

15 December 2023

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| Your reference | Our reference |
| TWA/21/APP/01/OBJ/8 | SFIT/1001174320 |
| TWA/23/APP/02 | |

The Inspector and the Programme Officer
Gateley Hamer
One Eleven
Edmund Street
Birmingham B3 2HJ

By email only

Attention: The Inspector and the Programme Officer
(Joanna Vincent)

Dear Sirs,

THE NETWORK RAIL (OLD OAK COMMON GREAT WESTERN MAINLINE TRACK ACCESS) ORDER 202[] (the draft Order)

We refer to the revised draft Order that was shared by Addleshaw Goddard on 15 December 2023 (in clean and track versions).

We enclose our comments highlighted in **green** in margin comments in the document. We have not made any additional amendments in track to the tracked version of the draft Order presented by Addleshaw Goddard as all of our amendments which have not been accepted by Addleshaw Goddard still stand. The Inspector has previously had a copy of those amendments.

We consider that it would be helpful to summarise at a high level Bellaview Properties Limited (**BPL**)'s position in relation to the draft Order ahead of the procedural meeting on 18 December 2023.

Article 2(1)

Definition of “the associated development”

In our previous comments, we had sought to clarify that “the associated development” falls outside the Order Land (i.e., it is not on BPL's land, but it is on the rail side). We consider that this is an important point which should be clarified either within the draft Order or on the Land Plan.

Definition of “land plan”

Network Rail advise that they are only proposing a single Land Plan to accompany the draft Order. At present, we have been provided with 4 land plans which are numbered 9-12, with plans 9, 10 and 11 all showing hatched areas for site sharing. We understand that Network Rail do not wish site sharing to be addressed within the draft Order but consider that it should sit outside of it, although they have not stated the reason for their preference. We have asked Addleshaw Goddard to provide their proposed Land Plan as soon as possible and we await a copy of this. We assume that Network Rail's proposed Land Plan will not show any shared areas, although we see no reason why site sharing cannot be included in the draft Order.

Last sentence of Art. 2(1)

Network Rail require rights over plot 3 *“to do, or place and maintain, anything in, on or under land or in the air-space above its surface.”* We note that there is no evidence before the Inquiry of such extensive rights over Plot 3 being required. In their response to our comment, Addleshaw Goddard refer to this wording being *“standard wording included in TWA order which accords with the Model Clauses”*. Please see below our general comment on this.

Art. 5(5)

Network Rail are proposing a 5-year period for the exercise of temporary possession powers and rights, as well as permanent rights. Given that they have 1 year in the draft deemed permission to implement the permission, it is difficult to see why they need 5 years to exercise powers relating to the temporary rights.

Art. 6(2)

Network Rail seek to make the grant of the right over plot 3 conditional on Network Rail acquiring a *“necessary”* interest in Plot 1 – we consider that this position is flawed. Addleshaw Goddard explain that *“this wording has been requested by the Inspector to make sure that permanent powers over land are only exercised if rights over plot 1 are secured”*. As per our previous comments on this Article, we consider that this provision lacks transparency, as it is unclear who would be the arbiter of whether Network Rail has a *“necessary”* interest, and the timing of this.

Art 7(1)(c)

Network Rail seek powers to construct unspecified *“temporary works”* and *“provision of means of access”*. In its response to our previous comments, Addleshaw Goddard has explained that this is a model provision. We consider that, notwithstanding the fact that this may be a model clause (see our general comments below on this), the draft Order must be appropriate for the circumstances of this case. We note that there is no evidence before the Inquiry of a need of any such other works or accesses being required.

Art 7(2)

We consider that providing 14 days' notice of entry of temporary possession is not practical and this is why we have suggested 28 days. We note that Network Rail have proposed a period of 3 months in the Option Agreement for completion of the transfer following the service of the option notice. It is not clear why only 14 days is allowed for Network Rail to take the land, but 3 months is allowed to hand it back for site sharing.

Arts. 9(1) and 9(2)

We have significant concerns in relation to these Articles.

We consider that, as currently drafted, these clauses would allow Network Rail to extinguish any rights they consider to be *“inconsistent”* with the exercise of their rights.

In their comments, Addleshaw Goddard explain that *“[...] site sharing arrangements have been agreed to limit the exercise of Network Rail’s powers [...]”*. Site sharing arrangements have not yet been agreed as there is no site sharing agreement in place. Unless and until such agreement is in place, these Articles give Network Rail rights which are beyond what they require as stated in their evidence before the Inquiry. There is therefore no compelling case in the public interest for the rights secured in these Articles to be granted.

The use of “Model Clauses”

We note that, in their comments, Addleshaw Goddard repeatedly refer to their reliance on the Model Clauses to justify the reason for including specific wording in the draft Order.

The Model Clauses set out in The Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (the **Model Clauses Order**) are simply templates to be used for Transport and Works Act Orders. Legislation makes clear that the Model Clauses are not mandatory (see, e.g., the Transport and Works Act 1992, section 8(3)). The explanatory note to the Model Clauses Order provides that *“the use of the prescribed clauses is not mandatory: they may be omitted entirely from orders if not appropriate or may be adapted to meet special requirements”*.

We therefore do not consider that it is appropriate or justifiable for Network Rail/Addleshaw Goddard to rely as they do, as a reason for maintaining certain wording, that it is a Model Clause, as it is clear that departures from Model Clauses can be made to meet the specific requirements of the case at hand. It is also clear that reliance on Model Clauses does not provide the justification for a compelling case in the public interest if the rights sought via those Model Clauses exceed what is required.

We have copied this letter to Addleshaw Goddard.

Yours faithfully

Norton Rose Fulbright LLP

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