

Rebecca Bell

From: Sarah Fitzpatrick (Head of Planning)
Sent: 05 January 2024 16:13
To: Joanna Vincent
Cc: Elsenaar, Marnix; Volodina, Tatiana; Giulia Barbone; Carina Wentzel; Rebecca Bell; cgent@velocity-tp.com; Nick Gallop
Subject: 239 Horn Lane : risk assessments [NRF_EMEA-UK.FID1533930]
Attachments: OOC Lane Access Overview.xlsx; Rail Systems Mains Access.xlsx; RS RRAP Access v3.xlsx; Risk Assessment Notes FINAL.docx

Importance: High

Joanna

You may recall that we promised the Inspector at the most recent CMC that we would send our comments on the 3 risk assessments by 5 January. Please find attached a note with BPL's comments on the risk assessments. Risk assessments were referred to in Mr Fleming's oral evidence, and these 3 documents were produced after his evidence had concluded. The Inspector has not yet seen the risk assessments and the intention is that these will be introduced into evidence together with the attached note, and any response produced on behalf of NR. Please kindly forward the attached to the Inspector. Addleshaw Goddard are copied into the email.

Many thanks

Kind Regards

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COMMENTARY ON NETWORK RAIL'S RISK ASSESSMENTS

Introduction

This note provides BPL's commentary in relation to the Network Rail (NR) risk assessments described in the oral evidence of Mr Fleming for NR and made available to BPL on 22 November 2023, following the completion of Mr Fleming's oral evidence on 21 November 2023.

The Risk Assessments comprise three documents, which appear to summarise the project promoter's thoughts on various options for trackside access at the time at which these were produced.

Document #1 RS RRAP access v3 ("prepared following a site visit to Hitachi on 12/8/2023. The document was completed on 02/09/2022")

We assume the site visit to Hitachi was in August 2022, otherwise the chronology does not make sense.

We understand the document was produced by SRSA (Southern Rail Systems Alliance/Colas).

The document is understood to identify options for access to the main and relief lines for the Rail Systems Project. 6 options are identified for access to the main lines:

- Jacobs Ladder
- Jewson's Yard (Permanent)
- Jewson's Yard (Temporary)
- North Pole Depot (OOC Lane)
- North Pole Depot (Mitre Way) (OPTION 1) (PREFERRED)
- North Pole Depot (Mitre Way) (OPTION 2)

The clear indication is that there is a preferred option and a second preference option to access the main lines. In relation to the relief lines, the same language is used with an "OPTION 1 (PREFERRED)" and an "OPTION 2" also identified. What is clear is that Jewson's Yard (Temporary) was not a preferred or second preference option when the document was prepared.

The document identifies "pros" and "cons" for each option. We have summarised below the data relevant to Jewson's Yard (Temporary) and (Permanent), North Pole Depot OPTION 1 (PREFERRED), North Pole Depot OPTION 2, and North Pole Depot (OOC Lane). It is assumed that the reference to "Jewson's Yard (Permanent)" is a reference to the proposed permanent RRAP on the Crown land / plot 1. It is assumed that the "North Pole Depot (OOC Lane)" option is equivalent to the "western RRAP" at the Hitachi Depot referred to in evidence at the Inquiry, and seen on the site visit. Mr Fleming confirmed on the site visit that the western RRAP was the one that SRSA/Colas rail had assessed.

Pros

Site	Jewson's Yard (Permanent)	Jewson's Yard (Temporary)	North Pole Depot Lane) (OOC	North Pole Depot Way) OPTION 1 (PREFERRED)	North Pole Depot Way) OPTION 2
Pros	Currently limited mains access in this location	Currently limited mains access in this location	Provides only source of off-track access to brownfield site	Provides low mileage access	Provides low mileage access
		Existing large yard can be modified		Uses existing compound	Uses existing compound
				Efficiencies in using existing shed, low mobilisation costs	

As can be seen, the document identifies two positives in relation to the two Jewson's Yard options:

1. Currently limited mains access in this location and;
2. Existing large yard can be modified (temporary access only).

The first of these does not appear to specifically relate to the proposed Rail Systems Project, but is rather a statement of fact that there is limited mains access in this location. Whilst this is relevant to the permanent RRAP proposal, is consistent with NR's evidence, and its justification for needing a permanent RRAP, importantly it does not relate to the Rail Systems Project and provides no justification for the temporary RRAP. Other options considered do specifically consider the suitability of the option for the Rail Systems Project, for example, the "pro" for access at the OOC Station RRAP (not summarised above) specifically identifies "close to site of works", and the North Pole Depot (Mitre Way) options (summarised above) "Provides low mileage access".

In terms of the second benefit, the "large yard", NR has modified its requirements during the Inquiry such that the majority of the yard and the entirety of the warehouse area is no longer required, and therefore this "pro" is no longer relevant.

In relation to North Pole Depot (OOC Lane) the "pro" identified is that it "provides the only source of off-track access to the brownfield site" [Primary Brownfield Access defined as: "Access across Hitachi Depot for work in rail locked site - >100 vehicle movements at maximum"].

In relation to North Pole Depot (Mitre Way) (OPTION 1 (PREFERRED) and OPTION 2), the document notes this location would provide low mileage access, and use the existing compound; in relation to OPTION 2 only, the document goes on to refer to two further "pros": efficiencies in using existing shed, and low mobilisation costs. This option is identified as having more "pros" than any of the other mains options (4 "pros" in total), and more than the 2 "pros" (neither of which are now relevant as referred to above) identified in respect of Jewson's Yard (temporary).

Cons

Site	Jewson's Yard (Permanent)	Jewson's Yard (Temporary)	North Pole Depot Lane)	Pole (OOC Way) OPTION 1 (PREFERRED)	North Pole Depot (Mitre Way) OPTION 2
Cons	Requires land purchase	Requires land purchase	Requires land purchase/ agreement	Requires land purchase	Requires land purchase
	Significant De-veg and prep works	Works required on compound-RRAP interface	Significant impact/ interface with North Pole Operations	Available land area TBC	
	RRAP on DEP boundary	RRAP may not be operational for required start date	Significant prep works required	May conflict with 3rd parties	
	Constrained compound & access	Constrained with Acton ML platform (solution believed to be achievable)			

Land acquisition is noted as a “con” for each of the options. No distinction can therefore be drawn between the options in this regard.

Preparation / interface works are noted as a “con” for both Jewson’s Yard options and for North Pole Depot (OOC Lane).

Impact/interface is noted as a “con” for North Pole Depot (OOC Lane) [North Pole Operations] and (Mitre Way) Option 1 [may conflict with third parties], but there is no mention of conflict with an operational builders depot, BPL’s development construction site, or residential neighbours in respect of the Jewson’s Yard sites. This is a significant omission.

Taking an overview of the “pros” and “cons”, it seems clear that more “cons” and fewer “pros” were identified in respect of the Jewson’s Yard sites than there were for the three North Pole Depot sites. Moreover, a number of the “cons” are common across the sites.

Document #2 Rail Systems Mains Access Options (produced on 15/11/2022)

This matrix considers alternative options to provide access to the “Mains” for the Rail Systems Project.

For conciseness and relevance to the Inquiry we have only considered the entries related to Do Nothing, Jewson’s, and OOC Lane.

Do Nothing – i.e. no new RRAPs are created and existing RRAPs are used to deliver the Rail Systems Project. This is also the scenario that would transpire if the TWAO order sought by NR was not granted.

In this scenario, a one-year delay in programme is expected, with the programme completing at Christmas 2030 (instead of Christmas 2029). This scale of delay was confirmed in the oral evidence of Mr Fleming. NR therefore proposes six-years of disruption to residents and BPL to save one year of programme on a project. This also assumes that there is no delay to HS2's overall programme at OOC i.e. the 1 year programme delay in relation to the Rail Systems Project would have a nil effect on the public's ability to interchange between the new HS2 OOC station and Crossrail station if the delivery of the OOC station project was also delayed by a year or more.

New RRAP at Jewson's – could save one year of programme (if the programme is realistically extended so that the baseline finish is 2030, as should be the case for a do-nothing scenario). NR note that the probability of success of securing Jewson's Yard is only average. Furthermore, they must secure access no later than September 2024, if they are to have the RRAP operational in January 2025 (unless NR can put in place an "accelerated process"). Ideally, it is stated, that the land would be available from mid-2024. If the RRAP is not operational in January 2025 then it is assumed that the one year time saving will not be realised. It is stated "no impact to programme if RRAP can be utilised from January 2025". However, it would seem there is actually a very low probability of those timescales being met, for the reasons set out below, which in turn would mean no 1 year timesaving benefit compared to the do-nothing scenario.

- 1) The programme for determination of the order by the secretary of state : originally NR advised that they had assumed a determination in April 2024 which would have been circa 4 months from the close of the inquiry in late November 2023. With the close of the inquiry now 9 February 2024 it is assumed that the secretary of state's determination is now anticipated circa the first week of June 2024.
- 2) The potential for legal challenge to any decision in favour of the order : A legal challenge pursuant to section 22 Transport and Works Act 1992 (**TWA92**) must be made within 42 days of the date of publication of the notice required pursuant to section 14(1)(b) TWA92. Assuming notice was published in early June 2024, it would mean a challenge period expiring in circa the third week of July 2024. If a challenge was made, noting that there is no requirement to obtain leave to bring the proceedings, it would mean the High Court hearing the case substantively in circa December 2024 without expedition, and possibly October 2024 with expedition (the Trinity Term ends 31.7.24 and the Michaelmas Term starts 1.10.24). There must be a risk that judgment would not be given *ex tempore*, meaning a further delay in waiting for judgment to be handed down in circa January 2025 without expedition, and circa November 2024 with expedition. This assumes that there is no appeal to the Court of Appeal or that leave to appeal is refused. If leave to appeal is sought and refused then an additional 2 weeks should be added pushing towards February 2025 and December 2024.
- 3) The service of notice : the draft order provides that NR must serve not less than 14 days notice before entering upon and taking temporary possession of land. If judgment is handed down in November 2024 or January 2025 then NR would not be able to take temporary possession until either later in those months, or depending on timing, December 2024 or February 2025.
- 4) Build period : if the period required by NR to construct the RRAP and ramp at Jewson's Yard and establish the compound is circa 4 months without an "accelerated process" (based on possession from September to December 2024 with the RRAP utilised from January 2025), then if possession is obtained in December 2024 or February 2025, the RRAP will not be available until April 2025 or June 2025.

New RRAP at OOC Lane – the possibility of achieving access is only considered to be a low and very low probability, but it is not clear what this is based on, and whether this was informed by the

seemingly predetermined official DfT view as Mr Sinclair referred to in evidence. There also appears to have been a lack of awareness of the existing lease and sublease rights in the leases from DfT to Agility Trains, and Agility Trains to Hitachi, to secure the co-operation of Hitachi, meaning that many of the concerns relating to shared access could be readily resolved through appropriate activation of those contractual rights.

It is noted that the document also includes “pros” and “cons” with one of the “cons” for the OOC Lane RRAP being “significant interface & risk associated between live depot and construction works”. It is noted the NR have not included, in relation to the New RRAP at Jewson’s, any risk associated with a live builders’ merchant, or the construction of the BPL development. Although these are both now risks that seem to be acceptable to NR. Interestingly, no “con” repeating the “Requires land purchase/ agreement” is repeated in relation to the New RRAP at OOC Lane referred to in Document #1 above, although this continues to be a “con” in relation to the New RRAP at Jewson’s, namely “Land agreements not agreed.” “Proximity to local residents” is the other “con” identified in relation to the New RRAP at Jewson’s. In relation to the New RRAP at OOC Lane, one of the “pros” is “Access required already post Xmas 2026”. This suggests that NR have already agreed access via the North Pole Depot to access the brownfield site, which Document 1# advises was the “only source of offtrack access to brownfield site”, this interpretation is also confirmed by Document 3#. Document #2 also notes in relation to the New RRAP Access at OOC Lane that if “access road is not available” (presumably a reference to the Hitachi North Pole Depot access from OOCL) possibly because of the bridge lowering works referred to in evidence as part of HS2, then “plant would need to be offloaded directly on public highway OOC Lane”. It is noted that this is not listed as a “con”, but instead a “compound impact”. It is also noted that this was something that NR said in evidence would not be acceptable to them (off-loading RRVs onto the highway) at Horn Lane. It is also queried why access to the Hitachi Depot from the west would not be available, given that the Hitachi representative Mr Tim Green stated on the site visit that it was a “legal requirement” for them to have two accesses including an emergency access. It is also stated in relation to the New RRAP at OOC Lane that a “mitigation to meet programme” if the western access from OOC Lane was not available would be to “agree road access with Hitachi through depot from East access.”

Document #3 OOC Lane / Hitachi Access Point Requirements Matrix (produced on 28/06/2023)

Document #3 was prepared by Mr Andrew Fleming. On 28/06/2023 it was shared with the Head of Programme Delivery for On Network Works at OOC as a review of the difference in requirements between the use of the OOC Lane Hitachi access as a brownfield site access as compared to its use as a temporary RRAP access. 8 criteria are considered, with a number of the issues raised in relation to using the Hitachi OOC Lane access for a temporary RRAP having now been overcome.

The document identifies that “only smaller plant would be able to access via the existing ramp”, although swept path analysis had yet to be undertaken. Larger vehicles would access from the east via Mitre Way. The document notes that routes would require validation and agreement with Hitachi.

As presented in Mr Gent’s evidence, access from Old Oak Common Lane would be possible for larger vehicles. The Hitachi representative confirmed on the site visit that they had installed a sub-station with a 250-tonne mobile crane (typically a 16m rigid vehicle), which had to access via Old Oak Common Lane due to the height access restrictions from Mitre Way. The assumption that larger vehicles cannot access via the existing ramp therefore appears to be mistaken.

The Hitachi representative also stated that there is a legal requirement for them to maintain two accesses, the access from Old Oak Common Lane is used as an emergency access, and therefore any

works to amend the access ramp will need to maintain suitable access for the emergency services, with any route suitable for fire tender access also likely to be suitable for construction vehicle access.

The document notes that the amended ramp would be operational from Christmas 2026 and would be suitable for access by all vehicles.

The document notes a risk of trains parking across the (western) level crossing, although this is not possible with Hitachi's stated legal requirement to maintain the availability of the two accesses, including an emergency access at all times.

The document notes that agreement is required with Hitachi for "additional, early access above previous discussions", in relation to the mains track access from July 2024 - December 2026, suggesting that access has already been agreed, for the brownfield site access from Christmas 2026 – Christmas 2028. The column relating to the brownfield site access does not state that access is still to be agreed in principle with Hitachi (as is the case with the mains track access), reference is only made in the brownfield site column to requiring agreement with Hitachi on the interface with staff, vehicle movements, and OOC station works, which supports this interpretation. If agreement has therefore been reached with Hitachi in principle, with only details to be agreed, it suggests that access via OOCL to the adjacent railway corridor is agreeable to Hitachi in principle, and it is then simply a question of managing the interface in terms of the movement of people and plant, as part of an agreed protocol, as Mr Gent and Mr Gallop referred to in evidence, and as appears to be suggested will be required (and no suggestion that a solution cannot be reached) in relation to the brownfield site access.

The document notes that the existing track cant would need to be checked to confirm the feasibility of a RRAP in this location. We understand from comments made by Mr Fleming on the site visit that this check has not been undertaken. The document suggests that track cant would be acceptable when accessing the realigned tracks between Christmas 2026 and Christmas 2028. Track cant has not been identified as a constraint for western RRAP in any evidence presented by NR at the Inquiry.

We note that Appendix CF2 of Mr Ford's proof (Best Practice Guide for Network Rail Infrastructure Access Points) states in Section 5.4 that wherever possible RRAPs should be located on straight and level track and lists a series of parameters relating to locations where RRAPs should not be located. Track cant is not listed. In any event, we assume that if the track cant is considered to be such a severe engineering constraint on access locations, that this would have formed part of the very initial sifting exercise alongside the consideration of level access, which has been undertaken. As such we conclude the cant is unlikely to preclude an access in this location.

Document 3# states that additional laydown areas are required at HS2s Wormwood Scrubs depot in connection with a RRAP within the Hitachi depot accessing the mains. This was not part of NR's evidence to the inquiry and we assume that it is no longer an issue. Evidence was given in relation to a new laydown / storage compound being created for NR at the North Pole depot, and on the site visit the area of this compound was seen being levelled and prepared between the old Eurostar building and the Barlby Gardens RRAP.

Summary

The 3 documents prepared by Network Rail/SRSA/Colas appear to demonstrate (in BPL's view):

1. Network Rail's comparative exercises show that access via the North Pole Depot has more pros and fewer cons than access via Jewson's Yard;

2. Many of the concerns in relation to access from Old Oak Common Lane appear to have been misplaced when assessed in more detail, and/or with the benefit of clarification from Hitachi on the site visit.
3. The maximum benefit of access via Jewson's Yard is a one year saving on a construction programme (without questioning the validity of HS2's currently projected opening year for their OOC station);
4. The one-year programme saving (the only tangible benefit of using the Jewson's Yard site) is only achievable if NR secures access by September 2024 (or can accelerate its programme after that date so that the RRAP can be utilised from January 2025). The probability of this programme being met is extremely low given the delays in the inquiry process, should a legal challenge be made to the granting of the order, the time period required to obtain temporary possession pursuant to the order, and the build period for the RRAP/ramp/ compound, therefore even if the order is granted, it is likely that there would not be any time saving compared to the do-nothing scenario;
5. The extremely limited potential for a one-year programme saving must be considered in the context a) of the likelihood of the project completion date not extending in any event and b) the six years of nuisance and disruption that would be inflicted on residents of Acton House and the activities of Jewson's, BPL, and BDL. Mr Aarsonson gave evidence in relation to a compromised builders' merchant operation; and a time and cost extension to the construction of the new BPL development.