

BELLAVIEW PROPERTIES LIMITED

239 HORN LANE

RESPONSE TO NETWORK RAIL CONSULTATION DOCUMENT DATED 10.10.22

“Old Oak Common Lineside Logistics Compound”

1. Introduction

- 1.1. Bellaview Properties Ltd (**Bellaview**) are the freehold owners of a site known 239 Horn Lane (the **Site**). The Site is registered with freehold title number AGL22605. Bellaview have leased the Site to Saint-Gobain Building Distribution Limited (who trade from the Site as Jewson's and are hereafter referred to as **Jewson's**). Their leasehold interest is registered with leasehold title number AGL199709. The Jewson's lease expires on 9 April 2025.

2. Comments and questions

“extensive research”

- 2.1. The consultation document refers as follows “*after extensive research in this area, we have identified that the only suitable area for the compound and access to the south side of the railway, is the land currently occupied by Jewson Ltd, Horn Lane, Acton*”. Network Rail (**NR**) are asked to disclose all of their “extensive research” aforementioned, including but not limited to notes (digital and manuscript), records of meetings, presentations (including PowerPoint presentations), reports, all optioneering studies, all constructability reports, all assessments of options, and formal decisions. This information should include earlier and later drafts where more than one version exists. It should be specifically explained why other options have been discounted and why this is “the only” suitable site, including why the North Pole Depot, which had been one of NR's options, is now not an option and not considered “suitable”. This request should be taken as a request for information pursuant to the Freedom of Information Act 2000 and the Environmental Regulations 2004.

Jewson's relocation

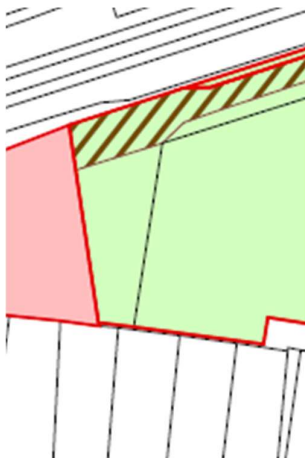
- 2.2. It is noted that NR are proposing to relocate Jewson's. NR are asked to confirm if that relocation will occur before the expiry of Jewson's lease? We have assumed so, as we note that “entry onto land” is proposed for Summer 2024. Are NR therefore in negotiation with Jewson's in relation to the surrender of their lease? Bellaview have not been advised by their tenant of any such intention to surrender their lease. We note that the lease does not contain a right for the tenant to unilaterally surrender their lease. Bellaview acting as a reasonable landlord, would expect to receive a lease surrender premium payment to be negotiated and paid by Jewson's if a lease surrender is to be agreed.
- 2.3. NR are also asked to advise what date Jewson's are likely to be vacating the Site (if an earlier exit than their lease expiry date is anticipated e.g. Summer 2024).
- 2.4. NR are also asked to advise where Jewson's are to be relocated to, and whether terms have been agreed for a relocation site. If NR have undertaken a site search, assessment or produced and report in relation to the identification of a site to relocate Jewson's to, then NR are asked to disclose this. This request should be taken as a request for information pursuant to the Freedom of Information Act 2000 and the Environmental Regulations 2004.

“permanently acquire land”

- 2.5. The consultation document refers as follows “*we are seeking to permanently acquire land at the rear of Jewson’s for future access needs*”. We have reviewed plan numbered 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1 this identifies the following land (approximately outlined in red) as land to be permanently acquired, identified in the key as “permanent road rail access point”:



However, we also note from the plan numbered 0170311/C that the same land is “land to be temporarily acquired”.



We understand from exchanges between NR’s Jonathan Sinclair, and Gerald Eve’s Adam Rhead (acting for Bellaview) that the land is to be temporarily acquired only, and that references to permanent acquisition are in error, and a new plan will be prepared. NR are asked to confirm that this is an error in writing. We request receipt of a copy of the revised plan as soon as it is available.

- 2.6. Given the above, it is not clear to us that NR are “*seeking to permanently acquire land at the rear of Jewson’s for future access needs*”. We cannot trace from the plans provided that there are proposals for any permanent land take, and request NR to provide confirmation that our understanding is correct.

“future access needs”

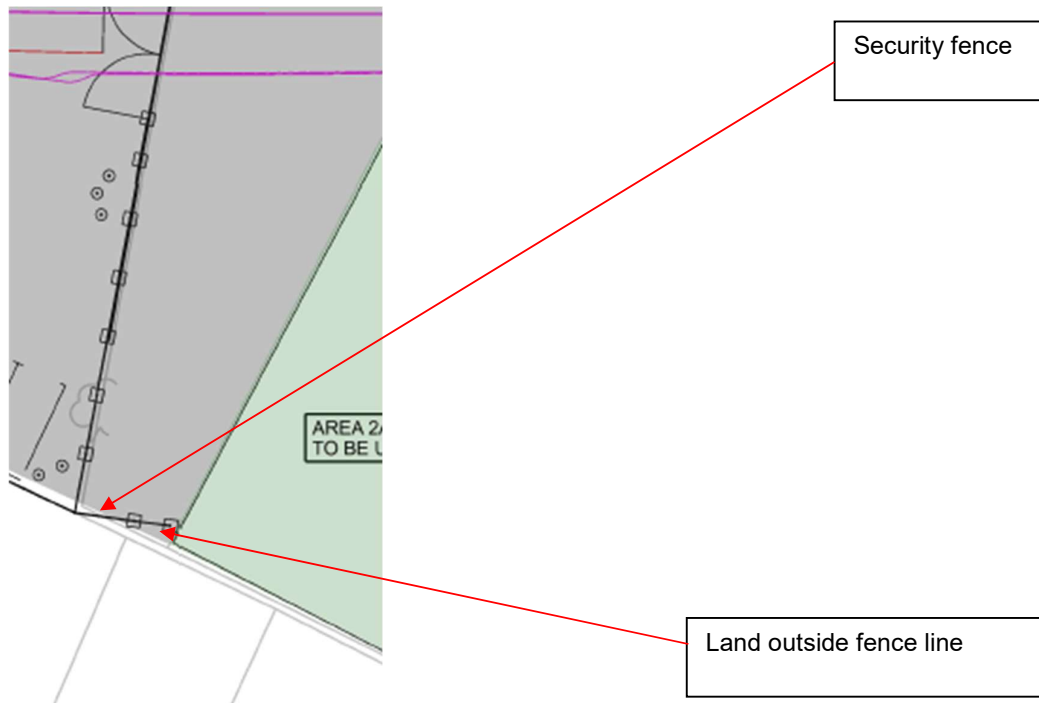
- 2.7. We note from the plan numbered 0170311/C that NR are proposing a permanent easement from Horn Lane to “Area 1”, the permanent RRAP location, through the Site. Bellaview may be prepared to grant NR an easement from Horn Lane across the Site, and along the rear boundary of the Site to allow access to the permanent RRAP, although this would need to be the subject of commercial negotiation.
- 2.8. NR are asked to confirm specifically what their *“future access needs”* are. In this regard, NR should provide the following information:
- 2.8.1. Width of the easement strip (or the width at different points on the route)
 - 2.8.2. Length of the easement strip
 - 2.8.3. Surfacing of the easement strip
 - 2.8.4. What weight of vehicle will the easement strip be required to take?
 - 2.8.5. What width and length of vehicles will the easement strip take?
 - 2.8.6. What airspace will be required over the easement strip (e.g. dictated by height of vehicles or plant)?
 - 2.8.7. Does NR require any parking on the easement strip?
 - 2.8.8. Will NR require the easement strip to be lit? If not, would NR object to it being lit?
 - 2.8.9. Will there be any services within the easement strip required by NR? If not, we assume that NR would object to Bellaview placing services within the easement strip?
 - 2.8.10. There are title restrictions at 2.75m and 3m from the rear boundary of the Site, in the location of the easement strip that would be incompatible with NR’s proposed use of the easement strip; how does NR propose that these are dealt with?
 - 2.8.11. It is noted that the route of the permanent easement is different from the red or magenta tracking shown on plan 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1, NR are to confirm what vehicles will be used in the post construction stage, and whether these will be able to use the easement strip provided, without straying outside its bounds. Tracking should be provided for the post construction stage.
 - 2.8.12. Post construction of HS2 it is stated that NR will use the “permanent access” for “regular and reactive maintenance”, and for “maintenance requirements and domestic infrastructure renewal works”. NR to advise how often in practice regular maintenance access will be required? Does NR agree that regular maintenance can be time restricted to ensure that there is no undue disruption to neighbouring residents from routine maintenance trips.
- 2.9. In relation to the easement strip, the following questions also arise, that NR is asked to answer:
- 2.9.1. The easement strip gets progressively wider towards the western end adjacent to the permanent RRAP, why is that? NR to provide an answer with reasons.
 - 2.9.2. The plan numbered 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1 shows articulated vehicles reversing into the Site from Horn Lane, does the permanent easement also assume vehicles reversing from Horn Lane to the permanent RRAP?
 - 2.9.3. We note that the easement strip is narrower than the route provided for all vehicles accessing the site on the plan numbered 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1. We therefore assume that no articulated vehicles need to use the easement, and therefore manoeuvre outside of it. NR to confirm.
 - 2.9.4. Please provide the vehicle tracking for the easement strip.

“Temporary lineside logistics compound”

- 2.10. NR have provided a plan numbered 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1, which shows the temporary lineside logistics compound (coloured grey). NR are asked to

provide a key, or to explain what all the features and facilities are that are shown on the plan as being within the compound.

- 2.11. It appears to us that NR may be proposing a fence/boundary feature partially on the Site, where the fence cuts back in at a 90 degree angle, leaving a small part of the Site outside of the land to be controlled by NR:



- 2.12. NR are asked to confirm :

- 2.12.1. if the “cut back” fence is a temporary or permanent feature?
- 2.12.2. why it is necessary for the fence to cut back in, in the manner proposed, and leave a part of the Site outside the fence?
- 2.12.3. why NR cannot simply have a fence on the boundary of the Site and the permanent RRAP to separate the landownerships, and why such a fence would be inadequate for NR’s needs?
- 2.12.4. whether the fence shown is for the construction works phase, or post construction phase, or both? If it only shows one phase, then NR is asked to provide a plan that shows the fence for the other phase.
- 2.12.5. NR are asked to confirm that in the post construction phase, that any fence between the Site and the permanent RRAP will only be sited on NR’s land.

- 2.13. NR are asked to specifically justify a requirement for all of the “current warehouse building”. It is unclear, for example, why NR cannot lease “office space” in the locality, or provide this on existing NR sites, and why such “office space” must be on the same site as “storage” and “welfare”. NR will also need to justify a requirement for “welfare” on the Site, and again why this cannot be leased in the locality, or provided on existing NR sites, and why it needs to be in the same building as “storage” and “office space”.

- 2.14. NR are asked to justify a requirement for 12 car parking spaces on the Site.

- 2.15. NR are asked to justify a requirement for 3522 sq m of “outdoor storage and parking”. It is unclear what will be stored and where. There would appear to be limited space available once NR have used the majority of area 2C for vehicular movements.
- 2.16. NR is asked to advise what vehicles they have used for their tracking, and whether this is the largest vehicle they anticipate using, i.e. there are no AILs.
- 2.17. NR are asked to advise the trip generation that they are anticipating of the vehicles that will need to make reversing manoeuvres within the Site in the construction phase.
- 2.18. The plan numbered 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1 is entitled “General Arrangement Option 1”, and shows pages “1 of 2”. NR is asked to provide copies of plans that show all other options, and all pages. NR is asked to confirm whether “Option 1” is the final option, or if other options are still being considered.
- 2.19. On the plan entitled “Land Requirements Plan”, numbered 0170311/C, NR are asked to advise what the numbers 1, 2, 3 and 4 denote.
- 2.20. NR are asked to advise if they have consulted on plan numbered 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1 with the local planning authority and highway authority for Horn Lane, and if so, NR are asked provide any feedback provided by these authorities. This request should be taken as a request for information pursuant to the Freedom of Information Act 2000 and the Environmental Regulations 2004.
- 2.21. Has NR considered issues with an articulated lorry reversing from Horn Lane (red tracking), including bus delays and safety implications for pedestrians and vehicles? If so, what were NR’s conclusions? The articulated lorry (red tracking) appears to straddle both lanes of the carriageway when making this manoeuvre.
- 2.22. There appears to be sufficient space to turn a vehicle within the temporary areas that NR are showing on plan numbered 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1, which would therefore suggest that NR should ensure that adequate manoeuvring space is available within the site boundary to remove the need for any reversing manoeuvres on the highway. NR are asked to provide further tracking information to demonstrate why vehicles cannot enter and exit the Site in a forward gear.
- 2.23. Where reversing with the Site, or on the highway is unavoidable, NR are asked to confirm what measures they will put in place to mitigate or reduce risk to other Site users and highway users.
- 2.24. It is noted that a long reverse is proposed within the Site along the northern boundary (magenta tracking) to access the permanent RRAP. What measures will NR put in place to mitigate or reduce risk to other Site users, and damage to buildings?
- 2.25. NR are asked to advise the number of vehicles trips in total, and per vehicle type, that they would expect during the construction phase.
- 2.26. Given the proximity of residential properties, NR are asked to advise what their proposals are for minimising and mitigating noisy working, in particular during night time hours, and in particular the noise of reversing alarms. It is suggested that noisy working (including reversing alarms) are only allowed during the following time periods:
- Monday - Friday, 8 am – 6 pm
 - Saturday, 8 am -1 pm
 - No noisy works on Sundays or Bank Holidays

Does NR agree?

- 2.27. NR are asked to confirm their timings for the use of articulated vehicles. If these are to be used only occasionally during a 24 hour period, then it is suggested that such trips are scheduled to arrive and depart at quieter times. Does NR agree?
- 2.28. NR are asked to confirm when they require the “temporary lineside logistics compound” to be operational, and how this dovetails with the relocation of Jewson’s and the projected timing for that relocation? Is this Summer 2024 or a different season?
- 2.29. It is noted that NR require the compound for a period of “approximately 8 years”. However, the timeline within the consultation document identifies “entry onto land” in Summer 2024 and “temporary compound handed back” in 2030. At the most this is 6 years to 6.5 years. NR are therefore asked to explain this discrepancy, and why it is seeking temporary planning permission in the TWAO for 8 years. Any temporary planning permission sought must expire on the re-occupation of the Site by a builders’ merchants, with the Site reverting to its current lawful use on that date.
- 2.30. Reference is made in the consultation document to installing a “road-rail vehicle access point”. On plan 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1 it is noted that this is to be created in Bellaview’s rear boundary with the adjoining railway.
- 2.31. NR will be aware that in a 1984 conveyance Bellaview’s predecessor in title released the British Railways Board (now presumably NR) from all obligations “*as to fencing in relation to the property hereby conveyed (including fencing bounding the railway) and undertakes to indemnify the Board from their liability (if any) in respect of such fencing.*” If NR are intending to breach the rear boundary and remove existing boundary treatment in whole or in part temporarily or permanently (which appears to be the case), then Bellaview will expect NR to provide an obligation relating to providing boundary replacement treatment post construction, and to indemnify Bellaview in respect of the same, and the variation of the existing covenant, specifically in respect of Bellaview’s indemnity in relation to any boundary treatment removed and replaced.
- 2.32. The consultation document states that the “*current warehouse building will be retained*”, but there is no reference to any of the other structures / surfacings / utilities on Site, and what the proposals are in relation to any of these. NR is asked to set out its proposals in relation to existing Site infrastructure and services.
- 2.33. NR is asked to show on a plan where the “*material laydown areas*” will be located.
- 2.34. The consultation document states that portable tower lighting will be provided, which it is assumed, will be a temporary and not a permanent erection. NR is asked to confirm this. There is also reference to allowing “*machinery to get on and off the track safely*” which will presumably require some sort of surfacing, as will the “*materials laydown areas*”. NR is asked to confirm, and all other temporary / permanent works proposed.
- 2.35. NR previously provided a copy of a few pages of a report entitled “Site layout-4L016725 (002) construction methodology report extract”. In that document Figure 19 was shown as follows; the words “Jewson’s warehouse” have been highlighted in green:

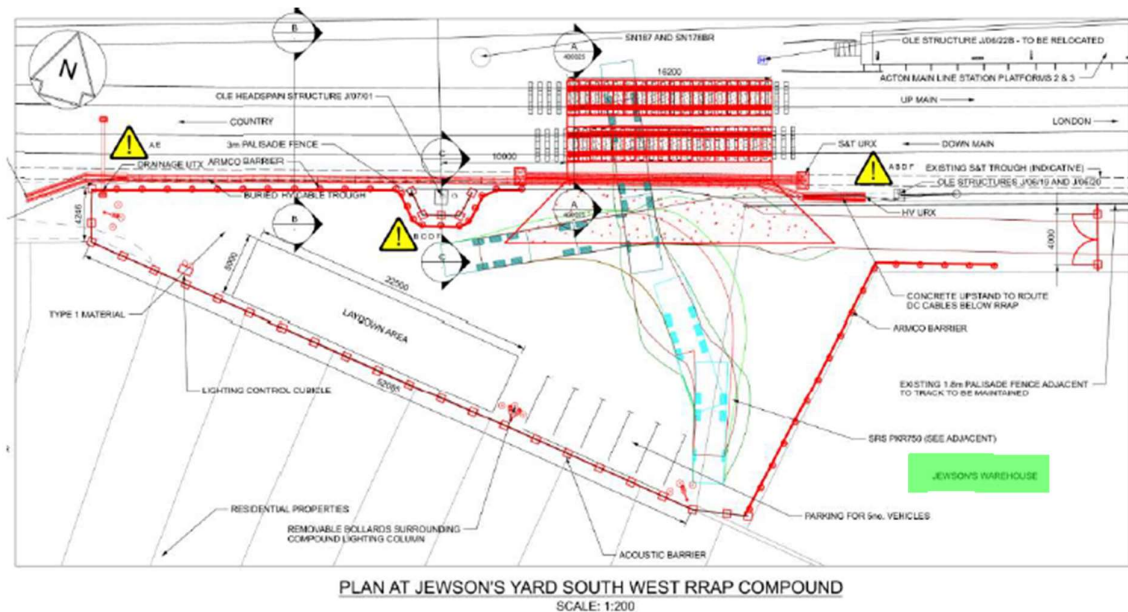


Figure 19: Temporary Stage of Jewson Acton SW RRAP

- 2.36. It is assumed that the “temporary stage of Jewson Acton SW RRAP” is what NR are now terming the “temporary lineside logistics compound” please confirm. Figure 19 does not show that the use of the “current warehouse building” is required, but only the part of the Site to the immediate west of the warehouse. NR is asked to provide justification as to why the compound now proposed differs so significantly from Figure 19 i.e. why the current warehouse building was not previously required, and is now required.
- 2.37. It is also noted that the vehicle tracking on Figure 19 is different to that shown on plan 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1, and NR is asked to explain the change.

“permanent road rail vehicle access”

- 2.38. The consultation document states that the “access point and associated access route will be operational 24 hours a day”. NR are asked to provide a plan that shows the access point and access route, any permanent works or infrastructure proposed (e.g. lighting, and any permanent boundary features proposed).
- 2.39. Figure 20 of the report extract provided by NR and entitled “Site layout-4L016725 (002) construction methodology report extract” shows as follows; the words “Jewson’s warehouse” have been highlighted in green:

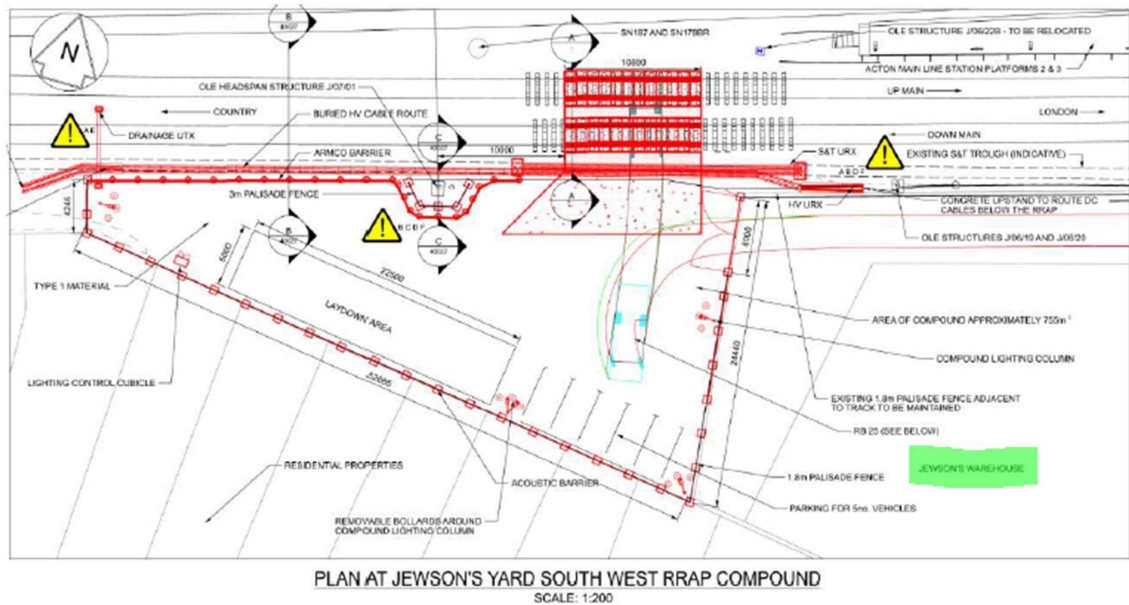


Figure 20: Permanent Stage of Jewson Acton SW RRAP

- 2.40. It is assumed that the “permanent stage of Jewson Acton SW RRAP” is what NR are now terming the “permanent road rail vehicle access” please confirm. Figure 20 does not show that use of any part of the Site is required. It is noted the fence that “cuts back in” is absent from Figure 20. It is also noted that there appears no reason from Figure 20 why the easement strip would need to be wider at the western end. NR are asked to explain these discrepancies.

“Construction”

- 2.41. The consultation document advises that “*vegetation clearance, surveys, lighting and fencing installation*” is required. Details of each of these are required by Bellaview, including the types of surveys, whether intrusive, and the proposed dates. Details of lighting lux levels, heights of light columns and any baffles or shields are required. In relation to fencing, the type, height, location, and materials are required, and an indication as to whether it will be located on NR’s land or land within Bellaview’s title. Details are also required relating to the “*concrete apron*” (size, location) and whether this will be located on land within Bellaview’s title. The location of all such works should be shown clearly marked on a plan.
- 2.42. Details of any security measures are required relating to both the temporary compound and permanent access. This includes e.g. proposals for CCTV, gates and locks, anti-climb fencing, and security personnel.

“Environment”

- 2.43. Bellaview will require an advance copy of the formal screening request before it is submitted to the Secretary of State. The socio-economic impacts of NR’s proposal are unlikely to be clearly understood by NR, and it is important that this is factored into NR’s assessments. Builder Depot, a company affiliated with Bellaview (and owned by members of the same family) are likely to require the Site on a temporary basis, and may require it on a permanent basis. One of Builder Depot’s stores has planning permission for a redevelopment, and Bellaview has identified the Site as the location to temporarily relocate the business to whilst the new store is being constructed. Separately, that same store is under threat of compulsory purchase, and the Site has been identified as the only suitable site to relocate the Builder Depot business to in the event of compulsory acquisition. Without the ability to relocate to the Site, the Builder Depot store faces closure, the extinguishment of its business, and the redundancy of its staff

(unless an alternative relocation site can be found). It is therefore important that this socio-economic impact is taken into account. Bellaview will consider NR responsible for the full extinguishment value of the Builder Depot store in the event that a relocation site cannot be found. Builder Depot have been unable to find an alternative site despite a thorough site search, and retained agents who provide weekly updates on opportunities. NR should therefore factor in the need to find a relocation site for Builder Depot, as well as Jewson's, on a temporary or permanent basis, unless an agreement can be reached with NR to share occupation of the Site to ensure that Builder Depot can continue trading.

"Consent for the Project"

- 2.44. The consultation document indicates that the TWAO submission will be in "Winter 2023". NR are requested to be more specific in terms of time frame. In which month is the submission anticipated, November or December 2022, or January or February 2023? Or some other month?
- 2.45. It is noted that NR will only be seeking the "acquisition of land" in the TWAO, no reference is made to the acquisition of permanent new rights, or the suppression of existing rights, or seeking powers for the temporary use of land. NR is asked to explain its position in relation to each of these four categories as these relate to the Site, and show the same on a plan. The easement sought is presumably a permanent right.
- 2.46. NR is asked to confirm what powers it will seek over the Site in the TWAO, and specifically whether it will seek powers, and if so what, to remove any buildings and vegetation, undertake surveys, construct temporary works (including lighting and fencing), the provision of a means of access and any buildings, construct any permanent works, or undertake any permanent mitigation works.
- 2.47. To the extent that NR will seek the temporary possession of land, and specifically the Site, NR is asked to confirm what notice period it will seek to be included in the TWAO for the entering upon and taking of temporary possession of the Site.
- 2.48. To the extent that NR will seek the temporary possession of land, and specifically the Site, NR is asked to confirm the period of time (to be referred to in the TWAO), after which it may not remain in possession of the Site, e.g. the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken.
- 2.49. To the extent that NR will seek the temporary possession of land, and specifically the Site, NR is asked to confirm that it will refer in the TWAO to the removal of all temporary works and the restoration of the land to the reasonable satisfaction of Bellaview.
- 2.50. NR are asked to confirm that after the expiry of the temporary permission for a "*railway construction and logistics compound*" that it will ensure that the TWAO confirms that the lawful use of the Site will be for a builders' merchants on the terms that currently exist.
- 2.51. NR are asked to confirm what permitted development right(s) they are relying on in relation to the "*smaller, permanent access*" and to disclose any report that confirms how they have come to the conclusion that the works are permitted development. This request should be taken as a request for information pursuant to the Freedom of Information Act 2000 and the Environmental Regulations 2004.
- 2.52. NR is asked to confirm if it is seeking the compulsory acquisition of the Jewson's leasehold interest as part of its TWAO.
- 2.53. The consultation document indicates that "Summer 2024" is the date that "entry onto land and associated changes" are required. NR to confirm whether it is this date or earlier or later that it anticipates relocating Jewson's.

- 2.54. The consultation document indicates that the “temporary compound” is “handed back” in 2030. A documented handback procedure and condition report will be required noting any changes from a condition report commissioned before NR take possession of any part of the Site.
- 2.55. Bellaview suggest that it would be convenient to go through the issues raised in this consultation response in a meeting with NR, as well as a follow up meeting once the consultation closes in case NR’s position on any matter has changed as a consequence of other representations it has received. NR is asked to provide dates within the next 2 weeks when its representatives could attend a meeting.

Norton Rose Fulbright LLP

26 October 2022