

# Make a Freedom of Information request

## Your contact details

Title
Miss

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## Your request

Your request (provide a detailed description of the information you're seeking, but do not include any personal or financial information):

Dear Sirs,

Request pursuant to Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR)

#### Background

We write on behalf of our client, Bellaview Properties Limited (BPL), the freehold owner of 239 Horn Lane, London, W3 9ED (the Site). The Site is registered with freehold title number AGL22605.

By an application made to the Secretary of State for Transport (the Secretary of State) on 17 April 2023, Network Rail Infrastructure Limited (Network Rail) has applied pursuant to section 6 of the Transport and Works Act 1992 (the 1992 Act) for an order under section 1 and section 5 of the 1992 Act (the TWAO Application). Pursuant to the latest draft of the Order presented by Network Rail, Network Rail seeks powers to “acquire compulsorily rights over land to use land temporarily, as well as to use the land within the Order limits as a construction compound, including provision of a temporary ramp, all in connection with the development of a temporary road rail vehicle access onto the Great Western Main Line railway to enable delivery of the Old Oak Common station and provision of a permanent maintenance access point for road rail vehicles onto the Great Western Mainline.”

BPL is the freehold owner of land affected by the draft Order and is an objector within the scope of section 11(4) of the 1992 Act.

On 23 June 2023 the Secretary of State made a decision to hold an Inquiry into the TWAO Application. The Inquiry was subsequently opened on 14 November 2023 and continued on the 15th, 16th, 21st and 22nd November 2023. BPL have actively participated as an objector at the Inquiry. To date, the Inquiry is still open and a roundtable discussion to discuss various matters (including the draft Order) is scheduled for 9 February 2024 with closing submissions to follow on a separate date shortly thereafter.

One of BPL's grounds of objection to the draft Order which it has maintained throughout the Inquiry process has been that Network Rail has failed to show a compelling case in the public interest for the draft Order to be confirmed as BPL contends that there are reasonable alternative means by which Network Rail can secure (1) access to the Great Western Mainline Line (GWML) for any permanent maintenance access requirements, and (2) temporary access to the GWML including temporary construction compound requirements in connection with its Rail Systems Project (the project).

Most notably, BPL considers that the Hitachi North Pole Depot represents a more suitable location for a temporary construction compound as well as temporary and permanent rail road access points (RRAPs). The Hitachi North Pole Depot is situated on land owned by the Secretary of State, is in public ownership, is already used for railway purposes, and is in very close proximity to the proposed Old Oak Common Station where Network Rail need to undertake their project works. However, Network Rail's case to the Inquiry is that it does not consider the Hitachi North Pole Depot to be a suitable alternative to BPL's Site. BPL's site is in private ownership, is currently in use as a builders' merchants, and has planning permission for redevelopment for a mixed -use development comprising 185 residential units, and a replacement builders' merchant on the ground floor (the proposed development). It is located further from the project work site, and has existing residential properties located in close proximity (as well as future residents of the proposed development). BPL's evidence is that there would be considerable disruption to and interference with the current use of BPL's Site, the construction of the proposed development, and future occupants of the BPL Site (both commercial and residential) if the draft Order was confirmed.

#### FOIA/EIR Request

During preparation for, and in the course of the Inquiry, it has come to light that – in considering whether the Hitachi North Pole Depot could be a potential alternative site for a temporary and/or permanent RRAP – that Network Rail has liaised with the Department for Transport (DfT) in relation to this matter.

We refer specifically to the following evidence produced by Network Rail that is before the Inquiry:

- a. Extract from document titled ‘Old Oak Common Lineside Logistics Compound Strategy’ (see attached as Attachment 1) (Appendix ARR1i to Adam Rhead Rebuttal Evidence, Inquiry Document OBJ08.6.6): “The DfT and depot operators Agility/Hitachi will not entertain a lineside logistics compound at North Pole Depot as they consider this will be disruptive to depot operations and performance KPIs under the Agility/Hitachi contract” (see page 10, penultimate paragraph);
- b. Email chain dated between Mr James Slater (DfT) and Mr Jonathan Sinclair (Network Rail) of 6-25 January 2021 (see attached as Attachment 2) (Inquiry Document INQ-04) which states inter alia “The area is occupied by Agility who have a long lease. Therefore we cannot consent without involving Agility” (the DfT/NR emails);
- c. Extract from Rebuttal Evidence produced by Mr Chris Ford (Network Rail) (Inquiry Document W2.4), as follows: “The stakeholders relating to the access points through North Pole Depot have been engaged

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with for an extended duration without a viable solution being obtained” [emphasis added] (see attached as Attachment 3); and

d. Oral evidence provided by Mr Jonathan Sinclair (Network Rail) before the Inquiry. According to Mr Sinclair, various meetings were held between Network Rail and the DfT between February, March and April 2021 to discuss Network Rail’s access to the GWML via the Hitachi North Pole Depot in respect of which access was neither considered suitable nor appropriate.

In light of the above, we request that DfT disclose the following information pursuant to the FOIA and / or EIR:

1. Letters, correspondence, emails, meeting notes, reports, or documents of a similar nature between Network Rail, their contractors or agents (including Colas Rail) and DfT that discuss the use of the Hitachi North Pole Depot for either the temporary or permanent RRAP by Network Rail or HS2 and /or their contractors (beyond the email chain referred to at point (b) above) for the period between 1 June 2020 and 16 April 2023, we request in particular and further emails in the chain additional to the DfT/NR emails post-dating 15:11 on 25 January 2021;

2. Internal letters, correspondence, emails, meeting notes, reports or documents of a similar nature between different members of staff employed by DfT in the nature of internal documents that discuss the use of the Hitachi North Pole Depot for either the temporary or permanent RRAP for the period between 1 June 2020 and 16 April 2023; and

3. Any internal letters, correspondence, emails, meeting notes, reports or documents of a similar nature that contain any request for the Secretary of State to exercise powers pursuant to section 25 of the 1992 Act or any consideration or determination by the Secretary of State of any such request in relation the Hitachi North Pole Depot for the purposes of the project.

Please note that with reference to our requests at points 1 to 3 above BPL is unconcerned with documents of a peripheral nature that have no substantive bearing on the issue (for example emails that state “what time would you be free for a meeting”).

The information held should be provided by email in electronic form.

If you consider that the cost of complying with this request would exceed the cost limits for compliance (Section 12 of the FOIA / or EIR 12(4)(b)) then you are asked to provide advice and assistance to help reduce the scope of the request and cut down the cost of compliance, or to advise the cost so that we have an opportunity to pay it directly.

If this request is denied in whole or in part you are asked to justify all deletions by reference to specific exemptions within the FOIA or EIR (as the case may be). You are expected to release all non-exempt material.

We reserve the right to appeal your decision to withhold any information or to charge excessive fees.

We would be grateful if you could confirm in writing that you have received this request and provide a response as soon as possible. As explained above, a round table discussion is scheduled to take place on 9 February 2024 to discuss various matters relating to the TWAO Application and it would therefore be helpful if DfT could provide a response by then. However, we appreciate that DfT formally have 20 working days to respond.

The organisation you are asking to provide this information is:

Department for Transport (DfT)

## Department for Transport subject area

The subject of your request is:

Rail

## Review

Please confirm the information you have provided above is correct:

I confirm

Send email is

FOIAdvice@dft.gov.uk