as the railway infrastructure manager where the Seller shall have absolute discretion PROVIDED ALWAYS that the Seller's refusal shall be considered reasonable if the Buyer's request cannot be accommodated due to the Seller's inability to vacate the relevant part of the Scenario Two Property due to the Seller's construction programme and subject to the Seller offering alternative dates for suspension to the Buyer

* + 1. over the part of the Scenario Two Property shown coloured green and hatched on TWAO Land Plan 10 a right to install a fence and a gate and to operate a gate at all times in a location to be determined by the Seller (and for the avoidance of doubt, gate to be installed is not in addition to the gate referred to in clause 9.4(a)(ii)) following consultation with the Buyer and acting reasonably save in respect of the safety and/or operation of the railway where the Seller shall have absolute discretion subject to the Buyer being permitted access through such gate PROVIDED ALWAYS THAT the exercise of this right shall not restrict the Buyer's ability to redevelop the Buyer's neighbouring land pursuant to planning permission to be granted under reference 225069/FUL save where the exercise of such right is required in relation to the safety and/or operation of the railway and/or operation of the Seller in their capacity as the railway infrastructure manager (as to which the Seller shall have absolute discretion).
  1. If the Transfer is of the Scenario Two Property the Buyer may elect to grant to the Seller for the benefit of the Scenario Two Retained Land a right to park vehicles on the land shown coloured grey and hatched on TWAO Land Plan 11 and if the Buyer so elects the right reserved by the Seller pursuant to clause 9.4(b)(ii) shall be released in respect of the part of the Scenario Two Property coloured green and hatched and labelled Plot 4 on TWAO Land Plan 11 but for the avoidance of doubt shall continue in respect of the remainder of the Scenario Two Property coloured green and hatched on TWAO Land Plan 11.
  2. In the Transfer the Buyer shall covenant with the Seller to keep the parts of the Property over which rights are reserved to the Seller in no less a state of repair and condition as is required for the exercise of such rights and to procure that any successor to the Buyer enters into a direct covenant with the Seller to do the same and the Seller shall covenant to pay a fair and reasonable proportion according to user of the costs incurred by the Buyer in maintaining and repairing such parts of the Property.
  3. The Buyer shall inform the Seller within [ten] working days of receipt whether the proposed form of Transfer is approved by the Seller. The Buyer shall act reasonably in considering the form of the Transfer.
  4. If the Buyer and the Seller are unable to agree the form of Transfer either party may refer the matter to dispute resolution pursuant to clause 10 of this Contract provided always that the Buyer may not refer any question relating to the safety and/or operation of the railway where the Seller has absolute discretion.
  5. The Buyer's Solicitors shall deliver the executed Transfer to the Seller's Solicitors no later than 5 working days before the Completion Date.
  6. The Buyer shall give the Seller's Solicitors a duly executed duplicate of the Transfer within 20 working days after the Actual Completion Date.
  7. Standard Condition 3.3(b) does not apply to this Contract.

1. Dispute resolution
   1. A **reference to dispute resolution** is made if either party so notifies the other party under clause 9.8.
   2. A dispute referred to dispute resolution is to be decided by a surveyor or solicitor depending on the nature of the dispute agreed between the parties or, in default of agreement within 5 working days after the reference, appointed on the application of either party by the President of the Royal Institution of Chartered Surveyors / Law Society (or his deputy).
   3. The surveyor / solicitor acts as an expert.
   4. The parties shall instruct the surveyor / solicitor to:
      1. allow the parties to make representations to him (copied to the other party) within 5 working days of his appointment and counter-representations within 5 working days of receipt of the other party's representations;
      2. take those representations and counter-representations (but only if delivered timely) into account;
      3. make his decision and notify it to both parties within 15 working days of his appointment; and
      4. if required by either party, give written reasons for his decision.
   5. The surveyor's / solicitor's decision is final and binds the parties. Neither party shall complain that the decision is outside the surveyor's /solicitor's jurisdiction.
   6. The surveyor / solicitor's decision is treated as being delivered when he notifies that parties that it is available to be collected or delivered (by whatever means) on payment of his fees and expenses.
   7. The surveyor / solicitor may specify that one party shall pay his fees and expenses and if so, that party must pay those fees and expenses before being entitled to receive the decision.
   8. Any party who pays the other's share of the surveyor's / solicitor's fees and expenses may reclaim the other's share on demand, and it is payable as a debt.
2. Completion
   1. The parties shall complete the sale and purchase on the Completion Date.
   2. The Buyer shall ensure that the Price is paid to the Seller on the Completion Date.
   3. The Seller may only be required to complete between 9.30 am and 5.30 pm on a working day.
   4. If Completion occurs after 2.00 pm on a working day, or at any time on another day, the Actual Completion Date is treated as the next working day (before 2.00 pm).
   5. Documents sent by post or document exchange are at the Buyer's risk and the Seller's Solicitors are not liable for any loss or damage (save in case of fraud).
3. Entire agreement

This Contract, and any documents annexed to or incorporated in it, is the entire agreement between the parties for the sale of the Property and supersedes any previous agreement between them about it.

1. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Contract has no right to enforce it under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any rights which are available apart from that Act.

**Signed** by the parties or their duly authorised representatives on the date stated on the cover sheet and in the Particulars

2. Form of Option Notice

To

Network Rail Infrastructure Limited

Waterloo General Office, London SE1 8SW

**By hand**

**Option Notice**

This is an Option Notice under a contract dated ⧫ 2023 and made between (1) Network Rail Infrastructure Limited and (2) Bellaview Properties Limited (**Contract**).

The definitions in the Contract apply in this notice.

[On ⧫, the Buyer assigned the benefit of the Contract to ⧫ of ⧫ (the Buyer's assignee).]

The Buyer['s assignee] is exercising its option to buy the Property on the terms of the Contract.

This Option related to the Scenario [One/Two] Property.

This Option Notice is served on ⧫, within the Option Period.

The Completion Date is ⧫.

Date: ⧫

……………………….………….

Buyer / Buyer's assignee / Buyer's Solicitors

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| Signed by  duly authorised for and on behalf of  **Seller** | ) |  |
| ) |  |
| ) |  |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| Signed by  duly authorised for and on behalf of  **Buyer** | ) |  |
| ) |  |
| ) |  |
|  |  |  |