



Report to the Secretary of State for Transport

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an Inspector appointed by the Secretary of State for Transport

Date: 23 May 2024

TRANSPORT AND WORKS ACT 1992

ACQUISITION OF LAND ACT 1981

**THE NETWORK RAIL (OLD OAK COMMON
GREAT WESTERN MAIN LINE TRACK ACCESS) ORDER 202[]**

The Inquiry was held on 14–17 and 21–22 November 2023, 1 and 9 February 2024 and 8 March 2024

File Ref: DPI/H5390/23/17

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List of Abbreviations used in this Report

BPL	Bellaview Properties Ltd
DfT	Department for Transport
DLUHC	Department of Levelling Up Housing and Communities
GRIP	Governance for Railway Investment Projects
GWML	Great Western Main Line
HS2	High Speed 2
RRAP	Road Rail Access Point
RRV	Road Rail Vehicle
SoM	Statement of Matters

CASE DETAILS

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

- The Order would be made under sections 1 and 5 of the Transport and Works Act 1992.
- The application for the Order and for a deemed planning permission were made on 17 April 2023 and the Order and deemed planning application have been subsequently revised as detailed later in this report.
- The applications, supporting documents and Inquiry documents are available at the following website: [Old Oak Common - Gateley \(gateleyhamer-pi.com\)](https://www.gateleyhamer-pi.com)
- The Revised Order would authorise Network Rail to (a) acquire temporary possession of land at Horn Lane, in the London Borough of Ealing, to operate a temporary construction compound to enable works on the railway in connection with the construction of a new station at Old Oak Common; and (b) acquire permanent rights of access over land at Horn Lane, in the London Borough of Ealing, to provide access to adjoining land on which a permanent maintenance access point to the Great Western Main Line is proposed to be provided and operated.
- There were seven objections to the Order outstanding at the close of the Inquiry.

Summary of Recommendation:

That the Network Rail (Old Oak Common Great Western Mainline Track Access) Order 202[] is not made and that deemed planning permission is not granted.

1 INTRODUCTION

- 1.1 The Order applicant is Network Rail Infrastructure Limited, a regulated statutory undertaker that owns and operates the national rail infrastructure network of Great Britain.
- 1.2 There are two separate elements to the Order's provisions. Firstly, it provides for Network Rail to acquire temporary possession of land at Horn Lane (as originally applied for, plots 2, 3 and 4 on CD 08) for the purpose of providing and operating a temporary construction compound. The compound would be used as a point of access to the adjoining Great Western Main Line (GWML) to enable railway works in connection with the provision of a station at Old Oak Common to take place. These railway works are known as the Great Western Railway Main Line (GWML) Systems Project. This station on the GWML is intended to provide interchange with the, currently under construction, Old Oak Common station on the London – Birmingham High Speed Rail line (HS2).

- 1.3 Secondly, the Order would provide Network Rail with a permanent right of access from the public highway at Horn Lane, along plot 3 to the boundary of a piece of adjoining land (plot 1, also known as the Triangle land). Using permitted development rights Network Rail proposes to use this adjoining land as a permanent maintenance access point on to the GWML. Plot 1 itself, which is currently held by the Crown Estate bona vacantia, is not the subject of any provision of the Order.
- 1.4 Plots 2, 3 and 4 (as originally applied for and shown on CD 08) are currently occupied by a Jewson builders' merchant warehouse, although Bellaview Properties Ltd (BPL), the freeholder of these plots, has planning permission for a mixed-use development on the site comprising a replacement builders' merchant warehouse with 185 residential flats above. As originally applied for, the temporary possession would have included the whole of the site currently used as the Jewson builders' merchants (ie the warehouse building itself and surrounding car parking/storage areas).
- 1.5 However, on the first day of the Inquiry Network Rail proposed reducing the extent of temporary possession to exclude the builders' merchant warehouse building itself and some of the car parking/storage area. The alignment of plot 3 (the permanent right of access) has also been altered. A number of other revisions to the Order have also been made - to protect rights of access to the neighbouring Acton House, to remove some irrelevant elements of model order provisions and to remove ambiguity and internal inconsistencies. The Revised Order Plan as now proposed by Network Rail is at Appendix 3 of this report.
- 1.6 Network Rail also now proposes that the majority of the remaining land which is the subject of temporary possession in the Revised Order would be shared with BPL to enable BPL (or its tenant) to use the warehouse as a builders' merchants and/or to commence implementation of its planning permission for the mixed-use development. Network Rail has proposed achieving this "site-sharing" through a completed unilateral undertaking to BPL (INQ-82).
- 1.7 Through the unilateral undertaking Network Rail commits to only exercising the temporary possession provision of the Order in the ways set out in the undertaking's Schedule 1. The arrangements set out in the Schedule are complex and are subject to three different scenarios and configurations of the affected land dependent upon the site's use over time for either the existing warehouse or construction of the proposed mixed-use development. Consequently, the following does not cover every detail of the arrangements. However, in essence this means that Network Rail would only take "full" temporary possession of a small part of the Order land (that shown in unhatched green on Site Sharing Land Plans for Scenarios 1, 2 and 3 (Appendix 1, 2 and 3 of INQ-82)). For the remainder of the Order land (shown hatched on the same plans) Network Rail would only exercise the following:
- The right to pass and repass with or without vehicles.
 - The right to install a gate/fencing indicatively shown on the Scenario 1

and 2 plans, beyond (north of) which BPL/its warehouse tenant would be permitted access during warehouse opening/delivery hours and construction hours of the mixed-use development. Such access at other times would be subject to agreement by Network Rail, but access would not be possible during (and for short periods before and after) "possessions" of the railway secured by Network Rail to undertake the GWML Systems Project.

- The right to undertake works associated with utilities and the provision of the ramp on land beyond (north of) the gate for a period of up to 4 weeks.
- The right to park vehicles and store materials/plant/machinery outside the defined warehouse opening/delivery hours and construction hours of the mixed-use development, subject to restrictions to ensure access for BPL/its warehouse tenant to various parts of the site at various times.

- 1.8 The application for deemed planning permission relates to use of the Order land as a temporary construction compound, the application plan and description of development for which have also been amended since the application was originally made. The description of development for which permission is now sought is "Use of land as a temporary construction compound including provision of temporary ramp" and the revised application plan is DRW No. 0388965 (Red Line Plan) at Appendix 4 of this report.
- 1.9 The railway works themselves (ie the GWML Systems Project), which will not take place on the Order land, are either permitted development or consented by the High Speed Rail (London – West Midlands) Act 2017.
- 1.10 The provision of a temporary and permanent road rail access point (RRAP) on to the GWML is "the scheme" which would be enabled by the Order and deemed planning permission. That scheme would in turn enable implementation of the GWML Systems Project which itself is related to the construction of Old Oak Common station on HS2.
- 1.11 Whilst Network Rail has indicated (see paragraph 3.5 of this report) that it would have strongly preferred to take possession of the entire Jewson warehouse site at Horn Lane (as proposed in the original Order), it confirmed in response to my question at the outset of the Inquiry that it was no longer pursuing the Order as originally proposed.

Other Statutory Consents

- 1.12 CD 09 identifies that aside from the Revised Order, deemed planning permission and an application to Ealing Council under s61 of the Control of Pollution Act 1974, no other statutory consents are necessary to implement the scheme. However, it would require ownership of, or to secure rights over, plot 1 (the Triangle land) to construct and operate the permanent RRAP. Plot 1 is currently held by the Crown Estate bona vacantia and, thus, cannot be the subject of compulsory purchase.

1.13 Paragraph 7.16 of CD 11.1 identifies that the scheme is not one for which an Environmental Statement would be required.

Statement of Matters

1.14 On 15 September 2023 the Department for Transport (DfT) issued a Statement of Matters in line with rule 7(6) of the Transport and Works (Inquiries Procedure) Rules 2004. The Statement sets out the matters about which the Secretary of State particularly wishes to be informed in respect of the applications for the Order and the deemed planning permission:

- 1) The aims and objectives of, and the need for, the project to provide a temporary and permanent road rail vehicle access point on to the Great Western Main Line railway (“the scheme”).
- 2) The main alternative options considered by Network Rail and the reasons for choosing the scheme. This should include alternatives that did not require compulsory acquisition.
- 3) The likely impact of the scheme on local businesses and residents during construction and operation. Consideration should include but is not limited to:
 - i. The impact on access arrangements including access to parking at the rear of Acton House
 - ii. Impact on local amenities and the surrounding environment
 - iii. Impact on noise, light and air quality
 - iv. Impact resulting from an increase in HGV movements including on the local highway network.
- 4) Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12-15 of the MHCLG [now DLUHC] Guidance on the “Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion” published in July 2019:
 - i. Whether all the land and rights over land which Network Rail has applied for is necessary to implement the scheme
 - ii. Whether there are likely to be any impediments to Network Rail exercising the powers contained within the Order, including the availability of funding
 - iii. Whether there is a compelling case in the public interest to justify conferring on Network Rail powers to compulsorily acquire and use land for the purposes set out in the Order
 - iv. Whether the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected (having regard to the Human Rights Act).

- 5) An update on the current position in relation to Crown Land.
- 6) The conditions proposed to be attached to the deemed planning permission and their suitability.
- 7) Whether all statutory procedural requirements have been complied with.
- 8) Any other matters which may be raised at the Inquiry which may be important and relevant to the Secretary of State's decision.

Objections

1.15 Eight objections to the Order as originally proposed were received by DfT, two of which were withdrawn before the Inquiry. An additional objection was then received in response to the consultation on the Revised Order as were further comments from an existing objector (BPL). The remaining seven objections which were outstanding at the close of the Inquiry in summary concern:

- The lack of need for the Order given the existence of alternative locations where the scheme could be constructed and operated.
- The impact of the scheme on the operation of the existing Jewson builders' merchant and on the implementation of the proposed redevelopment of the site for a mixed-use development.
- Noise, disturbance, pollution and access difficulties which would be caused by the scheme for nearby residents.
- The contention that, even if the scheme were to be constructed/operated at this location, that it could be carried out in such a way as to cause significantly less impact on the existing Jewson builders' merchants and on the implementation of the proposed redevelopment of the site.

The Report

1.16 The remainder of this report sets out the gist of the objectors' and Network Rail's cases in respect of the proposed Revised Order and application for deemed planning permission, followed by my conclusions and recommendations to the Secretary of State. An application for costs by BPL against Network Rail in connection with the Inquiry will be the subject of a separate report and recommendation.

2 THE CASES FOR THE OBJECTORS TO THE ORDER

Bellaview Properties Ltd

Introduction

- 2.1 BPL is the freehold owner of the land at Horn Lane, Acton which is the subject of the powers sought by Network Rail through its application. BPL is the party that will principally be affected, and adversely affected, by the exercise of those powers.
- 2.2 The application and the case Network Rail has made in support of it has changed. At the start of the Inquiry on 14 November 2023 and at all times before, Network Rail's case was that there was a compelling case in the public interest for it to be given temporary possession of the whole of the land held by BPL at Horn Lane, including a power to take temporary possession of the warehouse building, necessitating the closure of that building as an operational builders' merchant and, potentially at least, its removal. That position was maintained until day one of this Inquiry. Network Rail also sought a permanent right of access over a route, (plot 3), to land to the west of BPL's land, namely the Triangle land owned by the Crown Estate bona vacantia. Network Rail's application for permanent rights over plot 3 remains unchanged albeit the alignment has been revised.
- 2.3 However, through its opening statement on day one of the Inquiry, Network Rail changed its case and its application for rights of temporary possession in a fundamental way by (a) substantially reducing the area of BPL's land over which it claims to require temporary possession by 70% of the area originally sought, including by seeking an amendment to its Order land to remove the warehouse itself and an area external to the warehouse from the scope of the Order, (b) conceding that it does not require exclusive possession of the majority of the remaining area over which it continues to claim a need to take temporarily and (c) by confirming that removal of the warehouse is not required.
- 2.4 Although this change in position was perhaps unsurprising – Network Rail's case, as disclosed through its written evidence, for seeking the extensive rights it sought through the application, as submitted, was very far from compelling - it is remarkable that it took until day one of the Inquiry and Network Rail's opening statement for the substantial changes to its application and its case to be confirmed. Network Rail's behaviour in this respect forms the basis of a separate application for a partial award of costs.
- 2.5 However, the powers, in the form of both a permanent right to cross BPL's land and of temporary possession, which are now sought by Network Rail, remain the subject of objection from BPL. BPL's case is that no compelling case in the public interest has been demonstrated by Network Rail for the taking of the powers, both temporary and permanent, that it seeks over BPL's land both as a matter of principle and in terms of extent.

The Involvement of the Secretary of State for Transport

- 2.6 The Secretary of State is of course the decision maker in respect of Network Rail's application; the Inspector's role is to report to him with a recommendation as to whether the application should be granted, with or without modifications, or refused.
- 2.7 As such, the Secretary of State is required, by law, to determine the application fairly, transparently and with an open mind. That the application seeks by compulsion the expropriation from BPL of its land and its possession of it, both permanently and temporarily (albeit for many years), provides particular focus to the requirement for the proper and fair discharge by the Secretary of State of his function as decision maker.
- 2.8 The Inquiry has been shown evidence that the Secretary of State, either himself or acting through his officers, was engaged with Network Rail before the application was made and as part of the process (such as it was) which resulted in a decision being made by Network Rail to seek powers over BPL's land. The Secretary of State and/or his officers appear, from the evidence, to have been involved in the decision which was apparently taken before the application was submitted not to utilise land at the North Pole Depot for a temporary RRAP for the purposes of the GWML Systems Project and/or for a permanent RRAP to give access onto the GWML. In particular, in terms of the Secretary of State's involvement, the Old Oak Common Lineside Logistics Compound Strategy (Appendix ARR1i of OBJ-8.6.6) on page 10, includes the following statement:
- "The DfT and depot operators Agility/Hitachi will not entertain a lineside logistics compound at the North Pole Depot as they consider this will be disruptive to depot operations and performance KPIs under the Agility/Hitachi contract".*
- 2.9 Additionally, in an email from James Slater (Principal Surveyor, Property – Corporate Finance Directorate, DfT) to Jonathan Sinclair of Network Rail, sent on 25 January 2021 (INQ-04), Mr Slater states, when referring to the North Pole Depot, that *"the area is occupied by Agility who have a long-term lease. Therefore we cannot consent without involving Agility"*. The "we" as used in Mr Slater's email can only be taken to be the DfT as a whole, of which Mr Slater was an officer. In any case this is, of course, incorrect; the Secretary of State has powers to consent to compulsory acquisition of the leasehold interest held by Agility/Hitachi (see section 25 of the Transport and Works Act 1992). There is no evidence that the Secretary of State was asked to provide his consent.
- 2.10 Mr Sinclair's evidence (in examination in chief and in response to questions put by the Inspector) is that he had meetings with "various" officers of the DfT in February, March and in April 2021, including with Mr Slater, whom Mr Sinclair described as his "proxy contact" at the DfT. Although the substance of these meetings has not been disclosed in spite of requests and the obvious need to do so, Mr Sinclair confirmed in cross-examination that the objection to the use of North Pole Depot which had been expressed by Mr Slater was

the “*general view of the wider DfT*” and the “*general consensus*” within DfT, and not just Mr Slater’s own view.

- 2.11 Even when taken at face value this evidence reveals clear and substantive involvement and the exercise of influence on the part of the Secretary of State, or at least his officers at the DfT, in advance of and in the decision apparently taken by Network Rail not to use North Pole Depot to deliver the access to the operational railway which it now seeks powers to do by using BPL’s land. It is BPL’s case that that depot should be used for those purposes. It is of course the case that the Secretary of State is the freehold owner of the North Pole Depot, is the landlord of Agility Trains (its lessee at the depot), and is subject to landlord covenants in that lease. The Secretary of State is responsible for granting the rail service contracts to train operating companies including to Agility/Hitachi which in turn include “performance KPIs” against which Agility/Hitachi will be assessed by the Secretary of State.
- 2.12 DfT is also the sponsoring department for HS2 which is the project that ultimately the temporary powers in the Order are sought to facilitate. This context gives the Secretary of State an interest in the Order being made or at the very least a perception of him having such an interest. Thus, even when taken at face value, the involvement of the Secretary of State himself (or acting through his officers) in Network Rail’s decision is such that the Secretary of State cannot now fairly determine this application or adjudicate upon BPL’s objection to it. At the very least, this gives rise on the part of the Secretary of State to the appearance of bias, for the purposes of the test in *Porter v Magill* [2002] 2 AC 357 (at para.103), that is “*whether a fair-minded observer, having considered all the facts, would conclude that there was a real possibility of bias*”.
- 2.13 However, the point goes further. It is simply not credible to accept that the involvement of the Secretary of State, through his officers, was limited to what is recorded in the Compound Strategy (Appendix ARR1i of OBJ-8.6.6), in the single email sent by Mr Slater to Mr Sinclair in January 2021 or in what Mr Sinclair said, in the most general terms, about the meetings that took place in earlier 2021. The reference included in the Compound Strategy is plainly derived from some engagement and probably correspondence which preceded it and which the Compound Strategy is seeking to summarise and/or record. The email from Mr Slater to Mr Sinclair must be one of a series of emails; it is simply not credible that the correspondence was not more extensive or that there are emails which predate and/or which post-date the exchange that has been provided. This is particularly so in the light of the fact that Mr Slater’s last email contains a series of questions addressed to Mr Sinclair, which it is to be expected would have been answered.
- 2.14 What took place during the meetings between Mr Sinclair and officials of the DfT has not been revealed in any material detail. However, in the face of repeated requests for disclosure, Network Rail has refused to reveal or even to acknowledge that other material existed or exists which relates to engagement between itself and the Secretary of State (and, it seems, Agility/Hitachi) during the pre-application stage.

- 2.15 The most egregious expression of this is the singular failure of Network Rail to respond properly or transparently to the letter sent by BPL on 15 January 2024 (INQ-38 and INQ-39) and of 1 February 2024 (INQ-45 and INQ-46), which was sent after the roundtable session held on 1 February 2024 to consider BPL's application for express disclosure (made pursuant to s.11(5) of the Transport and Works Act 1992). The Inspector too, by a letter of 1 February 2024 (INQ-86), asked Network Rail to respond to BPL's letter of 15 January 2024. The response of David Wilson, of Network Rail, sent on 5 February 2024 (INQ-52) is manifestly inadequate. Mr Wilson states that he has "*undertaken a reasonable search of the electronic folders to which I, personally, have access*" and states that those folders do not contain "*any written communications or meeting notes that relate to the location of a RRAP in connection with the GWML Systems Project, and which are written communications between Network Rail and Hitachi or Agility Trains or the Department for Transport, or notes of meetings between Network Rail and those bodies, which are not already before the Inquiry*". That does not answer BPL's requests of either 15 January 2024 or of 1 February 2024.
- 2.16 In particular, what Network Rail was requested to disclose was all and any correspondence (internal or external) and notes of meetings between it, Agility/Hitachi and the Secretary of State - not just that which is included in files to which Mr Wilson may have had access. Mr Wilson, in his letter, appears to contradict what Mr Booth KC told the Inquiry (on instruction from Network Rail, at the roundtable discussion on 1 February 2024) that "*after an exhaustive search*" no such documents existed "*and that Mr Wilson will state that*" in writing. Plainly Mr Wilson's confirmation is much more limited and no indication whatever is given as to the records that he has access to, which may themselves be limited.
- 2.17 BPL contend that it cannot be the case that the extent of the record of engagement between Network Rail and the Secretary of State is limited to what has been revealed. Network Rail having plainly declined to disclose or even to investigate further the existence of records, as it was requested to do, BPL has sought disclosure from the Secretary of State (INQ-47, INQ-48, INQ-49). No substantive response has, thus far, been received. It seems extraordinary that there are no notes/records of meetings that were held between Network Rail and the DfT and Agility/Hitachi. An organisation of the scale and indeed with the range of responsibilities such as Network Rail is to be expected to have processes in place to record such meetings, particularly those with the DfT and in relation to important capital projects.
- 2.18 Additionally, Mr Wilson is wrong in stating in his letter of 5 February 2024 (INQ-52), that Network Rail had not "reviewed" the four draft documents that he did disclose. The fact that Network Rail had, at first, disclosed a two page extract (i.e. pages 27-28) from one of those draft documents (Appendix F of OBJ-8.3.2) can only mean that this draft document at least must have been reviewed and considered by Network Rail before its partial release to BPL, a point that was raised already by BPL with Network Rail (email of 5 February 2024 (INQ-57)). That Mr Wilson is, it seems, mistaken in this respect in what he says further undermines the reliability of his contribution as a whole.

- 2.19 BPL has requested information from Network Rail via Freedom of Information Act requests from October 2022 all the way through until February 2024, seeking to establish what its "*extensive research*" was that meant BPL's site was the "*only suitable*" site. Additionally, BPL has sought to establish what correspondence there had been between Network Rail and the DfT/Agility/Hitachi relating to the North Pole Depot. BPL has been met with contradictory, and at the time obfuscatory replies. Notably Network Rail stated in a letter dated 4 December 2023 that it was "*still in discussions with our colleagues about the potential prejudice that might stem from releasing the information in question*". Network Rail's position now is that there is apparently no such information, at least of any material or meaningful kind.
- 2.20 With regard to the extent of involvement and consensus within DfT concerning the exclusion of North Pole Depot, Mr Sinclair was clear that this was the "*general*" view within the organisation. Moreover, from his evidence in cross-examination it appears that this too was the position of the Secretary of State himself (rather than only his officers). When Mr Sinclair was asked whether the Secretary of State had already decided in principle that it would not allow a RRAP at North Pole Depot, Mr Sinclair gave a quiet "*yes*" and nodded in agreement.
- 2.21 Therefore, BPL submits, on the basis of what is known, that (a) it is clear that the Secretary of State either himself or acting through his officers was, as a matter of fact, engaging with Network Rail before the application was made and (b) it appears, as a matter of fact, he and /or his officers either directed or came close to directing, or at least sought to influence Network Rail in its decision not to consider or pursue further the opportunity to secure access to the GWML for the purpose of the GWML Systems Project, and thereafter permanently, from North Pole Depot. As such, the Secretary of State cannot fairly and in accordance with his public law duties determine the application, not least since the use of North Pole Depot as an alternative to the use of BPL's land at Horn Lane is a central part of BPL's objection and is thus central to the determination of the application.
- 2.22 For completeness, BPL is also no clearer as to what the extent of involvement of Agility/Hitachi was pre-application, with regard to consideration being given to the use of North Pole Depot; they plainly had some influence on the Secretary of State and involvement with him in advance of Network Rail's decision to proceed to seek powers over BPL's land. The disclosure by Network Rail in this respect too is inadequate.

The powers sought and the effect on BPL

- 2.23 BPL is the owner of the Order land, which is currently the subject of a lease to STARK, who use it as a Jewson builders' depot. STARK has contracted with BPL to surrender its lease on 1 October 2024. Thereafter, BPL expects to itself take up occupation of the warehouse and associated land and to operate it initially as a logistics and delivery hub immediately post-STARK's vacation and as a builders' depot, either as a replacement for its own facility at West Hampstead, which is threatened with compulsory acquisition or as a new facility in its own right. BPL has also secured planning permission for a redevelopment of the Horn Lane site to provide a replacement builders' depot

and new homes. That planning permission was granted on 29 December 2023 (INQ-71). BPL intends to carry out that development in due course.

- 2.24 The extent of the powers originally sought by Network Rail would have precluded BPL, or indeed anyone else, operating the site as a builders' depot or allowing BPL to carry out its redevelopment. Network Rail's position has moved on, and with its concession made on day one of the Inquiry, in that it has reduced the extent of BPL's land over which it seeks powers and has accepted, in principle, that it can share the site with BPL to enable the operation of a builders' depot and/or the construction of BPL's scheme.
- 2.25 However, the powers Network Rail still seeks, reduced as these are from those sought when the application was first made, will have a substantial and adverse effect on BPL and its use of its land at Horn Lane.
- 2.26 Mr Aaronson (OBJ-8.7.1) is the only witness who has been involved in operating a builders' depot and was able to give evidence about what is operationally required and his evidence on these matters was not contested. In terms of the use of BPL's site as a builders' depot he explained that external space is critical; this is where external building products are stored and displayed for sale. He also explained that it is in the nature of a builders' depot that much of its stock requires external storage. The effect of the rights of temporary possession which are sought, in particular the areas not identified for shared use under the Revised Order, will not be available for the storage and display of products and this will have a substantial effect on the attractiveness and the performance of the operation.
- 2.27 Mr Aaronson stated that customers come to a builders' merchants for the external materials, and then shop further for internal materials stored inside the warehouse. However, the external building materials drive the trade. If the area for external materials is reduced, the range cannot be carried and trade across all product ranges will be affected. Moreover, he stated that parking is critical, customers seeking to purchase bulky goods will pass-by if they cannot park. The temporary possession of parking spaces will therefore also have a significant impact on trade. Mr Aaronson stated "*external space and car parking drive turnover*".
- 2.28 Mr Aaronson's case was that the builders' depot business could still operate under the Revised Order, but it would be severely compromised. Moreover, it is also clear that through the unilateral undertaking, Network Rail will be gatekeepers to the area over which temporary possession is sought and BPL will require its consent to open the gate outside operational and delivery hours. This too will substantially reduce flexibility for BPL and its operation.
- 2.29 Although Network Rail suggests that the powers which it seeks will not preclude BPL from carrying out and completing the redevelopment of the site for which it has planning permission, the reality is rather different. If site-sharing is in place, Mr Aaronson's uncontested evidence was that it would be more expensive to build the development and would take longer due to the constraints placed on the contractor via the site-sharing arrangements. He also stated that it may limit the pool of contractors willing to bid for the project and that they would charge a premium. Moreover, he noted that the

viability of the development was a fine one. It is possible that if a development is marginally viable then an increase in build costs could affect viability and therefore whether a development would be built. Mr Aaronson also stated that it is unlikely that new homes will be attractive to purchasers or occupiers where, immediately outside many of those homes is a compound to be used by Network Rail in particular during night-time hours when residents can be expected to be asleep. 200 families in the new development, as well as existing residents, could be affected by these works.

- 2.30 The value of the new homes may be suppressed as a consequence of Network Rail's exercise of temporary and permanent powers, a reduction in value combined with an increase in development costs can also affect viability and whether a development will be built. Mr Aaronson referred to the fact that Ealing Council "*want desperately more homes*" and that the planning application was promoted under the Council's guidance. If the new homes were not built it could therefore affect local residents in need of housing, and in particular affordable housing (the development includes 35% affordable housing). The restrictions on the use of the shared area and on the route of the permanent right of way which is sought will be a significant burden on the physical delivery of the permitted scheme and on its quality and attractiveness.
- 2.31 In addition, it is plainly the case that the powers sought by Network Rail are in direct conflict with BPL's redevelopment for the reasons set out in INQ-43, in particular paragraph 14(d). Area numbered "4" in Site-Sharing Scenario 2 is land which falls within BPL's redevelopment, specifically within parts which have been allocated for showroom space as well as the entrance into the concierge/post delivery office and entrance to the residential cycle store. This would make it very difficult to operate either the builders' depot or the residential development with no showroom, no cycle store, and no post room/concierge for incoming deliveries.
- 2.32 BPL understands that Network Rail needs this area only for parking three minibuses/light goods vehicles, and that their usual parking requirement will be one evening fortnightly. It is questioned whether it is proportionate to deprive the development of these facilities for several years to accommodate such an intermittent parking demand. Mr Fleming gave evidence that the minibus drivers will come from Barlby Gardens where workers will have "signed on" for their shift and will need to go back there too at the end of their work. It is unclear why the minibus drivers cannot return to Barlby Gardens and must park at the site for the duration of the possession.
- 2.33 It remains the case that the powers now sought will have a serious effect on BPL and its use of its land. Plainly, the effect will be less than would have been the case had Network Rail persisted with the powers it was seeking until day one of the Inquiry. However, the effects are serious, nonetheless. It is in the context of these impacts on BPL that Network Rail's case that there is a compelling case in the public interest must be considered. Any such compelling case must be sufficient to outweigh those impacts as well as the interference in principle with BPL's legal rights as a landowner (including its Convention rights) not to have the enjoyment of its property taken away or materially reduced.

Power of temporary possession – a compelling case in the public interest?

- 2.34 As matter of principle, for there to be a compelling case in the public interest to take, by compulsion, powers over private land, it must be shown that there is no alternative means by which the purposes of the Order can be met, and which avoid the need to take those powers. This of course includes demonstrating that alternative sites have been considered and why these have been discounted.
- 2.35 BPL's position is straightforward – it considers that there exist other means by which access to the GWML can be obtained for the purposes of delivery of the GWML Systems Project and in particular there are other locations, including publicly owned land, from which such access can be taken, and which would avoid the acquisition and interference with BPL's interest at Horn Lane. The focus is on the land at North Pole Depot.
- 2.36 Before turning to specific matters concerning the depot and its suitability and availability as an alternative to BPL's land at Horn Lane for temporary access to the railway, there is the matter of the extent of consideration of sites by Network Rail before the application was made. Before a decision is taken to proceed with a proposal which involves substantial interference with, and acquisition by compulsion of, private land, an acquiring authority is to be expected to have carried out a thorough and comprehensive process of examining what alternatives are available, including land in public ownership, to secure the outcome sought. This generally will comprise an alternative site assessment and selection process.
- 2.37 In this case, so far as the proposals are to secure both temporary rights of access to the GWML for the delivery of the GWML Systems Project and to secure a permanent RRAP, Network Rail can be expected to have, objectively, considered the merits of alternative means of achieving this *before* it decided to compulsorily acquire BPL's land. However, in terms of evidence which Network Rail has put before the Inquiry, there is no such assessment or at least none that it has disclosed. The three risk assessments (INQ-34, INQ-35 and INQ-36) latterly disclosed by Network Rail do not demonstrate any meaningful alternative sites assessment; these were in the main generated after Network Rail had decided to proceed with acquisition of interests over BPL's land. In any event, and as set out in BPL's response (INQ-33) to the disclosure of these assessments, these demonstrate that use of North Pole Depot has more "pros" and less "cons" than use of BPL's land. Even the "pros" identified in relation to the Horn Lane site are now diminished since Network Rail no longer requires the warehouse. The "pros" in terms of use of BPL's land seem to be limited to it providing an opportunity for a one-year programme saving if Network Rail secures access by September 2024 and has the temporary RRAP operational by January 2025. As BPL made clear in its response, given that the Inquiry into the Order has continued into March 2024, the prospect of access being achieved by September 2024 is now unrealistic. As such there would be no one year programme saving. Based on Network Rail's response to BPL's comments on the risk assessments (INQ-37) BPL contends that the one year programme saving is absolute, i.e. it does not diminish to 11 months if Network Rail

secures access in October 2024 and has the RRAP operational in February 2025.

- 2.38 Beyond that, nothing has been put into evidence which demonstrates any meaningful option assessment process undertaken by Network Rail before the decision was taken to acquire compulsorily interests over BPL's land.
- 2.39 If there was no such objective comparative assessment of alternatives before Network Rail decided to proceed to seek powers over BPL's land then the case for the Order is substantially undermined. It is difficult to see how there can be claimed, let alone found, to be a compelling case to acquire interests and rights over BPL's land unless the decision to do so was properly made, having regard to a meaningful consideration of all alternatives. Anything offered now by Network Rail is plainly after the event and an attempt to address a deficiency in the decision-making process which led to powers within the Order being sought.
- 2.40 The approach to consideration of alternative sites for development when considering whether planning permission (or similar, such as a Development Consent Order) should be given is not applicable to the compulsory purchase field, where the test – a compelling case in the public interest – is very different. It is plain, in the compulsory purchase context, that whether the purpose of acquisition can be met by alternative means is clearly material. The Secretary of State's Statement of Matters in the present case recognises and confirms this. As such, *Mount Cook*, *East Suffolk* and *Stonehenge*, as referred to by Network Rail, which are all planning cases, are not relevant here.
- 2.41 The alternative is that there was indeed the sort of objective assessment of options before it was decided to acquire interests and rights over BPL's land, but Network Rail has not disclosed this. As already submitted, it is clear enough that Network Rail was engaging with the Secretary of State and/or his officials as well as, at the same time, with Agility/Hitachi before it resolved to seek powers over BPL's land. Little of this engagement has been revealed. Network Rail's consultation publication of 10 October 2022 (Appendix 1 of OBJ-8.3.2) refers to "*extensive research*" having been carried out by Network Rail before it identified BPL's land as "*the only suitable area*" for the lineside compound. This is all strongly suggestive that at least some form of optioneering exercise was undertaken by Network Rail before it decided on BPL's land but this has not been disclosed. It is of course the case that BPL has asked repeatedly for disclosure of option assessments since October 2022 but on each occasion that has effectively been declined.
- 2.42 In particular, the absence of a "GRIP 3" report remains unexplained. Network Rail appears to accept that the "GRIP" process was undertaken; a "GRIP 4" "single option development" report has been produced (i.e. the Arcadis report at Appendix L of OBJ-8.4.2). But it has not been satisfactorily explained by Network Rail where/what the "options selection" "GRIP 3" report is, when the next stage of the "GRIP" process was completed.
- 2.43 Most recently, on 1 February 2024, after the roundtable session to consider BPL's formal application for disclosure, Network Rail was asked again to

provide such material or else to confirm that no such material exists. As stated above, Mr David Wilson's response of 5 February 2024 (INQ-52) does not provide an answer to the matters put to it. If Network Rail has in fact carried out an options assessment but has declined to disclose the material associated with it, this too undermines its case for the making of the Order sought.

- 2.44 Turning to the evidence before the Inquiry concerning alternative sites to secure access to the GWML, at the forefront is North Pole Depot, which is located in close proximity, to the east, of BPL's land. The starting point is that (a) it is publicly owned land, the landowner being the Secretary of State, (b) it is operational railway land and (c) it is, like BPL's land, located to the south of the GWML but is closer to the Old Oak Common station works than is BPL's land at Horn Lane. Several opportunities for a temporary RRAP exist, including use of the existing RRAP and compound at Barlby Gardens and use of a site to either the east or west of the Agility/Hitachi depot (Paragraph 2.4 (OBJ-8.4.4) and Appendix T (OBJ-8.4.5)). Mr Fleming confirmed on the site visit that the one to the west was the one he had considered.
- 2.45 It is the case that part of the North Pole Depot is occupied by Agility/Hitachi pursuant to a lease from the Secretary of State. Nothing has been put before the Inquiry concerning any attempt by Network Rail to secure, or even to explore the potential for, the agreement of Agility/Hitachi to site-sharing or to give up occupation of part of the area it leases for use as a RRAP for a temporary or permanent period. There is also no evidence concerning whether the Secretary of State can re-enter (partially or otherwise) under the lease or require Agility/Hitachi to give up possession of any part of the leased area for other railway operations or to allow the area to be used jointly. In any event, and if necessary, the Secretary of State could give consent for compulsory acquisition of part of Agility/Hitachi's leasehold interest under s25 of the Transport and Works Act 1992.
- 2.46 The Inquiry has not seen any written evidence, or heard, from Agility/Hitachi to explain whether, and if so to what extent, there is any overriding impediment to use of part of the land it occupies as a temporary RRAP. If and in so far as Network Rail is seeking to demonstrate that the use of North Pole Depot as a temporary RRAP would interfere unacceptably with the operations of Agility/Hitachi, this omission is surprising.
- 2.47 Moreover, Arcadis, who prepared the "GRIP" 4 report (Appendix L of OBJ-8.4.2) recommended that a temporary RRAP at the Agility/Hitachi part of North Pole Depot and in doing so recognised none of the impediments now advanced by Network Rail to locating a RRAP there.
- 2.48 With regard to locating a RRAP on the west side of North Pole Depot Network Rail's objection seems to include three elements:
- access from the highway network from the south;
 - access within North Pole Depot itself, including crossing the rail lines

which serve the sidings/depot; and

- wider concerns about interference with Agility's/Hitachi's operations.

- 2.49 With regard to the first of these, the evidence has shown that Agility/Hitachi currently access the depot from the east, via Mitre Way and from the west, via Old Oak Common Lane. On the site visit the Agility/Hitachi representative explained that the majority of vehicular traffic comes from the east, but emergency and oversize vehicles come from the west. These access points are used by a range of operational and other vehicles now, without any operational or highway safety difficulties. The evidence of Mr Gent has confirmed that the expected traffic and range of plant, machinery and vehicles required to access a RRAP at the western side of North Pole Depot will be able to use the existing access from Old Oak Common Lane, if required, as well as the Mitre Way access. The swept path analysis carried out by Mr Gent (paragraph 3.30 of OBJ-8.3.1) demonstrates how the Old Oak Common Lane access will be available.
- 2.50 It is the case that there is a height limitation when approaching the access to the depot from Old Oak Common Lane from the north. However, Mr Gent has demonstrated that this will not in practice be an impediment, as the likely direction of traffic will be from the south (A406 North Circular Road).
- 2.51 It has also been demonstrated that the works proposed to lower Old Oak Common Lane will not lead to closure of the access to the depot; access will remain available from the south, with only limited disruption of access from Old Oak Common Lane due to the proposed works likely, spread across a number of years. This has been confirmed by HS2 (INQ-50 and INQ-51). Evidence has been provided in relation to undertakings given to Agility to minimise disruption to their operations at North Pole Depot including in relation to access. Consequently, this access to a RRAP at North Pole Depot from the public highway is plainly available. In any event, the Mitre Way access will remain available as an alternative. Mitre Way was confirmed in the Arcadis report as providing acceptable access in the context of the Barlby Road RRAP (Appendix L of OBJ-8.4.2); the same logically must apply to the suitability of Mitre Way for access to a RRAP to the west of the North Pole Depot.
- 2.52 With regard to movement within North Pole Depot, the Mitre Way underpass has been shown not to be any practical impediment, and as explained on the site visit by the Agility/Hitachi representative a 250t crane (used to lift a substation) which could not come under the Mitre Way underpass simply came in via the west from Old Oak Common Lane without difficulty. Furthermore, if road/rail plant being transported to the RRAP is of a height that cannot be manoeuvred beneath the bridge, then, as Mr Gent has confirmed, this plant is capable of being moved into position using its road mode. As confirmed by the Network Rail operative (who was in charge of the Road Rail Vehicle (RRV) demonstration) on the site visit, the largest RRV vehicles (PKR750 and Superbug) travel under their "own steam" in any event, and not on a low loader.

- 2.53 Network Rail advised (via letter from their solicitors Addleshaw Goddard on 13 November 2023) that in relation to vehicle movements *“on a weekend shift, there will be 5 low loaders arrive on Friday/Saturday to deliver plant to site. These HGVs will leave site after off-loading and then return to either on Sunday or Monday to pick up the plant. Two lorries/flatbeds will also arrive on the weekend in daytime hours to deliver materials. [...] It is also estimated that there will be 1 HGV delivery each midweek day to bring materials to site ahead of a shift.”* Therefore, vehicle movements would not be extensive and most possessions would only occur once a fortnight.
- 2.54 The concern of Network Rail about the interface of RRAP traffic with vehicle movements (and principally employee vehicle movements) on the road within North Pole Depot has not been substantiated. Mr Gent has confirmed that, within the Agility/Hitachi depot, there are existing level crossing points over the depot lines, which are presently in use and which would be available to use by any vehicles accessing a RRAP, whether HGVs or RRVs; the eastern level crossing is equipped with flashing lights, half-barriers and road markings; the western crossing with road signals and markings (paragraph 2.4(d) and Figs 1 and 2 of OBJ-8.4.4). If it were required, the use of those crossings by vehicles accessing the RRAP would be scheduled with the operators of the depot, but the necessity for this, given these are existing crossings which operate satisfactorily would seem doubtful.
- 2.55 Mr Fleming (for Network Rail) also confirmed in evidence that management procedures could be put in place, but he viewed having to cross the level crossing as creating possible delay and risk. The need for RRVs to cross the depot lines can be addressed by that plant being transported over the lines by HGV/transporter and unloaded on the north side. Network Rail’s point about the depot lines being electrified from above and that this may affect some RRAP traffic is addressed by the capacity to switch off electrification in that location; in that existing rail traffic into and out of the depot travel under diesel power no disruption is to be expected. A train was seen arriving under diesel power on the site visit and the Agility/Hitachi representative confirmed that they stored 300,000 litres of diesel on site. A range of plant and machinery crosses the depot lines now without any evidence of problems arising. There is ample space for any working compound required in association with a RRAP at the west of the North Pole Depot.
- 2.56 In terms of an unacceptable interface with Agility/Hitachi’s operation as alleged by Network Rail, this has not been substantiated by the evidence from Network Rail nor from Agility/Hitachi. The point about overhead line equipment and electrification and how it can be addressed is covered above. It was demonstrated on the site visit where the vehicle turning area was, and it was confirmed that this was under marshal control. Whilst the internal road within North Pole Depot is also used for parking, the peak parking demand is at shift changeover which would not obviously conflict with Network Rail’s proposed usual possession times. In any event, Barlby Gardens (where minibuses are to start and finish as referred to above) is even closer to North Pole Depot than Horn Lane.
- 2.57 Network Rail’s case that BPL’s land is required for a temporary RRAP to meet the programme for the GWML Systems Project proceeds on the assumption

that possession will be taken of BPL's land by September 2024 with the temporary RRAP operational in January 2025. However, given it is now March 2024 and the Inquiry into the Order has not thus far closed, the prospect of this being achieved is unlikely. There remain several stages of the process to be completed before a decision is taken on the application. When account is taken of the potential for a legal challenge, if the application is allowed, this makes entry onto BPL's land by September 2024 even less likely, unless Network Rail proceeded at risk whilst an Order was under legal challenge and before the challenge was disposed of; the Court of course has powers to preclude this. Consequently this reason for the temporary RRAP to be located on BPL's land should be discounted.

- 2.58 As such, in spite of the absence of evidence of any objective assessment of alternatives before Network Rail decided to seek powers over BPL's land at Horn Lane, the justification for rejecting the most obvious of those alternatives, namely provision of a RRAP at the western side of North Pole Depot has not been substantiated. The land is owned by the Secretary of State and is operational railway land. It is located closer to the site of the new Old Oak Common station, which is the destination of RRVs needing to use the temporary RRAP than is BPL's land. It is a suitable and available alternative and Network Rail has demonstrably failed to show why it should not be considered to be such.
- 2.59 In terms of the permanent RRAP and the intended ad hoc use of this for maintenance, once HS2's works are complete there will be no restrictions on accessing North Pole Depot via Old Oak Common Lane, and use of the level crossings can be managed, with use in accordance with already established procedures or as agreed with Agility/Hitachi. No evidence has been given as to how ad hoc use of a permanent RRAP at North Pole Depot would interfere with Agility/Hitachi operations.
- 2.60 Consequently it cannot be concluded that there is a compelling case in the public interest to take BPL's land for either a temporary or permanent RRAP given that an alternative location, on publicly owned operational railway land exists and is both suitable and available to meet the purposes of a new temporary RRAP for the purposes of the GWML Systems Project. It should also be noted (INQ-33 and INQ-37) that access has been negotiated in principle between HS2 and Agility/Hitachi for access to the 'brownfield site' via North Pole Depot post-Christmas 2026. Whilst there are no details as to these access arrangements, it is clear that there is no in principle objection to rail access being taken by others to the GWML from the south via North Pole Depot.
- 2.61 If, however, and contrary to the submission above, the Inspector and/or the Secretary of State were to conclude that a temporary RRAP is required on BPL's land, it is submitted that the extent of the workspace and the compound which Network Rail seeks to secure via rights of temporary possession is not necessary. Network Rail is seeking to acquire an adjoining parcel of land – the Triangle land (plot 1) – as a site for a permanent RRAP. The land is vested in the Crown as bona vacantia and as matters stand Network Rail neither owns nor controls that land and the Crown Estate Commissioners have confirmed that they are not prepared to engage with

Network Rail until the outcome of this Order is known. The Commissioners have not committed to a transfer of the Triangle land to Network Rail.

2.62 Nonetheless, Network Rail is, it would seem, confident that it will acquire the Triangle land and asks the Secretary of State to allow its application for a permanent right of access over BPL's land. Network Rail cannot have it both ways and, on the basis of its confidence that the Triangle land will be available to it, there is no evidence at all to demonstrate why this land could not be used to accommodate at least some of the working compound required in association with the temporary RRAP, thereby reducing the need to take land temporarily from BPL. Network Rail's evidence is that there would need to be some vegetation removal and levelling of the Triangle land so that it could be used. This rather suggests that once these works were complete that it could be used for some of the parking, laydown or welfare cabins that Network Rail seek to use BPL's land for in the temporary situation. As such, on Network Rail's own case, the extent of working compound required to be taken has not been shown to be necessary and is excessive.

2.63 Moreover, in respect of the use of the Triangle land, Network Rail have confirmed that the electrical isolation works that it contends prevent the use of the Triangle land for a temporary RRAP are works that need to be done in any event for the permanent RRAP, and are works that would take 100 hours to complete. This also undermines Network Rail's position that BPL's land at Horn Lane is the only suitable location for a temporary RRAP.

The permanent right sought over BPL's land to access a permanent RRAP on the adjoining Triangle land – a compelling case in the public interest?

2.64 The permanent right that Network Rail seeks is to access (plot 3 on the Revised Order plan) a proposed permanent RRAP on the adjoining Triangle land (plot 1). Network Rail does not own or have any right over the Triangle land, nor indeed is there any agreement in place with the Crown Estate Commissioners. As such, there is a current factual impediment (ie Network Rail does not own the Triangle land) and a legal impediment (ie it needs the Commissioners to sell the Triangle land to it) to be overcome before there is any basis to take the permanent right sought over BPL's land. Given the lack of any commitment on the part of the Commissioners to sell the land to Network Rail (and there is another party seeking to acquire that land) there is no compelling case in the public interest for Network Rail to be granted a permanent right over BPL's land. Indeed, were the position to be otherwise, there would be a right granted to Network Rail to access land which it does not own and has no power to acquire; Network Rail cannot acquire compulsorily land held by the Crown. Therefore, there is no compelling case for a permanent right over plot 3 to be given in the current circumstances.

2.65 With regard to the modified form of Article 6(1) of the Revised Order, the proviso that the power given to Network Rail, by Article 6(2), to take a permanent right of access over plot 3, is not to take effect until "*Network Rail has acquired such an interest in plot 1 as necessary to allow the purpose set out in column (3) of Schedule (1) ... to be achieved*" is wholly insufficient to answer the point of objection that BPL has made. First, it is not stated what

“interest” will be sufficient to satisfy Article 6(1), who is to arbitrate this, and how visibility and transparency will be provided to the public and BPL in particular should such an “interest” be acquired; on its face, a temporary or otherwise time limited right to provide a RRAP on plot 1 for a limited period would be enough to meet the proviso. However, the right sought over plot 3 is a permanent right. As such, that can only be justified if Network Rail takes a permanent interest, that is freehold ownership or the equivalent (e.g. a 999-year lease) over the Triangle land. Anything less would result in the extent of the permanent right sought over BPL’s land being excessive.

2.66 Moreover, and separate to that, it is unacceptable that Network Rail is given the absolute discretion as to what “interest” is sufficient to meet the Article 6(2) proviso. Therefore, if, notwithstanding what is set out above, the Secretary of State concludes that a compelling case exists for Network Rail to be given a permanent right over plot 3, it is necessary for the Revised Order to be modified to ensure that this right is only taken if or when Network Rail secures ownership, or the equivalent, of the Triangle land, (plot 1).

2.67 As referred to above, Network Rail has not presented a compelling case as to why North Pole Depot is not an appropriate location for the permanent RRAP and, indeed, HS2 appear to have agreed, in principle, access to the ‘brownfield site’ via the depot land post-Christmas 2026. Network Rail has not suggested that access to the ‘brownfield site’ via North Pole Depot will not be available; they simply state that “*full details*” of the access arrangements between HS2 and Agility/Hitachi “*have not yet been agreed*”. Network Rail also state that access to a ‘brownfield site’ is not comparable to possession-based working, but they have not stated why, and have provided no evidence that access to the ‘brownfield site’ will not require manpower, machinery, laydown of materials, RRVs and all the matters referred to as being required in connection with a permanent RRAP.

2.68 More generally, Mr Gent gave evidence that the existing permanent RRAP at Barlby Gardens, together with a new permanent RRAP on the west side of North Pole Depot, in the location which is available for a temporary RRAP, would meet the need for further permanent access to the railway for RRVs. With this provision, a permanent RRAP on the Triangle land or elsewhere would not be needed. This remained Mr Gent’s evidence and Network Rail has not provided any substantive or satisfactory answer to this. Consequently, no compelling case in the public interest for access over BPL’s land to a new RRAP on the Triangle land (plot 1) has been shown.

The Application for a Direction of Deemed Planning Permission – s90(2A) of the Town and Country Planning Act 1990

2.69 The temporary RRAP proposed to be located on BPL’s land will include a works compound. That is to be located adjacent to a block of residential properties, namely Acton House. It is inevitable that the use of the temporary RRAP and associated works compound will generate noise and involve the use of artificial light during night-time working, as well as generating emissions from plant and machinery. This impact will be cumulative with the consequences of Network Rail’s use of the area on a site-sharing basis. However, Network Rail has produced no assessment of these

matters, including the noise profile of loading and unloading RRVs as seen on the site visit, nor of their impact on the amenity of residents of Acton House or elsewhere.

- 2.70 As such, and contrary to development plan and national planning policy and guidance (paragraphs 4.2 - 4.36 of OBJ-8.5.1) these impacts cannot be assessed, nor can the Inspector or the Secretary of State be satisfied that the impacts will be acceptable or acceptably controlled (including with reference to the combined impacts arising from Network Rail's operations together with an operational builders' depot, a scenario which was not proposed until day one of the Inquiry). The refusal of Network Rail to produce the type of assessment which is required of most other noise-generating development, whether permanent or temporary, is mystifying and concerning. It is plainly wrong to suggest that such assessments are not required for temporary works and nothing in planning policy suggests as much.
- 2.71 In the absence of any assessment of noise, lighting and air quality impacts it is not possible reasonably to conclude that the impact in planning terms of what is proposed is acceptable. Likewise, it is impossible to conclude the extent to which planning policy at all levels which seeks to protect amenity is met.
- 2.72 That it is proposed to attach conditions to any deemed planning permission to require the submission of an Environmental Management Plan is no answer to the point. To require, as proposed condition 5 does, for example, measures to control noise and vibration (having regard to BS 5223-1:2009+A1:2014) cannot and will not be effective as an environmental control unless it is established before planning permission is given or deemed to be given what the likely noise and vibration effects are and the extent to which these can be controlled by measures anticipated by the condition but yet to be identified. And, as a matter of law, if at the stage that condition 5 is to be discharged, it is revealed that the noise levels generated by the proposals are such that measures of the sort envisaged by condition 5 will not and cannot reduce noise to an acceptable level, it is then too late to remedy this. The Local Planning Authority cannot refuse to discharge condition 5 or otherwise stop the development if it is shown that no effective or practical mitigation is possible.
- 2.73 Thus, to effectively kick the can down the road, is not a sufficient or acceptable basis to grant planning permission. Local residents deserve to know that their amenity will be protected. Ms Kustza gave evidence that her amenity has not been protected and was awoken on Christmas Day by rail-side noise, with Network Rail's complaints team having, in her view, inadequately dealt with her concerns.
- 2.74 Consequently, there is not a sufficient evidence base to grant the deemed application for planning permission in this case.

The Draft Order and the Undertaking

- 2.75 Network Rail has accepted that it does not require exclusive occupation of all the Order land over which it seeks temporary rights of possession. Given the

limited occasions on which access is required to the GWML that Network Rail now accepts, in principle at least, site-sharing is unsurprising. However, the terms of the Revised Order and the unilateral undertaking mean that the powers sought still exceed that which Network Rail needs to secure access to the railway.

2.76 Importantly, BPL does not accept that it is necessary or appropriate for site-sharing to be provided in a unilateral undertaking rather than in the Revised Order itself. There is nothing in principle which precludes provision for site-sharing being included in an order made under the Transport and Works Act 1992; the model clauses are just that and are capable of being adapted. As matters stand, Article 7 of the Order, which provides for powers of temporary possession, exceeds that which is necessary for Network Rail's purposes in that it does not provide or even make reference to site-sharing. Thus, the powers sought by the Revised Order exceed what is necessary, on Network Rail's own case. A unilateral undertaking, enforceable only in private law by BPL, is not an appropriate remedy for the Revised Order taking powers which are excessive.

2.77 In addition the Revised Order does not make it clear that the "*associated development*" is located outside of the Order limits. This is an important clarification, and an amendment should be made to the definition of "*associated development*" to make this clear, particularly as Article 3 is entitled "*Power to use and execute temporary works on land within the Order limits*" which the Article concludes with the words "*for the purposes of the construction of the associated development*".

2.78 The rights sought in Article 2(2) are circumscribed by the rights in Article 6. It is therefore important that a cross reference is inserted into Article 2(2) to refer to Article 6. Nonetheless, the rights sought in Article 2(2) are too wide ranging - ie to "*do, or to place and maintain, anything in, on or under land or in the air-space above its surface*". No evidence has been given in relation to such rights. Network Rail states that exercise of the Article 2(2) rights would need to be consistent with the exercise of the Article 6 right. Whilst this might be accurate it would not prevent Network Rail from lawfully exercising its right to place an unreasonable restriction on BPL's development or business. For example, Network Rail could seek to place signage on Plot 3 (eg advising drivers to only travel at 5mph). This would be consistent with the right sought, but if that signage was placed so that it obstructed the emergency residential egress, or obstructed the loading bay doors then it would prevent BPL's use of the development and its only recourse would be compensation. Therefore, there is no compelling case for the grant of these rights and Article 2(2) should be modified to refer only to the rights that Network Rail needs, or else should be deleted.

2.79 Article 7(1)(c) seeks the construction of temporary works including the provision of a means of access. Network Rail has now clarified that these are references to the works referred to in the deemed planning application and the "*means of access*" refers to the gate that is also referred to in the application. That being the case, Article 7(1)(c) should be deleted or else amended to refer to the rights that Network Rail needs. Otherwise this article is too widely drawn, unclear, and there is no compelling case for it.

2.80 Articles 9(1) and 9(2) seek to extinguish rights inconsistent with Network Rail's right of access in Article 6, or suspend such rights (so that it can effectively achieve exclusive use of the site) when it is in temporary possession. Once BPL's new development is constructed a variety of new rights will be created with the right to use plot 3. There is no mechanism for deciding what if any of these rights are considered "inconsistent" with Network Rail's right of access, and it has stated that its access must be "unimpeded". Network Rail could argue that any manoeuvring or parking of any vehicle, save their own, on Plot 3 impedes its access if such parking/manoeuvring occurred when Network Rail wished to take access. This could render the development unoccupiable, unfundable and risks discriminating against blue badge holders with parking spaces accessed off plot 3. It is accepted that during a railway possession and for 4 hours before and 1 hr 15 mins after such possession that Network Rail need to maintain a secure area and that rights should be suspended during that period. This is what the undertaking provides for. Articles 9(1) and 9(2) should therefore be amended to make it clear that BPL's users' rights of access relating to the new development will not be extinguished, and the power to suspend rights is limited to the possession period as defined in the undertaking.

The aims and objectives of, and the need for, the project to provide a temporary and permanent road rail vehicle access point on to the GWML

2.81 BPL does not dispute the need for temporary access to the GWML from the south for the purposes of the GWML Systems Project. As such the need for a RRAP to access the main line from the south is not dispute. It is the need for that access to be taken from BPL's land and the need for a new RRAP for those purposes that is disputed.

2.82 With regard the permanent RRAP on the Triangle land (plot 1), powers necessary to deliver that RRAP are not sought through this Order, save for a permanent right of access over BPL's land to it. Since, as matters stand, Network Rail does not own and has no power to acquire the Triangle land from the Crown Estate Commissioners, BPL does not accept that there is a need for nor indeed any reasonable basis to take the permanent right sought over BPL's land, whatever the need for a new permanent RRAP on the southside of the GWML may be. The correct procedure would be for Network Rail to acquire the Triangle land first and seek by agreement a right of access with BPL over its land at Horn Lane, or in default of agreement seek compulsory powers.

The main alternative options considered by Network Rail and the reasons for choosing the Scheme

2.83 It is plain that, on the basis of the evidence produced to this Inquiry by Network Rail and the material that it has disclosed, no proper objective assessment of alternatives was carried out before it decided to locate a temporary RRAP on BPL's land at Horn Lane and a permanent RRAP on an adjoining parcel (albeit it has no power to deliver this). This represents a fundamental failing which goes directly to whether there is a compelling case in the public interest for Network Rail to be given the powers it now seeks. Moreover, on the basis of the evidence before the Inquiry, there is an

alternative location for the temporary and permanent RRAP; that is on the North Pole Depot site.

- 2.84 That site is owned by the Secretary of State for Transport and is operational railway land. Part of it is leased to Agility/Hitachi, who have not given evidence to the Inquiry to justify why a part of the land that they occupy could not be used to accommodate a RRAP. On all the evidence before the Inquiry there is no impediment to a temporary or permanent RRAP being located there, in particular to the west of the North Pole Depot. The terms of the lease to Agility/Hitachi and the scope for the land that they occupy to be used (jointly or otherwise) for other railway operations has not been addressed by Network Rail; there is also no evidence of the powers of the Secretary of State to re-enter, partially or otherwise, under the lease. Given that North Pole Depot is in public ownership, compulsory acquisition would be unlikely to be necessary; if it were to be necessary then the Secretary of State has powers to consent to this under s25 of the Transport and Works Act 1992.
- 2.85 Consequently, there are alternative means to deliver access to the railway which do not involve acquisition of rights and powers over BPL's land, and which would therefore avoid the substantial and adverse interference with BPL's operation and future development proposals which Network Rail's proposed powers would generate.

The likely impact of the Scheme on local businesses and residents during construction and operation

- 2.86 The impact on BPL of the powers sought and the continued use of its warehouse as a builders' merchant by STARK or BPL has been described in evidence and summarised above, as has the effect on the implementation of BPL's redevelopment of the site, which has been given planning permission. The builders' depot at Horn Lane is an important local business and resource. Mr Aaronson's evidence is that its main customers are local tradespersons.
- 2.87 In terms of the impact on the environment and through noise, light and on air quality these have not been assessed by Network Rail who, notwithstanding what is set out in BPL's statement of case, has not commissioned any assessment of these effects. Given that the proposed temporary RRAP and its associated works compound will be directly adjacent to Acton House, this is a serious omission. As such, the Secretary of State is not in a position to consider or to reach a conclusion on the range of impacts set out in this matter, and in particular the effect on neighbouring residential amenity. And, as a consequence, he is not able to consider the extent to which what is proposed by Network Rail would conform with planning policy which is concerned with protection of amenity and control of environmental impacts.
- 2.88 In relation to impacts on access, Network Rail's evidence confirmed that access to BPL's site by low loaders would be under marshal control. For forward manoeuvres, this would require temporary stopping of traffic on one carriageway of Horn Lane, and for reverse manoeuvres, stopping traffic on both carriageways. Horn Lane is a busy Transport for London road network route. Additionally INQ-42 identifies that, although Friary Road can be used

for the purposes of the project to access Horn Lane, night-time, weekend and public holiday noise pollution is likely to be caused by Network Rail's vehicles on residential roads which is an important consideration for the Inspector and Secretary of State.

Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the Department for Levelling Up, Housing and Communities Guidance on the "Compulsory purchase process and the Crichel Down Rules" published July 2019:

- a) whether all the land and rights over land which Network Rail has applied for is necessary to implement the Scheme*
- b) whether there are likely to be any impediments to Network Rail implementing the Scheme, particularly including the availability of funding.*
- c) whether there is a compelling case in the public interest to justify conferring on Network Rail the powers to compulsorily acquire and use land for the purposes set out in the Order*
- d) whether the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected (having due regard to Human Rights Act)*

2.89 BPL considers that the temporary possession sought of its land is not necessary to secure a temporary RRAP as part of the GWML Systems Project. An alternative, which uses operational railway land in public ownership exists and is suitable and deliverable, namely, to locate the temporary RRAP at North Pole Depot.

2.90 The same applies to the permanent right sought to access the Triangle land. Network Rail has no right to deliver a permanent RRAP on the Triangle land. As such, it cannot be the case that it is necessary to secure a right over BPL's land. That Network Rail does not own the Triangle land and the fact that there is no commitment given by the Crown Estates Commissioners to transfer the land to it, is a clear impediment to the implementation and delivery of a permanent RRAP on the Triangle land and thus to the need and justification for taking a permanent right over BPL's land. That right is, as matters stand, a right of access to nowhere. The contingency included at Article 6(2) of the draft Order does not answer this point and, as a matter of principle, it is not reasonable or proportionate to expose BPL to the contingent exercise of a power to acquire by compulsion a right over its land which the mechanism within Article 6(2) seeks to do.

2.91 In any event, BPL considers that the existing RRAP at Barlby Gardens, together with a new permanent RRAP at North Pole Depot can be delivered using publicly owned operational railway land. A permanent RRAP on the Triangle land is not necessary and thus a permanent right over BPL's land to access it is not necessary either.

2.92 As such and for the additional reasons set out above, and in BPL's evidence to the Inquiry, there is no compelling case in the public interest for Network Rail to be given the powers that it seeks. For the same reason, those powers

represent an unjustified interference with BPL's Convention Right, its rights under Article 1 of Protocol 1 to the European Convention on Human Rights. To grant the rights and powers sought would be a breach of those rights, disproportionate and, thus, unlawful.

An update on the current position in relation to Crown Land

2.93 The position in respect of the Triangle land, which is Crown Land, remains unchanged. Network Rail does not own it, has no powers over it and nor does it have the benefit of any commitment to have that land transfer to it. As such Network Rail cannot deliver the permanent RRAP which the permanent right over plot 3 within BPL's land seeks to access. This represents an impediment to the delivery of the scheme for which the permanent right over BPL's land is claimed by Network Rail to be needed.

The conditions proposed to be attached to the deemed planning permission and their suitability

2.94 BPL's views on the conditions which it is suggested should be attached to any deemed planning permission are set out in Inquiry document INQ-29.

Whether all statutory procedural requirements have been complied with

2.95 BPL makes no submissions in respect of this matter.

Overall Conclusion

2.96 For the reasons given and on the basis of the totality of the evidence, Network Rail has not made out its case to be given the powers it seeks. There is no compelling case in the public interest to acquire powers, neither temporary nor permanent, over BPL's land at Horn Lane. The application should be dismissed. Therefore the Secretary of State is requested to do so.

Anna Kuszta

2.97 Ms Kuszta objects to the scheme based on its impacts on local residents of whom she is one. She has lived in the area for 19 years, raising her children and she works locally in the field of education.

2.98 She is concerned about the noise, light pollution, intrusion and loss of privacy that local residents would experience during construction and operation of the scheme. In the past she has had to make a number of complaints to Network Rail about the noise caused by, and the impacts on safety and vegetation of, Network Rail's operations in the area. There has also been a lack of notification about intended operations. The scheme would increase the amount of railway-related activity in the vicinity and would bring it closer to her home, particularly in relation to the proposed permanent RRAP on plot 1, which adjoins her garden. She is concerned at the lack of detail about possible mitigation measures (eg acoustic fencing) and possible impacts on the structure of her property.

- 2.99 She believes noise and intrusion from the scheme, and the nearby railway more generally, will be exacerbated by the removal of trees and vegetation on plot 1. This will also have an adverse effect on biodiversity.
- 2.100 She also questions the validity of the consultation process given that the documents included complex legal phrasing and jargon and that there are elderly and disabled residents in the area and people for whom English is not their first language.
- 2.101 Although it is not a matter which is of direct relevance to consideration of the Order, Ms Kuszta also raises concern about the fairness of who would be and would not be eligible for compensation and the process by which the potential sale of Plot 1 has been carried out.

STARK Building Materials UK Ltd

- 2.102 STARK (trading as Jewson) has traded successfully from the site of the Order and scheme since 2000, and as Jewson since 2011 providing building supplies to both the trade and public, together with small plant hire. The site provides full time employment for 15 people.
- 2.103 Proposals for the construction of the Old Oak Common section of HS2 are rooted in The High-Speed Rail (London-West Midlands) Act 2017. It is thus a matter of fact that the evidence cited by Network Rail in justification of the use of powers of compulsory purchase are rooted in historic policy, statistics, market evidence, law and regulation and that the raising of this Order is to rectify a perceived design omission despite the fact that the design has not been finalised or frozen and the wider delivery of HS2 is fundamentally reviewed at regular intervals.
- 2.104 Network Rail has provided little or inadequate detail in support of their contention that there is no viable alternative point of access from road to the rail corridor. It is contended that there are a number of alternative options which, if Network Rail were not trying to promote two separate projects (the construction of Old Oak Common station and ongoing track renewal), would satisfy its needs without necessitating the extinguishment of an established business providing a local amenity and employment.
- 2.105 There is no study prepared in a post-pandemic world to demonstrate that there is demand from rail users which justifies the preservation of track availability/capacity to the extent asserted in Network Rail's evidence (CD03, paragraph 2.2). It is fact that journey numbers on Mondays and Fridays have not returned to pre-pandemic levels reducing demand for rail capacity and increasing the opportunity for track maintenance.
- 2.106 Network Rail has not demonstrated that there is an essential need for the facility which it seeks to create as a consequence of the use of powers of compulsory purchase or that the works could not be phased, removing the necessity for the extinguishment of STARK's business and use of power of compulsory purchase.
- 2.107 It is unclear from Network Rail's evidence what adverse impact the compulsory acquisition of the interests will have in terms of loss of

employment. Plots 2, 3 and 4 are used for both a business and as amenity to residential use. There is no evidence at this stage that Network Rail has properly considered the occupiers' rights in terms of a home (Article 8) and right to peaceful enjoyment of possession, including businesses (Article 1 of the First Protocol).

- 2.108 In CD06 (paragraphs 2.31 to 2.34) Network Rail advises that it has been unable to secure acquisition of plot 1 and that the land title has reverted to the Crown. The powers provided by the Order, were it to be confirmed, do not extend to land owned by the Crown and there is no certainty that the scheme could be delivered as Network Rail will not have powers to assemble all land and rights necessary to deliver the scheme.
- 2.109 The temporary acquisition of plots 2, 3 and 4, for a period of 6 years and 6 months, would give rise to the extinguishment of STARK's business (ie the Jewson builders' merchant) due to a lack of suitable relocation opportunities resulting in loss of amenity and employment in the area.
- 2.110 The London logistics hub is described on the HS2 website as "*a colossal logistics operation is taking place at HS2's logistic hub near Willesden Junction. The 30-acre site will be the beating heart of the logistics operation for HS2 in London*". It is worthy of note that the Willesden Logistics Hub lies on the east side less than 1km from the Old Oak Common station construction site. This raises the question why does Network Rail require a further logistics hub on STARK's land which lies to the west side of the station site some 1.9km by rail?
- 2.111 The Order land lies to the west side of Acton Main Line station and, thus, the use of this land as a supply point will result in material and plant passing through the Acton Main Line station platform area increasing congestion and heightening safety risk.
- 2.112 The following potential locations for the RRAP should be investigated further in the context of phased working and better use of the Willesden Junction logistics hub: a) Land to the east of the North Pole storage depot where there is a private access into North Pole depot from Mitre Way and the A219. b) Access at the north end of the Big Yellow Storage Box. c) Access off Old Oak Common Lane at the west end of the freight siding. d) Land to the west of Dean Court, 1 Friary Road. e) Access through the car wash builders' yard to the west of 239 Horn Lane.
- 2.113 NR04 paragraph 5.2 sets out an unproven assumption that "*any RRAP must be located to the west of the existing North Pole Depot*". There appears to be no evidence in support of the assumption that an engineered solution to any disruption of the North Pole Depot could not be achieved if the RRAP was introduced in or east of the North Pole Depot.
- 2.114 Network Rail estimates the costs of land acquisition (CD05) at £10,980,270, based on market value. In fact, the compensation due to STARK should be by reference to the Land Compensation Act 1961 Section 5(6), Business Losses, not Section 5(2), Market Value. Consequently, STARK questions whether the scheme has adequate funding and therefore whether the scheme is capable of delivery.

- 2.115 CD06 states that Network Rail has been in contact with STARK's agent, Sanderson Weatherall, since July 2020. This is incorrect, the first communication received by Sanderson Weatherall from Network Rail took place in July 2021. There have been 35 separate communications between the parties since July 2021.
- 2.116 STARK asserts that it has security of tenure under the provisions of the Landlord and Tenant Act 1954 and has a legal right to renew its lease in April 2025. [Inspector's Note: during the course of the Inquiry STARK agreed to surrender its lease from 1 October 2024.] Network Rail has, since July 2021, maintained periodic contact with STARK's agents but has not made an offer of compensation or sought to acquire STARK's interest by agreement.
- 2.117 Network Rail has assumed that STARK's landlord would resist its application for lease renewal on the grounds of a hypothetical residential development scheme for which planning permission has not been granted and in making this assumption Network Rail is promoting a cap on compensation limited to the statutory formula contained in the Landlord and Tenant Act 1954.

Mark Aston

- 2.118 Mr Aston objects to the scheme on the basis of the potential reduction in his property's sale or rental value. This would arise from the increase in noise, light and pollution day and night over 6.5 years, caused by the increase in HGV movements to and from the proposed site to the rear of his property located within Acton House. The right of access to the residents' parking at the rear of this property would also appear to be obstructed by the proposed new entrance to the logistics site.
- 2.119 Horn Lane is already a busy road subject to frequent traffic congestion and queuing traffic; the scheme will just make matters worse. The PM 2.5 pollution levels already often exceed the safe recommendations. Ealing Council's long term plans for the proposed site were for residential properties which will now be delayed or cancelled.
- 2.120 Network Rail already has the possibility of much closer access to the Old Oak HS2 work site at North Pole Depot which is not adjacent to residential properties. Therefore, this proposed site would appear to be unnecessary.

Shaukat Khan and Brett Coventry

- 2.121 They object on the basis of the partial loss of access to the rear of Acton House and also the anticipated high volume of HGV movements day and night for 6.5 years.

Myron Kuszta

- 2.122 As a resident of Acton, who will be directly affected, Mr Kuszta vehemently believes that the proposal will negatively impact Actonians in all areas of working and home life.

Nadia Thompson

2.123 Ms Thompson (who had been unable to comment at the time of the original consultation on the Order) responded to the December 2023 – January 2024 consultation on the Revised Order. She believes that she is the resident of Acton House who will be most affected by the round-the-clock comings and goings of the work by both Network Rail and BPL, which she considers would be a two-pronged attack on her fresh air and peace and quiet.

3 THE CASE FOR NETWORK RAIL

The Proposals enabled by the Revised Order

- 3.1 The single Order that Network Rail is promoting is concerned with two proposals.
- 3.2 As Mr Fleming explained in his evidence, the first proposal comprises the delivery of a temporary RRV access point (the temporary RRAP), together with an associated access compound, on land at Horn Lane, Acton, which is currently being used as part of a builders' merchants (the Jewson Depot). This RRAP/compound facility is required in order to effect works to the GWML pursuant to a wider scheme of works known as the GWML Rail Systems Project. The Systems Project is required in order to deliver changes to the GWML in connection with Old Oak Common station being constructed to serve trains on the GWML. Old Oak Common station will sit alongside a further new station, to be constructed as the (temporary) London terminus of HS2.
- 3.3 As Mr Fleming also explained, the second proposal comprises the delivery of a permanent RRAP on land immediately to the west of the Order land (the Triangle land). The purpose of the permanent RRAP is to make good an existing deficiency in maintenance provision of the GWML, by providing access for RRVs to the two, southern, 'main' lines of the GWML in this location. Access to the permanent RRAP will require the acquisition of a permanent easement (right of access) across the Order land, this being identified as Plot 3 for the purposes of the Order.

Revisions to the Order

- 3.4 The Order as originally submitted has been the subject of a number of revisions. Some of these were notified shortly prior to (and at the outset of) the Inquiry; others have been confirmed during the course of proceedings. In combination they represent a revised form of the Order. In light of concerns raised by the Inspector, the Revised Order has been subject to a further round of consultation (in addition to that originally undertaken in connection with the Order as originally submitted), so that all parties have had the opportunity to comment not only on the 'original' Order but the Revised Order also.
- 3.5 Insofar as some of the revisions are more substantive (as opposed to being entirely cosmetic), those revisions have been effected with a view to accommodating concerns raised by BPL in respect of the impact of the Order on its use of the Jewson Depot. In particular in this regard whilst Network Rail would have strongly preferred, for operational reasons, to take possession of the entirety of the Jewson Depot for the purposes of the temporary RRAP and compound, it has sought to revise the Order in such a way as provides for the absolute minimum of powers/land-take sufficient for Network Rail to deliver the first proposal. In particular, it no longer seeks powers over the footprint of the warehouse within the Jewson Depot, and has identified areas within the depot where it is prepared to 'share' occupation with BPL and/or any party the latter may licence.

- 3.6 During the course of the Inquiry, Network Rail was subject to criticism for the amendments it was proposing to the Order. For the avoidance of doubt, all such criticism is strongly rejected. As Mr Sinclair explained in cross-examination, Network Rail has been engaging with BPL for a period of years (since June 2021), and over a period of several months specifically regarding site-sharing and its changing requirements in respect of the Jewson Depot. Such discussions continued up to the eve of the Inquiry and beyond. It is in that context, and consistent with its responsible attitude in seeking to co-exist with affected landowners, that Network Rail has determined to effect revisions, so as to produce the Revised Order.
- 3.7 In terms of BPL's contention that the Secretary of State for Transport should not determine the application for the Order, Network Rail considers that the rhetoric adopted by counsel for BPL was not appropriate; rather it was alarmist and unjustified. Secondly, the documentation relied upon by BPL in support of its argument in this respect is both limited and dated.
- 3.8 Thirdly, neither the Secretary of State nor anyone else has given any indication that would suggest a predetermination of the decision whether or not to make the Order; rather, the only discussion has been as regards the suitability of a site within the North Pole Depot as a potential alternative.
- 3.9 Fourthly, it is in no way unusual or improper that DfT were involved at an earlier stage of proceedings, given the public ownership of the North Pole Depot. Such involvement was not inappropriate and does not prevent the Secretary of State from determining the application.
- 3.10 Fifthly, insofar as an indication was given by DfT personnel in relation to the North Pole Depot and the suitability (or otherwise) as to the location for the temporary RRAP, or of the Secretary of State's view of that issue, such indication would certainly not have been a predetermination, but would instead only have been an indication of a predisposition, which 'provisional view' is entirely lawful, and would not render the Secretary of State's determination of the application unlawful.
- 3.11 Sixthly, ultimately it will be a matter for the Secretary of State to decide whether he can approach determination of the application with an open mind and can, thus, lawfully determine the application.
- 3.12 Finally, it should be noted that, in determining whether or not the facts relating to a particular decision give rise to the "appearance of bias", a court will have regard to all circumstances which would be known by the public by the time of the court's decision. Specifically, the court will not focus on the particular factor/circumstance which is said to give rise to the appearance of bias, but will instead look at all matters which would be known to the 'man on the Clapham omnibus'; this proposition has been well established by a line of caselaw that came after the decision in *Porter v Magill*.

Objections to the Revised Order

- 3.13 Some 180 parties were consulted about the Order as originally promoted. Those same parties were also re-consulted regarding the Revised Order. In addition, prior to the Inquiry, at the Inspector's request, other parties were

formally consulted pursuant to Schedules 5 and 6 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. These included the Local Highway Authority, the Mayor of London, His Majesty's Railway Inspectorate and the Fire and Rescue Service. All these parties were also re-consulted in respect of the Revised Order. Such consultation is in addition to the two public events held in the locality to promote public notification and understanding of the project.

3.14 Notwithstanding those various exercises – the original consultation, the bespoke consultation requested by the Inspector prior to the Inquiry, and also the further consultation on the Revised Order – the number of parties objecting to the Order has, at all times, remained very small. No statutory body – none of those cited above, and in particular neither the Local Highway Authority nor Transport for London – has objected. Instead, the only objectors have been the landlord (BPL) and tenant (STARK) of the Jewson Depot, together with seven local residents. Of these local resident objections, six were made at the 'original' objection/consultation stage. Two have since withdrawn their objections, so that only four remain live (of these four, one is that of Ms Kuszta, and another is that of Mr Kuszta).

3.15 The further resident objection was elicited by the most recent consultation; it is from Ms Nadia Thompson, also of Acton House. As is evident from the correspondence generated with Ms Thompson, it is clear that a significant part of her objection is not in fact concerned with Network Rail or its proposals, but instead with "*property developers*" such as BPL.

Context for consideration of the Revised Order

3.16 Before turning to the substance of the disputes between Network Rail and the other parties, it is first appropriate to identify certain matters which are advanced by Network Rail, and which are not disputed by any parties objecting to the Revised Order. These matters are extremely significant. Indeed it is respectfully submitted that such matters provide an agreed context within which the Inspector and the Secretary of State should conduct their deliberations in respect of the Revised Order.

3.17 In this regard, the unchallenged evidence of Mr Ford and Mr Fleming, as stated in their proofs (W1.1 – W1.4 and W2.1 – W2.4) and in cross-examination, was to the following effect:

- First, that a new, temporary RRAP is required for the purposes of construction of Old Oak Common station.
- Second, that until Old Oak Common station is completed, HS2 services cannot run, since otherwise they would terminate at a location which offers no (or alternatively inadequate) options for onward travel.
- Third, and most importantly, that if the temporary RRAP is not approved pursuant to the Revised Order, that will result in at least a one year delay to commencement of HS2 services. In INQ-33, BPL queried whether the Order would be made in time to allow the first proposal to avoid the one year delay to HS2 services. Notwithstanding that such contention by BPL is entirely rejected, Network Rail notes

that BPL did not dispute the fact that failure to make the Order would indeed result in a one year delay to commencement of HS2 as stated by Mr Fleming in evidence.

- 3.18 At the outset of any evaluation of the Revised Order, it is appropriate to pause and reflect on these matters. There has been much public debate about the merits of HS2, both in terms of the principle of the scheme, and also in terms of its reduced extent, following the announcements last year that Phase 2B of HS2 would not proceed, and that Old Oak Common would for the foreseeable future serve as the London terminus of the line.
- 3.19 However, what is beyond any dispute is that HS2 represents the most significant national transport infrastructure project constructed in this country for several decades; indeed Old Oak Common station combined with the HS2 station will comprise the biggest new railway station in more than a century. Further, what is also beyond dispute is that the project has benefitted from cross-party support in Parliament, and that in the course of its construction it has been the subject of massive investment by successive Governments.
- 3.20 As has been widely noted in the media, delivery of the project has already been delayed and the cost of delivering the project is already substantially over budget. Should the project be further delayed, both the reputational damage to UK plc and the additional financial costs (in terms of overruns and lost/delayed opportunity), will be huge. In these circumstances, it is submitted that there is a very substantial – indeed overwhelming – public interest in ensuring, so far as it is possible to do so, that:
- no further delay to HS2 is caused, and that services commence in mid-2030 as anticipated; and that
 - no further ‘financial loss’ is incurred in respect of the project.
- 3.21 It is in these circumstances, and in this context, that the Revised Order – and the objections to it – fall to be considered.

First Proposal – temporary RRAP and construction compound

- 3.22 In the event that the Revised Order is confirmed the temporary compound facility will operate from later in 2024 (with use of the temporary RRAP from no later than January 2025 being a matter of necessity), until cessation of operations at the end of December 2029, with the site then being restored by no later than 31 January 2030.

Objections

STARK

- 3.23 STARK’s written objection is ‘high level’ in tone. In essence, its position is similar to that of BPL, insofar as it asserts that the temporary RRAP would have an adverse impact on existing employment and amenity, and that “...there are a number of alternative options” for the location of the temporary RRAP. Similarly, like BPL, it too asserts that delivery of the

permanent RRAP on the Triangle land may not come forward, having regard to the fact that it is Crown Land.

- 3.24 These points are not evidenced, but they are nevertheless addressed by Network Rail in the context of BPL's objection. Other points raised by STARK – such as the assertion that there is no need for a temporary RRAP, or indeed no need for further rail capacity more generally in a 'post pandemic' world, have been addressed in the evidence of Mr Fleming and Mr Ford (W1.1 – W1.4 and W2.1 – W2.4). The need for a temporary RRAP has been firmly established; notably it is not contested by BPL. Similarly, insofar as STARK query whether the funding is in place to deliver the first proposal, that issue is addressed in the letter from HS2 (Appendix AF1 of W1.2).
- 3.25 Notably, whilst BPL initially pursued this point, it conceded it during the course of the Inquiry. The funding for the first proposal is guaranteed by HS2 Ltd. Lastly, to the extent that STARK query the extent of engagement it has had from Network Rail, such query is rejected. Mr Sinclair explained in cross-examination that Network Rail has sought to agree compensation and terms with STARK over an extended period; indeed discussions began in 2021. The position has been complicated by STARK's challenging relationship with its landlord, but an offer to acquire its interest by agreement has been made by Network Rail.
- 3.26 In the absence of any evidence from, and any participation by, STARK, it is submitted that no further discussion of its objection is necessary. Such points as might potentially have had merit are addressed elsewhere in the context of BPL's objection.
- 3.27 The only further observation Network Rail makes in respect of STARK is that its involvement with the Jewson Depot is due to end shortly, irrespective of the proposals. In this regard in INQ-65.3 BPL states "*Mr Aaronson has advised that he'd start using the site as a logistics and delivery hub immediately post STARK vacation of the site (lease will be surrendered 1.10.24, agreement for surrender signed 2.2.24)*". Thus, there is apparently no need for any concern (such as in the context of the operation of Network Rail's unilateral undertaking) regarding the future position of STARK, or the operation of its business at the depot, or the employees of that business.

Shaukat Khan and Brett Coventry

- 3.28 This objection complains of impact on access rights to the rear of Acton House, the block of flats located to the east of the Jewson Depot. In fact, and as explained by Mr Fleming in cross-examination there will be no impact on such access rights, which will be entirely unaffected. [Inspector Note: the Order as submitted did include the power to extinguish access rights to the rear of Acton House. It is only in the Revised Order that this power is not sought.]
- 3.29 The further point raised in the objection appears to relate to amenity, with the complaint being that HGV traffic will access the proposed compound "...24/7 for 6.5 years". In fact, activity on/use of the proposed compound will be very significantly restricted, by means of conditions imposed on the deemed planning permission, and thus the complaint raised is predicated on

a misconception. Nevertheless, issues of residential amenity are addressed elsewhere in the context of the objection advanced by BPL.

Mark Aston

- 3.30 Mr Aston's objection raises the same points as that just considered, namely a perceived impact on access rights to the rear of Acton House, and a concern that activity will take place on the compound "...24/7 over 6.5 years". As already stated, there will be no impact on access rights [see Inspector's Note at paragraph 3.28], and the extent of activity on the proposed compound will be stringently conditioned.
- 3.31 Other matters raised by Mr Aston include a complaint as to impact on the value of his property. Such issues are not relevant to the determination of whether or not to confirm the Order, since any adverse impact on value could be the subject of a claim for compensation (as accepted in cross-examination by BPL's witness Mr Rhead). In any case Network Rail does not accept that there will in fact be any impact on property values as Mr Aston suggests.
- 3.32 Mr Aston's concern that PM2.5 levels would increase (a suggestion which is unevidenced, and moreover is simply not sustainable given the very limited activity proposed within the compound), and a fear that the proposed use of the Order land will result in the residential development (and cessation of the builders' merchant use) being "*delayed or cancelled*". It appears that Mr Aston is not aware that BPL intend to continue the use of the site as a builders' yard in addition to its residential redevelopment [Inspector's Note – this would not have been possible under the original Order to which Mr Aston objected]. However, in any event, the Order has been revised expressly so as to allow that redevelopment to take place.

Ms Nadia Thompson

- 3.33 Ms Thompson objected to the Revised Order. She is another resident of Acton House, and her concerns relate to noise and pollution on the one hand, and loss of light on the other.
- 3.34 Network Rail has since corresponded with Ms Thompson (INQ-74). In terms of the issue raised as regards noise and pollution, this will be addressed by way of conditions imposed on the deemed planning permission (as detailed below). It appears that such explanation has provided some degree of reassurance.
- 3.35 The further issue raised, relating to loss of light, is not one which will be in any way consequent on the making of the Order. Rather, to the extent that Ms Thompson ever experiences a loss of light, it will be as a result of BPL's redevelopment proposals. This is evidently now understood by Ms Thompson.

BPL*Alternative Location for Temporary RRAP*

3.36 The main, substantive ground of objection advanced by BPL is that insofar as Network Rail needs a temporary RRAP and/or compound (which its witnesses accept that they do), they should use another location in place of the Jewson Depot.

3.37 In this context BPL's witnesses (Mr Gent and Mr Gallop) pointed to the following locations in their evidence:

- The existing RRAP at the eastern end of the North Pole Depot (Barlby Road RRAP);
- The existing Jacob's Ladder RRAP;
- The existing Southall RRAP;
- The former RRAP at Acton Main Line station;
- A potential RRAP location at Westcott Park Community Garden;
- A potential RRAP location within the Agility/Hitachi compound at North Pole Depot (either to the east or west of the Agility/Hitachi compound);
- A potential RRAP location at Westway Estate;
- The existing RRAP at Noel Road;
- A potential RRAP location at Bloomsbury Close;
- The proposed RRAP on the Triangle land;
- A potential RRAP location at Acton Goods Yard; and
- Willesden Euroterminal.

3.38 In this regard part of BPL's case turned on its suggestion that Network Rail had failed to approach matters with the requisite 'flexibility' and it should have looked to operate any temporary RRAP on a 'just in time' basis, using storage space at other locations, and then delivering plant, personnel and materials to its RRAP location on the eve of their actually being required. In fact, and as Mr Fleming explained in evidence in chief, that is precisely what Network Rail have planned. Indeed, the compound at the Jewson Depot will operate very much on a 'just in time' basis, operating as a 'spoke' in a 'hub and spoke' approach. Full use will be made of the depot near Barlby Road in this regard, to ensure that only when materials/plant/personnel are required at the temporary RRAP will they be taken to the Jewson Depot. It is on that basis that Network Rail is able to make do with the reduced land take proposed in the Revised Order.

3.39 Accordingly, all talk/suggestion by BPL in its written evidence that Acton Goods Yard, Barlby Road – or anywhere else – be used in conjunction with the temporary RRAP has been overtaken. Indeed, Mr Gallop accepted in

cross-examination that Network Rail would be using the temporary RRAP on a 'just in time' basis.

3.40 Turning to the substance of the 'alternative location' argument it was agreed between the parties that in order for Old Oak Common station to be delivered, a new, temporary RRAP will be required. Notably in this regard, Mr Gallop conceded in cross-examination that, even utilising the existing permanent RRAP at Barlby Road, there would be a need for another RRAP in addition.

3.41 In objecting to the Order in respect of this issue, BPL pointed in different directions. In its initial objection only Acton Goods Yard and the Triangle land were identified. Subsequently, in its Statement of Case, BPL pointed also to its properties at 227-237 Horn Lane, and to the North Pole Depot. However, it was only at the stage of evidence submission for the Inquiry, that it cast the net wider so as to include the myriad of different locations identified above (with two potential alternatives being identified within the Agility/Hitachi Compound). Both Mr Gent and Mr Gallop purported to assess/identify all these various different locations. The suggestion was, that if only Network Rail had cared to look, there were in fact multiple alternatives to the Jewson Depot site.

3.42 However, now that the evidence has been scrutinised at the Inquiry, it can be seen that any such suggestion on the part of BPL was misleading. In fact, as was ultimately made clear at the Inquiry, even on BPL's case, there are only two potential options. Both Mr Gallop and Mr Gent conceded (in cross-examination) that the only potential alternatives to the RRAP at the Jewson Depot were the use of either:

- Barlby Road RRAP in combination with what BPL propose as the 'Hitachi West' RRAP; or
- Barlby Road RRAP in combination with what BPL propose as the 'Hitachi East' RRAP.

3.43 All other supposed alternatives, including the Triangle land, were disavowed in cross-examination and on that basis there is no need to consider any of those alternatives further. In written submissions since the Inquiry, BPL and its solicitor have sought to suggest that the Triangle land is a potential alternative to the temporary RRAP. This is simply not consistent with the evidence. BPL's own witness team have expressly agreed that the Triangle land is not a potential alternative location, and thus it is not open to BPL now to contend otherwise.

Analysis

3.44 Notwithstanding that BPL point to these two locations as potential alternatives, the fact is that no meaningful alternative has been proposed to the Inquiry, since neither option is tenable. For a location to truly serve as an alternative, that location must be shown to be credible. On the basis of the evidence before the Inquiry, that is manifestly not the case.

Requirements of the RRAP

- 3.45 The first issue for consideration in this context, should be Mr Fleming's evidence in chief as to how 'possessions' are conducted, and thus the basis on which any temporary RRAP would need to operate. In this regard, and importantly, that evidence was entirely unchallenged. The only witness at the Inquiry with direct experience of this issue is Mr Fleming, and given neither BPL nor any other party disputed anything he had to say upon this topic, his evidence should be accorded very significant weight.
- 3.46 There are numerous steps, all of which must be carefully undertaken, before a stretch of railway line can be isolated so that contractors are in fact actually able to carry out works; these various steps serve to significantly 'shrink' the time available for substantive works. In addition there is the extent to which the timings for a possession are vulnerable to erosion by external factors – a late running train, which delays commencement of the possession, for example.
- 3.47 Given that the carrying out of works pursuant to a possession is such a complex and problematic exercise in and of itself, it is respectfully submitted that it is simply not credible for any party to the Inquiry to suggest that the temporary RRAP be sited in a location where other, external factors – conflict with vehicular or rail traffic in a train maintenance depot, for example – add yet further risk and complication to the situation.

The Hitachi Options

- 3.48 Turning to the supposed 'Hitachi Options' no detail has been provided by BPL in respect of either option. As Mr Gent accepted in cross-examination all that has been done in respect of either Hitachi East or Hitachi West, is "*desktop analysis*". Not only had neither Mr Gent nor Mr Gallop actually visited the Agility/Hitachi Compound, neither of them had even sought permission to carry out such a visit. Indeed, notwithstanding his evidence was concerned with highways matters, Mr Gent had not even conducted a site view of the local highways network.
- 3.49 Further, and significantly, neither one of them had sought to engage with Hitachi (the actual operators of the Hitachi Compound 'on the ground') or Agility Trains (the party responsible for maintaining Great Western Railway trains, which has sub-contracted to Hitachi), regarding the feasibility of Network Rail operating a temporary RRAP in either one of their suggested locations. Quite simply, there had been no engagement whatsoever. In circumstances where BPL and its team come before an Inquiry advocating that a particular alternative solution is available, in place of that proposed by Network Rail in the form of the Revised Order, it is incumbent on BPL to advance a credible case that such alternative is in fact tenable. In the present case, this simply has not been done.
- 3.50 Notably, this position can be compared with that of Network Rail. In this regard, there has been much criticism levelled at Mr Ford and Mr Fleming for failing to provide records of their discussions with Agility/Hitachi. However, crucially, there is no suggestion that discussions – a series of meetings on site and Teams meetings – had not been undertaken to discuss feasibility of

site-sharing between Network Rail and its contractors on the one hand, and Agility/Hitachi and their personnel/equipment on the other. Both Mr Fleming and Mr Ford attested to such meetings having been held, and that evidence is unchallenged. Further, there is no challenge by BPL of what Mr Fleming and Mr Ford have explained Agility/Hitachi told them regarding the feasibility (or rather lack of feasibility) of such site-sharing. That is, that the operation of the temporary RRAP within the Agility/Hitachi Compound would be unacceptable to Agility/Hitachi in operational terms, resulting as it would in significant interference with their existing use of the compound.

- 3.51 The failure of BPL and its witness team to have undertaken anything more than a desktop analysis (and in particular to engage with the operational realities of the Agility/Hitachi Compound) as regards their notional alternative, can usefully be put into a legal context which has regard to recent caselaw relating to 'alternatives' considered in the context of infrastructure schemes promoted under the Planning Act 2008. Notably, in R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport, [2022] EWHC 3177 and R (Substation Action Save East Suffolk Limited) v Secretary of State for Business, Energy and Industrial Strategy v East Anglia One North Limited, East Anglia Two Limited [2022] EWHC 3177, Holgate J and Lang J both relied upon the observation of the Court of Appeal in R (Mount Cook Land Ltd) v Westminster City Council [2004] 2 P&CR 22 that:

"...where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight".

(Paragraph 30 of Mount Cook, as considered at Paragraph 270 of Stonehenge, which analysis in turn is cited at Paragraph 209 of Substation Action.)

- 3.52 Of course, in so saying, Network Rail fully recognises that the consideration of alternatives in the context of a decision whether or not to grant development consent (or planning permission) for development is a different context to that where compulsory purchase powers are under consideration. However, it is respectfully submitted that as regards the feasibility of a proposed alternative, a useful parallel can be drawn.
- 3.53 In any event, it is in the context of BPL having failed to make out their proposed 'alternatives', that consideration is now given to the various reasons why neither the Hitachi West nor the Hitachi East potential RRAP locations should be regarded as providing a substantive alternative to the temporary RRAP, as proposed by Network Rail at the Jewson Depot, pursuant to the Revised Order.

Hitachi West

- 3.54 In summary there are multiple reasons why the Hitachi West proposal would not serve.
- 3.55 In order for this proposed alternative to serve as a RRAP, it would be necessary that Network Rail and its contractors be able to gain access from

the public highway. Such access would need to be sufficient for low-loaders (of some 18m in length, 3.2m in width) carrying RRVs more than 3m in width (eg the Komatsu Dozer RRV, of width greater than 3m (with blade)) and potentially 8.5m long in size (eg the Doosan Crane RRV, of length 8.5m). Two access points are posited by BPL, a 'Western Access' off Old Oak Common Lane and an 'Eastern Access' off Mitre Way.

Western Access

- 3.56 BPL points to Old Oak Common Lane as providing a potential access route to the Hitachi West location, on account of the fact that there is currently an emergency access to the Hitachi Compound at this location. However, the existence of such access does not assist BPL in making out its case; crucially, as Mr Ford explained in evidence in chief, that emergency access could not serve low loaders delivering RRVs to a temporary RRV/access compound. Further, quite apart from the access being unsuitable, Network Rail could not rely on this access being available to it during the period when the Temporary RRAP will be active. In this regard, Mr Fleming and Mr Ford explained the following matters in their verbal evidence none of which is significantly in dispute.
- 3.57 First, it is anticipated that this road will be closed for six months during the period mid 2025-2026. Such closure is necessary to give effect to an interim phase of road lowering works.
- 3.58 Second, it is anticipated that there will be a further closure of this road for more substantive road lowering works, which will last 12 months. The timeframe for this additional closure is not set, but will be prior to 2030.
- 3.59 Such closures are planned by HS2 Ltd. The precise timing of such closures is not definitive, since the very nature of the works being undertaken at Old Oak Common means that the position is an evolving one. However, that is the position communicated to Mr Fleming by HS2 Ltd, and there is no basis on which to depart from it. BPL – and in particular Mr Gent – sought to test these matters in evidence, but to no avail. The documentation before the Inquiry – notably the approved plans submitted to the Inquiry by BPL – support the evidence given by Mr Fleming in this regard, and confirm that the extent of the road closure will include the junction of the emergency access with Old Oak Common Lane.
- 3.60 With regard to INQ-50 and INQ-51 the substantive content of these documents is entirely consistent with the position as set out above by Network Rail; namely, that the works to be undertaken by/at the behest of HS2 will result in significant and material interference with (and closure of) Old Oak Common Lane, during a period that will be critical for use of the temporary RRAP. This position is definitively clarified by Network Rail in INQ-62. To clarify, the question put by BPL to HS2 related only to the closure of the Hitachi Compound access; however that is not the only extent of closure of Old Oak Common Lane which would affect Network Rail's ability to get low loaders to the access entrance.
- 3.61 Further, the 'western access' will not be available in any event during the period prior to January 2027. As Mr Fleming explained in evidence in chief,

HS2 Ltd will be rebuilding the access road into the Hitachi Compound from Old Oak Common Lane during this period, in order to facilitate works at their 'brownfield site'. The rebuilt access must be in place by January 2027, which means that the works will necessarily be undertaken at some point during the period January 2025 – December 2026, which Mr Fleming had already explained as being a critical one for use of the temporary RRAP. Again, the critical nature of the 24 month period January 2025 to December 2026 – in terms of use of the temporary RRAP, and the works to be facilitated by it – was not challenged by BPL or any other party to the Inquiry.

- 3.62 Mr Gent's response to these matters was telling; he conceded in cross-examination that "*Network Rail may well be right*" that the Western Access will be unavailable as Mr Fleming explained. The highest he could put his case was to the effect that he would "*wish to have seen more*" to confirm the position. That may be Mr Gent's preference, but that is no basis on which to accept that the Western Access is a suitable highways access for the proposed facility. The available evidence before the Inquiry indicates that the Western Access will simply not be available to Network Rail when it needs it. There can be no question of assuming that it will be so available. To base a decision whether or not to confirm the Revised Order on the basis of such assumption would be fundamentally misconceived and Wednesbury unreasonable.
- 3.63 There is then the matter of the extent to which Network Rail's use of the posited RRAP would conflict with the activities of Agility/Hitachi. In this regard, it is important to note that this is not simply a question of 'whether the position would be acceptable to Agility/Hitachi. Rather, as Mr Fleming confirmed in evidence in chief, the position would need to work satisfactorily both for Network Rail and for Agility/Hitachi.
- 3.64 In this location, even if it were possible to make use of the Western Access from Old Oak Common Lane, it would then be necessary for traffic to climb the hill up into the compound, before then negotiating a level crossing under overhead lines providing electricity to the trains in the depot. As Mr Fleming explained, Hitachi had indicated that their train movements would take priority, preventing Network Rail/contractors from moving across the level crossing, and thereby ensuring that they would have to operate in a constrained manner, within what are already constrained possession windows. Further, as Mr Fleming indicated, the overhead lines beneath which Network Rail and its contractors would have to traverse, are not ones that would be isolated during the course of a possession of the GWML; indeed, for them to be turned off would require a further, bespoke isolation which would turn off the power for much of the depot.
- 3.65 In circumstances where passage of low-loaders/RRVs would be in potential conflict with the passage of trains shunting within the depot sidings, and would be passing beneath electric lines – either representing an additional hazard (if live), or a restriction on the operations of Agility/Hitachi (if isolated) – there can be no question but that use of the Western Access would represent a very considerable risk/complication to use of a temporary RRAP sited at Hitachi West.

Eastern Access

- 3.66 In order to access Hitachi West via the Eastern Access, traffic would need to travel north up Mitre Way, before turning westwards at its northern end. Vehicles would then pass through the security gate into the Hitachi Compound, before proceeding to a length of single lane carriageway within the underpass beneath Scrubs Lane. Whilst it may be possible for some low loaders to travel 'laden' through the underpass, it may be necessary for others to unload RRVs first, which would then travel independently as 'wheeled' vehicles. In any event, passage through the underpass by one or more set of RRVs would of course preclude any existing Hitachi Compound traffic heading east. The low-loaders, of course, would travel slowly in this constrained environment, as would the RRVs if 'unloaded' (some of the latter travel at no more than 5mph). This would therefore serve as a bottle neck.
- 3.67 The next obstacle to address would be the road/rail crossing point, located immediately to the west of the underpass. There, any traffic would need to give way to trains heading into or out of the sidings. Such traffic would also need to negotiate the overhead electric lines serving those trains. Again, there would be a risk of congestion or delay.
- 3.68 Having negotiated both the underpass and the road/rail crossing, low-loaders/RRVs (and of course other RRAP traffic, such as mini-buses carrying staff or the private vehicles of specialist contractors) would then need to travel almost the full length of the Hitachi Compound heading west, before accessing the proposed RRAP. Mr Gent was not aware of how long that stretch of carriageway was, or whether in fact it had a single or double lanes. There was talk of 200m, 300m or indeed 400m; as the Inspector will have noted at the site visit, the stretch is in fact some 1km in length. For much of that distance, there is only one operative lane - the remainder being used for parking spaces. As noted above, traffic speeds for some vehicles would be no more than 5mph, and the potential for congestion/conflict is self-evident. In this regard, it must of course be borne in mind that the Hitachi Depot does not keep 'office hours'. Unlike the Jewson Depot, it is very much active during the night-time periods when Network Rail would need to be making use of the temporary RRAP.

Proposed Location

- 3.69 The final point as regards 'Hitachi West' relates to the proposed compound/RRV location itself (as distinct from access to it). In this regard, Mr Ford stated in terms in W-2.4 (pages 7 and 9) why it is that the location proposed by Mr Gallop on behalf of BPL would not meet Network Rail's requirements. The siting proposed by Mr Gallop (shown at Appendix Q of OBJ-8.4.2) would conflict with existing facilities for welfare, storage and waste, whilst after Christmas 2026 the railway tracks at this location will move northwards, meaning that if a temporary RRAP were sited here then plant and material would need to travel northwards through the HS2 contractor's construction site, resulting in yet more conflict (albeit this time between Network Rail and HS2).

Hitachi East

- 3.70 In this case, BPL assume that access would simply be from Mitre Way from which traffic would pass through the security gate, along the underpass, and then over the level crossing beneath the overhead electric lines, as previously discussed in the context of Hitachi West. However, at this point it would then be necessary to unload RRVs from their transport vehicles, in this busy location, complicated by the proximity of both underpass, crossing point and overhead lines. Without having visited the site, Mr Gallop is content that such operation is feasible. Network Rail whose contractors will be the ones actually serving any such temporary RRAP, fundamentally disagree.
- 3.71 Further, Network Rail is confident that the site visit undertaken by the Inspector will have demonstrated beyond all doubt, the practical impossibility of this approach as advanced by BPL.
- 3.72 Hitachi East is simply not a credible proposition, and it says much about the approach of BPL's witness team that Mr Gent and Mr Gallop are prepared to say otherwise.

Conclusions

- 3.73 The answer to all of this, so far as BPL is concerned, is 'management'. It is simply said that Agility/Hitachi and Network Rail would need to 'manage' the situation, putting in place schedules and timetables so that all parties could make use of the infrastructure in a way which accommodated everyone, whether for Hitachi East or Hitachi West. No detail, or explanation is provided as to the feasibility of any of this, Network Rail is simply told to 'manage' the position.
- 3.74 Such high-handed assertion on the part of BPL and its witnesses is so cavalier as to be almost offensive. As noted above, Mr Fleming explained the complexity of the position, how tight timings are, in relation to the operation of a possession in the ordinary course of events when dealing with the constraints imposed by the railway itself. He also explained how draconian (and costly) the consequences of overruns can be. In these circumstances, it is simply not credible or sensible now to proceed – as BPL asserts that it should – on the basis of an assumption that conflict/clashes with the rolling stock, plant and ordinary operations of Agility/Hitachi in the Hitachi Compound will have no material adverse effect on the operations of Network Rail and its contractors, working urgently to ensure delivery of the Systems Project, to enable construction of Old Oak Common station, and thus completion of HS2. This is to say nothing of the adverse impact on Agility/Hitachi, and the work done in the Hitachi Compound to maintain the fleet of Great Western Railway trains that already serve thousands of passengers throughout the west of England (and Wales) every day.
- 3.75 For all these various reasons, it cannot sensibly be advanced that either of the proposed Hitachi RRAPs represent a meaningful alternative to the Jewson Depot. The complications in terms of access, and in terms of interaction with existing compound activities, mean that they would prove a manifestly inferior alternative to the access compound which Network Rail has

promoted, and would significantly increase the risks associated with delivery of the Rail Systems Project, and thus HS2.

Procedural Issues

- 3.76 The points made by BPL about the way Network Rail identified Horn Lane as the appropriate location for the temporary RRAP are misconceived, and entirely without merit.
- 3.77 First, the question of consideration of alternatives is largely artificial and academic, having been overtaken by the concessions made by BPL's own witnesses. Even on their (best) case, the only alternatives to what Network Rail propose, are use of either Hitachi East or Hitachi West with Barlby Road, as opposed to Jewson Depot with Barlby Road.
- 3.78 Second, whilst it appears to be suggested that there are internal materials/studies held by Network Rail which analyse alternatives, but which Network Rail is refusing to provide to the Inquiry/BPL, this is simply not true. All relevant materials have been disclosed: for example, the three draft Arcadis reports, none of which were finalised or accepted by Network Rail, (INQ-53, INQ-54 and INQ-55) disclosed to BPL following the round table discussion held on 1 February 2024.
- 3.79 Third, none of that disclosed material serves to strengthen BPL's case; none of it indicates that the Agility/Hitachi options are viable. Critically, 'historic studies' suggested that a location within the Hitachi Compound might be a desirable site for the temporary RRAP. However, all such studies voiced their conclusions only on a provisional basis, without any discussions with Agility/Hitachi as to the feasibility/viability of this option having taken place. Indeed at the relevant time, Agility/Hitachi had not even been approached.
- 3.80 Fourth, it is on the basis of those historic studies that Network Rail (and in particular Mr Fleming and Mr Ford) sought to engage with Agility/Hitachi, to explore the position. However the output of the meetings/discussions was that the siting of the temporary RRAP and access compound within the Hitachi Depot, would work neither for Network Rail nor for Agility/Hitachi [Inspector's Note: these are meetings/discussions about which there is no contemporary written evidence].
- 3.81 Fifth and finally, the upshot is that Network Rail undertook all proportionate analysis of alternatives, and concluded that Horn Lane was the optimum (and indeed only credible) location for the temporary RRAP. In terms of documentation of the analysis undertaken by Network Rail, there are various studies, both adopted and draft, as well as the Risk Assessments that were provided to BPL towards the end of the Inquiry, following a request for their disclosure. BPL alleges that this is 'inadequate', that the job of considering alternatives has 'not been done properly'. However, such assertion is wrong, and it is unfair. In this regard, perhaps the key indication, or 'tell', is that for all its complaints alleging deficiency of the Network Rail work on alternatives, BPL has not managed to identify a single workable alternative itself. It points to only two options, and, as detailed above, Network Rail shows that neither of these will serve.

Impact on BPL

3.82 The second of the issues raised by BPL concerns the impact on its use of the Jewson warehouse at Horn Lane. Here the position is not straightforward, since BPL apparently have a number of different purposes to which the site may be put. In this regard, it has been variously suggested that:

- BPL may continue to allow STARK to occupy the Warehouse and builders' depot;
- BPL may arrange for its sister company, BDL Ltd, to occupy the Warehouse and builders' depot; or
- BPL may pursue a mixed-use redevelopment of the builders' depot (which would of course require demolition of the warehouse).

3.83 In each one of these cases, BPL contends that there would be cost/loss incurred by BPL, by reason of the proposed temporary RRAP and access compound. In assessing the materiality of these considerations, it is of course first necessary to consider Network Rail's proposals as they now stand, in the context of the Revised Order, and in the context of the mixed-use development permission.

3.84 Taking the latter first, there was a Council resolution to grant the planning permission even by the time of the initial Inquiry sessions held in November 2023. The relevant permission has now been granted, subject to a planning condition (Condition 28), which expressly makes provision for Network Rail's activities (in the form of the temporary RRAP and access compound) [INQ-71]. Thus in granting the permission, the Council has looked to ensure that the proposed re-development of the Jewson Depot does not prejudice Network Rail's activities (in the form of the temporary RRAP and access compound). Indeed, the authority has granted the Permission in such a way that if the Secretary of State determines to make the Order, the phasing of the BPL development should 'fit around' Network Rail's activities; in essence, BPL's development will have to play 'second fiddle'. The permission has been expressly granted on that basis.

3.85 Turning to the Revised Order, significantly, it is no longer Network Rail's intention to take possession of the warehouse at all, and indeed it is seeking rights of possession of only a limited part of the overall area of the builders' depot. Further, it is offering a legal undertaking which provides for site-sharing arrangements over certain areas. The consequences of these revisions to the Order as originally promoted are significant - notably in respect of the reduced land take proposed.

3.86 Mr Aaronson confirmed that, in the event that BDL needed alternative accommodation (on account of the possibility of it being dispossessed by a compulsory acquisition of their existing site in Hampstead), they could operate from the 'reduced' Jewson warehouse. Mr Aaronson stated very firmly that such an enterprise would be less than ideal, as it would mean operating on a more limited basis from a more constrained site. However, he nevertheless - fairly - stated unequivocally that it could be done. Thus, there is no question of the BDL enterprise at Hampstead having to 'fold', or of the

workforce being laid off. If Mr Aaronson wants to move the business to Acton (which of course would – as he accepted in cross-examination– mean an entirely new business, in the sense of an entirely new customer base), he can do so.

- 3.87 In light of planning permission having been granted for the mixed-use development, the arrangements proposed by Network Rail (in terms of reduced land-take, and in terms of the protection afforded by the undertaking) would allow BPL to pursue the mixed-use redevelopment. In this context BPL have suggested that implementation of the development during the period within which the temporary RRAP is operational might lead to increased construction costs, may extend/lengthen the construction period, and may even potentially impact upon values achieved for the residential units constructed.

The Undertaking

- 3.88 As regards the undertaking Network Rail sought to reach agreement with BPL in this regard, and indeed at one point it appeared that such agreement would be reached. However, no sooner had Network Rail addressed one concern of BPL, than another was raised; this position is perhaps best illustrated by the fact that the undertaking was drawn up by Network Rail by reference to shared land areas which it had agreed with BPL's witness team, only for BPL's lawyers subsequently to indicate that such areas were not acceptable.
- 3.89 Ultimately, all the various concerns which BPL still seeks to raise have been addressed, comprehensively by Network Rail in INQ-70.07. It is submitted that such document provides a reasonable, practical response to the various complaints made. The truth is, that BPL is straining to find problems and failings where there are none; the undertaking will serve to ensure that BPL's activities and rights are protected as stated.
- 3.90 The Order, if made, will take effect subject to the constraints of the undertaking which provides for Network Rail and BPL to share the use of the Horn Lane site, during the period of the temporary RRAP and construction compound. The sharing arrangement will allow for the operation of a builders' warehouse (as per Mr Aaronson's evidence), for the carrying out of redevelopment pursuant to the planning permission, or even potentially for the occupation of a residential development constructed pursuant to that permission. In drafting the document, Network Rail has bent over backwards in its attempts to accommodate the various requirements BPL has identified. This includes reducing its land take to an absolute minimum, maintaining access to BPL's 'retained land', and being prepared to move its (minimal) parking areas around the site, in order to accommodate the various stages of the proposed redevelopment (if pursued). Network Rail has also committed to proceeding in a constructive, pragmatic fashion, in order to accommodate what will doubtless be an 'evolving position' as regards the requirements/wishes of BPL and its contractors.

3.91 In short, there is every reason to believe that BPL would – during the limited period of Network Rail’s activities – be able to proceed down whichever avenue it wishes to, as regards its future intentions for the Horn Lane site.

Entitlement to Compensation

3.92 However, if, even and insofar as the powers sought by Network Rail would interfere with the activities of BPL, then that position too is catered for.

3.93 To be clear, Network Rail does not accept as inevitable the adverse financial impacts that BPL assert, either in the context of use of the Jewson warehouse continuing as a builders’ merchants (whether for BDL or otherwise), or in the context of the site’s redevelopment. However, this disagreement is not one that need be resolved for the purposes of deliberations in respect of the Order: in the event of any of the potential financial loss/increased cost suggested, BDL would have a right to compensation. In the ordinary course of events, the quantum of such compensation would be agreed; if the parties were not able to agree, then the matter would be resolved by the Upper Tribunal (Lands Chamber).

3.94 As such, whilst Network Rail recognises that there would be a degree of inconvenience experienced by BPL, and even that there may be financial loss incurred, that is no reason for the Secretary of State not to make the Order. Legislation provides for fair compensation, and as such BPL would be fairly compensated for any loss.

Residential Amenity Considerations

3.95 Residential amenity is a matter raised most fiercely by BPL, notwithstanding that as matters currently stand there are of course no residential occupiers of the Jewson warehouse. The objections from actual residents came from occupants of Acton House, but as already noted, those residents were under a misapprehension both as to the extent of the activity to be carried out in the compound, and as to the frequency of that activity.

3.96 Returning to BPL’s position, it essentially raised complaint as to three issues; dust, noise and lighting. It pointed to the lack of environmental assessment of the likely impacts in respect of these issues and also pointed to media reports of other railway works, in other locations, which had caused upset and frustration to local inhabitants in those areas.

3.97 However, BPL’s commentary regarding other rail engineering operations, and other compounds/RRAPs, at other locations is of minimal, if any, relevance. Rail projects come in all shapes and sizes, and are subject to different restrictions and conditions. There is no detail before this Inquiry as to the instances reported in the press cuttings provided in OBJ-08.4.2, and Network Rail does not accept that they have any application in the present context.

3.98 The substantive works which the compound/temporary RRAP will facilitate, will not be undertaken in the compound. Rather, those works will be undertaken on the railway, and so themselves will not cause any adverse impact on amenity in that location. Further, it must of course be borne in mind that insofar as works to the railway are necessary, they will –

ultimately – be carried out irrespective of whether or not the Revised Order is made.

- 3.99 The third point to bear in mind is the very limited nature of the use of the temporary RRAP and compound which Network Rail anticipate. The use of the compound/RRAP is vital, but it is not extensive. It is a very far cry indeed from the type of 'continuous' activity referred to in some of the objections; instead what is anticipated is infrequent use. The very limited extent and frequency of this activity means that the noise/light/dust generated will itself be very limited. It is for this reason that Network Rail has not provided the Inquiry with assessments of impact, but has instead sought to guarantee amenity through the imposition of conditions on the deemed permission; it has adopted a sensible, common sense approach which has regard to the minimal nature of activity proposed. To be clear, there will not be industrial or construction activities carried out at the compound; instead on the limited occasions when the site is being used, there will be a small number of deliveries (whether of plant, material or personnel) and then a process in moving that plant/material across the RRAP and up the railway.
- 3.100 Fourthly, this is not the first occasion that Network Rail has operated a RRAP and compound such as this. Mr Fleming explained in evidence in chief that he had wide experience of dealing with issues arising from the proximity of residential development to a works compound, and spoke to some of the measures taken to address the potential for adverse impacts (such as the use of electric (as opposed to diesel) generators, and the directing of stand-lights away from residential properties). In this context, it should be borne in mind that the historic, temporary RRAP in this location (used during the construction of Crossrail), was closer to Acton House than that which is now proposed.
- 3.101 Lastly, there is the matter of the proposed conditions. As the Inquiry has heard, Network Rail engaged with the Local Planning Authority and sought to agree planning conditions for the deemed planning permission, which would serve to protect the amenity of residential properties. The Local Planning Authority in fact agreed those conditions and has not raised any issue with the Inquiry. That said, Network Rail of course recognises that the Local Planning Authority has also suggested in correspondence with BPL that it would be happy to accept revised conditions of the type that BPL has suggested. In any event, the position has of course moved on because the parties have engaged with the Inspector, who has produced his own set of conditions.
- 3.102 Network Rail contends that these conditions provide a comprehensive answer to any concerns voiced by BPL regarding residential amenity. Those conditions provide certainty and comfort on many different fronts. For example, they serve to limit, in absolute terms both the number of times that the compound/RRAP may be used over its lifetime, and within that, the number of times they may be used with powered RRV plant. In addition, they provide for local residents to be kept informed as to when activity will take place, and thus when they may anticipate some (limited) degree of disturbance. Further, they provide for the submission and approval by the Local Planning Authority of an Environmental Management Plan and a

Traffic Management Plan which will serve to ensure that on the limited occasions that the compound facility is in use, it is operated in a manner that minimises that disturbance. In this regard, the Environmental Management Plan will include measures to address noise, dust and lighting.

- 3.103 In this context, it is perhaps helpful to recall the evidence given by Mr Gent (for BPL) in respect of the conditions issue. He confirmed in cross-examination that in all the many years that he has practised planning and been involved with developments of this type (the particular example discussed was bus depots), he has never been confronted with a situation where suitable conditions could not be imposed so as to render the development acceptable in planning terms.
- 3.104 For all these reasons, most notably the limited degree of activity to be carried out at the access compound and the proposed conditions guaranteeing that limit, Network Rail contends that there will be no material adverse impact on amenity. This must particularly be the case in circumstances where the existing environment is not a tranquil one, but instead one where both the Jewson warehouse and Acton House back on to the GWML (with its 24 hour rail activity) and, beyond it, the aggregates depot, scrap metal facility and other intrusive activities housed in the Acton Goods Yard; this is to say nothing of the impacts of the BPL redevelopment, should it proceed. Further, it is a location where there was – in recent memory – another temporary RRAP, which was used by Network Rail in connection with delivery of Crossrail.

Benefits

- 3.105 The central benefit which will be secured by the making of the Order, as regards the temporary RRAP, is delivery of HS2. The temporary RRAP is fundamental to carrying out those works to the GWML which are necessary in order to construct Old Oak Common station. The need for a temporary RRAP is not disputed by Mr Gallop for BPL. Nor is the fact that if the Order is not made, then there will be a delay of at least 12 months to the operational commencement of HS2 services.
- 3.106 This is, quite simply, a massive consideration to which the decision maker must have regard. The benefit inherent is the avoidance of substantial delay to a multi-billion pound piece of national infrastructure, intended to provide a qualitative step change in public transport between London and the Midlands.
- 3.107 In this regard, it is crucial to bear in mind that there is no other option; the restriction on the ability of Network Rail and its contractors to take possessions – and in particular the lengthy possessions of up to 29 hours – means that works must commence from the temporary RRAP no later than January 2025, if Old Oak Common station (and thus HS2) is to be delivered on time. That timeframe means that there can be no Plan B; there is no question of promoting any other scheme. Further, in any event the only alternative posited by the main objector has been shown at the Inquiry not to be workable. The difficulties with access from the public highway (as regards Old Oak Common Lane), with access within the Agility/Hitachi

Compound (as regards conflict with the existing operations of Agility/Hitachi and its infrastructure), and the inherent unsuitability of the locations within the Hitachi Compound which BPL point to, mean that there is no other way of achieving Network Rail's objectives.

Powers Sought in the Revised Order

- 3.108 Network Rail understands that the concerns in this regard relate to the question of whether or not the powers of possession sought are excessive; could not Network Rail instead secure powers to use parts of the Horn Lane site in a particular way, and then look to come to terms with BPL, as landowner, regarding arrangements to share the use of it?
- 3.109 There is a clear and definitive answer to this point. Given the nature of the works which Network Rail wishes to undertake from the compound, and given also that the compound will essentially become part of the operational railway during the period of a possession, there can be no question/risk of any other party – whether BPL, its contractors, the customers for a builders' depot or the residents of any future residential development – having an unrestricted right over the site. On the contrary, Network Rail *must* be able to assert rights of exclusive possession so as to exclude all others from parts of its compound at particular times.
- 3.110 No powers less than the powers of temporary possession will guarantee that outcome; it cannot be left to chance to see whether or not that exclusive possession can be secured by negotiation. Failure to reach agreement – were BPL, or some other successor party to them prove to be intransigent– would leave Network Rail simply unable to make use of the temporary RRAP as required. Thus, Network Rail is justified in seeking the nature of powers which it does; indeed there is no lesser alternative that would secure the outcome necessary.

Restriction on Powers Sought in the Revised Order

- 3.111 The powers of compulsory acquisition conferred by the Revised Order will take effect subject to the restrictions imposed by the undertaking. BPL has sought to suggest that this is in some way improper, and that the terms of the undertaking should be included within the body of the Revised Order instrument itself. Such a submission is entirely without substance.
- 3.112 First, there will be absolutely no prejudice to BPL (or anyone else) if the relevant restrictions are included within the undertaking as distinct from the Revised Order. The relevant provisions will take effect and be capable of enforcement, as a matter of law, notwithstanding they are contained in a free-standing undertaking.
- 3.113 Second the fact of the site-sharing arrangements being contained in the undertaking is in fact beneficial to all parties, since it will allow for a degree of flexibility (the undertaking provides in terms for its provisions to be varied by agreement), which will not be available if the terms are included within the body of the Revised Order. Over the 5+ year period of the temporary RRAP, it is highly likely that one or other party (particularly BPL,

if it pursues its redevelopment ambitions) will wish for the terms of the arrangement to be varied.

- 3.114 Third, the inclusion within the body of the Order of the terms of the undertaking would be without precedent. BPL's legal advisors have not put before the Inquiry any example of such an arrangement; that is because it has never before been done. As Network Rail submitted at the round table discussion, it is in fact highly doubtful that DfT would accept the inclusion of text which sat so far outside of the model clauses. The precedent which would be established is problematic enough with one affected landowner; in the context of an order for a linear scheme – where dozens of landowners might be affected – the position would be wholly untenable. Quite simply any order made on that basis would be hopelessly unwieldy.
- 3.115 Fourth and finally, there is precedent for the grant of powers within a Transport and Works Act order, as modified by an external instrument. In this regard INQ-70 explains clearly how the powers conferred by a 2022 Order were restricted by means of agreements contained in separate deeds, and how powers conferred by the HS2 Act were restricted by commitments given by the Secretary of State in a unilateral undertaking dated 9 October 2015. Having regard to these clear precedents there is no basis to reject the course of action which Network Rail now proposes.

Form of the Revised Order

- 3.116 BPL's lawyers have raised numerous queries as to the drafting of the Order; none of which is of any substance and Network Rail has provided a comprehensive response to all the complaints raised in INQ-70.7.
- 3.117 To be clear, the approach to drafting employed in the Revised Order is not novel, speculative, or in any sense out of the ordinary. On the contrary, it reflects model clauses and established practice, such as will be familiar to DfT.

Balance and Conclusions on the First Proposal

- 3.118 It is trite law that in order to justify confirmation of compulsory purchase powers, an authority must demonstrate a compelling case in the public interest. However, it is also trite law that in this regard, no 'special rules' apply to the legal context governing compulsory acquisition (see *R v Secretary of State ex parte de Rothschild* (1989) 57 P&CR 330). In this regard, the approach of a decision maker is subject to no special oversight "...beyond the ordinary *Wednesbury* rules" (at page 337), and there is no 'burden of proof' for an acquiring authority to discharge; see *de Rothschild* where Slade LJ cited Lord Denning in *Prest v. Secretary of State for Wales* (1983) 81 L.G.R. 193, observing:

*"As Lord Denning observed in Prest itself, the Secretary of State's decision certainly is not a *lis inter partes*. As he said :*

It is a public inquiry—at which the acquiring authority and the objectors are present and put forward their cases—but there is an unseen party who is

vitaly interested and is not represented. It is the public at large. It is the duty of the Secretary of State to have regard to the public interest.

In making his decision, there are a multitude of different factors which the Secretary of State has to take into account. To mention only a few: questions of landscape and other amenity, feasibility, cost and delay. To talk of questions of onus of proof when so many competing factors have to be taken into the balance seems to me not only inappropriate but a somewhat difficult concept”.

- 3.119 As such, in the present case, the task for the Inspector/Secretary of State is to balance the various considerations in play, and determine what course is in the public interest. Network Rail considers that in the present case, the public interest is undoubtedly served by the making of the Revised Order.
- 3.120 In this regard, the benefits of the Order are self-evident. Rather, to put it another way, the adverse consequences of *not* making the Order are self-evident. Certainly they are not in dispute; if the Order is not made, that will mean the United Kingdom has to wait an additional minimum 12 months delay for the opening of HS2, over and above the delays that have occurred to date.
- 3.121 Set against this, are two matters.
- 3.122 First, the potential interference with the interests of a single commercial enterprise, which may or may not be materially affected. In this regard, the owner of the Horn Lane site may potentially be prejudiced:
- by having a sister company (BDL) operate a builders’ merchants from the premises on a basis which may be less profitable than would otherwise be the case;
 - by carrying out a redevelopment of its premises on a basis which may be more costly than would otherwise be the case, or alternatively at a later date than might otherwise have been the case; or
 - by letting their premises to another builders’ merchant business to operate, at a rent which may be less than would otherwise be the case.

However, in each of the above cases, compensation would be payable if the anticipated prejudice did in fact emerge.

- 3.123 Second, there is the potential impact on the residential amenity of residents of Acton House, insofar as there is any material, residual impact, having regard to the extensive protections afforded by the conditions to be imposed on the deemed planning permission.
- 3.124 Network Rail submits that the balance to be struck, having regard to the above matters, is a clear and straightforward one. The Order should and must be made. In *de Rothschild*, the question of the delay to delivery of infrastructure was central to the decision reached by the Secretary of State to confirm the compulsory purchase order. That issue is central in the

present case also, and wholly justifies the making of the Order. There is a compelling case in the public interest.

Second Proposal – Right of Access to a Permanent RRAP

- 3.125 The purpose of the permanent RRAP is to provide an additional maintenance facility for the GWML. No evidence has been led by BPL (or any other objector to the Order) that such provision is not required by Network Rail for the purposes of its undertaking in ensuring the safe and efficient running of the railway network. Rather, the only evidence that has been provided on this topic is from Mr Fleming/Mr Ford, who have confirmed that the facility is very definitely required.
- 3.126 No credible alternative location for the permanent RRAP has been posited by any party to the Inquiry; the Triangle land is the only suitable location for the facility. [Inspector's Note: this is not the case – throughout the Inquiry BPL maintained the view that the North Pole Depot is a suitable location for both the temporary and permanent RRAPs.] Further, given that the land (plot 1) formerly comprised part of the railway network, serving the rail sidings which formerly sat within the warehouse on the Horn Lane site, there is no possible basis to argue that it cannot serve the purpose anticipated for it.
- 3.127 Planning permission is not required for the permanent RRAP; in that regard the only basis on which it relates to the Order is insofar as the access to the facility will require the grant of an easement over Plot 3, for Network Rail personnel and contractors.
- 3.128 The objection from Ms Kuszta relates to amenity of her property. The Triangle land sits beyond the far end of her garden, and Network Rail contends that such concerns are not justified. Firstly in this regard, the use of the permanent RRAP will be extremely infrequent. The facility on the Triangle land will not serve as a 'day to day' compound, or anything remotely approaching it. Rather, the evidence given by Mr Ford in evidence in chief was that he would expect it to be used less than five times per year with RRVs, supplemented by further use by teams with hand tools and track trolleys on a small number of other occasions. On this basis, any impact on amenity caused by use of the compound/permanent RRAP to Ms Kuszta's property (or others in its vicinity) would be minimal. Further, as Mr Field confirmed, the construction of the compound on the Triangle land would be subject to a Section 61 application under the Control of Pollution Act 1974, made to Ealing Council's Environmental Health Department, which would serve to ensure that residential amenity was respected.
- 3.129 In fact, following the Inquiry sessions, Mr Wilson visited Ms Kuszta's property to discuss her concerns further, and it was agreed that if she wished, Network Rail would arrange for planting at the end of her garden to further screen the Triangle land, and any activities upon it. That commitment/discussion is recorded in INQ-72 and INQ-73.

- 3.130 BPL's objection to the permanent RRAP is grounded in its desire to resist the grant of the easement. However, following the engagement between Mr Gent (for BPL) and Network Rail's team, the parties are agreed that the route of the easement as now shown on the final Land Plan, will enable Network Rail's staff/contractors to access the Triangle land without coming into conflict with either the Jewson Warehouse or the site in its 'redeveloped form' in the event that the planning permission is built out.
- 3.131 Further and in any event, at all material times it has been understood by BPL that redevelopment of the Horn Lane site must provide for the maintenance of an access along the route of the easement, in order to allow Network Rail to serve the Triangle land for the purposes of the permanent Easement. Indeed, BPL's own Planning Statement expressly confirms that the Permission was sought on that basis¹.
- 3.132 In those circumstances, the only ground remaining to BPL concerns ownership of the Triangle land. In this regard, BPL contends that the easement should not be granted because the Crown Estate, which holds the Triangle land bona vacantia, has not sold it to Network Rail; thus any grant of the Easement might conceivably be abortive.
- 3.133 However, the Order provides that the easement cannot take effect until Network Rail has acquired a suitable interest in the Triangle land to allow it to operate the permanent RRAP. Thus BPL's position as regards the grant of a 'superfluous' easement being granted is redundant.
- 3.134 Second, as is evident from the correspondence before the Inquiry, the Crown Estate – understandably – is reluctant to commit to sale of the Triangle land to Network Rail, until it knows that the Order is made. For BPL to rely upon the fact that the Crown Estate has not yet sold the Triangle land (or an interest in it) to Network Rail is, in these circumstances, an entirely artificial construct. It is an attempt to mount a 'chicken and egg' argument, that has no place in a constructive debate.
- 3.135 In this context BPL itself has withdrawn its initial interest in purchasing the Triangle. There is only one other potential purchaser of the Triangle now, aside from Network Rail, and that is a local resident. The Inquiry should then note the statement made by the Crown Estate's solicitors, that *"...where a planning consent has been secured [the Crown Estate] would in the normal course then effect a transfer of the land to facilitate the consented development"* (Appendix JS1 of W5.2). Finally there is the further statement made by the Crown Estate's solicitors that *"... in this instance we propose to await the outcome of the application made by Network Rail before inviting further representation from each of the interested parties, at*

¹ Paragraph 7.30 of the Planning Statement submitted pursuant to the Permission states: *"Network Rail has confirmed that, due to the proximity of the Site to mainline railway, a 5m wide buffer is being provided along the northern boundary of the Site to safeguard future access for Network Rail. This derives from Network Rail requiring that a clear zone from overhead electrical cables to be left alongside the railway line and an allowance for construction traffic and operations that are required by Network Rail to allow for road to rail access of land immediately to the west of the Site. This results in a 5m offset in total and would ensure that Network Rail's operations are not unduly restricted by the Proposed Development.*

which point it should be clear to both parties which is the more appropriate purchaser” (INQ-05).

- 3.136 The only sensible, reasonable way to read these indications – supported as it is by the long-established practice of the Crown Estate – is to conclude that in the event that the Revised Order is made, then the Estate will transfer the Triangle land (or at the very least a lease in it) to Network Rail. Given this position, BPL’s contention on the issue of ‘land ownership as obstacle/impediment’, must fall away.

Conclusions on Second Proposal

- 3.137 There is a compelling case in support of the grant of the easement. The evidence as regards the need for the permanent RRAP is unanswerable; indeed no party has materially disputed it. Quite simply, it is required to ensure that the maintenance of the infrastructure of the GWML can be properly and responsibly undertaken. As such it is manifestly in the public interest. There will be no material impact on the amenity of any residential properties, and the proposed redevelopment of the Horn Lane site has been promoted expressly on the basis that the right of Network Rail to access the Triangle land will be protected. The easement will not ‘bite’ unless and until the Crown Estate transfers the requisite interest in the Triangle land to Network Rail, but the reality is that such transfer will follow on the making of the Order. That is the only reasonable basis on which to read the correspondence from the Estate’s solicitors.

Overall Conclusion

- 3.138 The two proposals in respect of which the Order is promoted both comprise vital matters in the public interest. There is minimal public objection to the Order, and the absolute minimum of powers are sought. If granted, the Order may interfere with the interests/intentions of BPL as the owner of the Order land, but Network Rail has bent over backwards in order to seek to accommodate those interests/intentions, and insofar as interference does result, fair compensation will be paid.
- 3.139 The Inspector is respectfully requested to recommend the making of, and the Secretary of State is respectfully requested to make, the Order.

4 INSPECTOR'S CONCLUSIONS

- 4.1 In reaching my conclusions I have had due regard to the aims expressed in S149(1) of the Equality Act 2010. References to earlier paragraphs in this report are shown in square brackets – eg [2.3] and main conclusions on the numbered Statement of Matters are highlighted thus – **{SoM7}**.

Whether or not it is appropriate for the Secretary of State to make a decision on the Order

- 4.2 Having particular regard to the verbal evidence at the Inquiry of Mr Sinclair (a Senior Surveyor for Network Rail) BPL contends that it would not be appropriate for the Secretary of State to make a decision on the Order. This is on the basis that he cannot fairly determine the matter given that he, either himself or acting through his officials, directed, came close to directing or sought to influence Network Rail not to pursue use of the North Pole Depot for the scheme [2.21].
- 4.3 In my experience it is not unusual for the Secretary of State/his officials to formally express support for a transport scheme (including a conditional award of funding) in advance of his consideration of statutory orders for the same scheme [3.10]. Moreover, such expressions of support may be inferred by some as meaning that the Secretary of State agrees that the proposed scheme is preferable to the assessed alternatives to it. That said, where support for a scheme has been indicated by the Secretary of State/DfT, this would normally be made openly in writing with a clear statement that it is “in principle” support, and would not prejudice decisions on any Orders or other permissions required for the scheme.
- 4.4 In this case the process of selecting the Horn Lane site in comparison with alternatives, most notably at the North Pole Depot, is the subject of an almost complete lack of contemporary written evidence – eg notes of meetings, email trails or letters etc. Network Rail has stated that the only such evidence relating to discussions with DfT or Agility/Hitachi (who operate the North Pole Depot) about its use is an email trail of January 2021 (INQ-04). From this trail (email and photo on pages 6 and 7) it appears that in January 2021 Network Rail were considering use of land to the west of the North Pole Depot for the construction compound/RRAP which is now the subject of the Order. The email trail ends with the statement by James Slater, a Principal Surveyor at DfT, that the land in question is the subject of a lease with Agility Trains and that, thus, the consent of DfT for use of this land by Network Rail could not be given without involving Agility.
- 4.5 Consequently, whilst it is clear that DfT officials were engaged in the matter in January 2021, there is no written evidence before the Inquiry as to (i) how or when the final decision on the choice of site for the scheme was made, (ii) the extent to which the decision was directed or influenced by the Secretary of State and/or his officials, and crucially (iii) what, if anything, was said in connection with the above about the likelihood of approvals being granted for statutory orders/permissions for the Horn Lane site.
- 4.6 Therefore, I am unable to conclude on this point other than to suggest that the Secretary of State appraises himself of what he/his predecessors/his

officials have said to Network Rail in respect of potential sites for the Order scheme and, if necessary, seeks his own legal advice before deciding whether or not it is appropriate for him to make a decision on the Order **{SoM8}**.

Compliance with Statutory Procedural Requirements

- 4.7 Prior to the Inquiry I noted that, contrary to sections 4(1) and 13(1a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, Network Rail had not consulted Transport for London about the Order. It had also not formally consulted the Mayor of London, His Majesty's Railway Inspectorate, the relevant Fire and Rescue Authority and the Local Highway Authority, which was potentially in conflict with the requirements of section 13(3) and Schedules 5 and 6 of the 2006 Rules. Network Rail agreed to formally consult these bodies on the Order concurrently with the Inquiry taking place. The deadline for responses was 14 December 2023 and no further objections were received. Consultation was then subsequently carried out between 19 December 2023 and 30 January 2024 on proposed amendments to the Order (the Revised Order) and to the application for deemed planning permission. Following this some further, relatively minor, amendments to the Revised Order were proposed, on which BPL (the landowner) have commented. These amendments are highly unlikely to materially affect any other party and, thus, I conclude that it would be appropriate to make a decision on the final Revised Order (INQ-70.02) without the need for further consultation.
- 4.8 An objector has questioned the validity of the consultation process given that it includes complex legal phrases/jargon and that there are elderly and disabled residents in the area and people for whom English is not their first language [2.100]. I recognise that the consultation correspondence may have been difficult for some people to fully understand. However, the 2006 Rules do not set out any particular requirements in this respect and I consider it unavoidable that consultation on a Transport and Works Act order will contain some legal phrases or jargon. Indeed, it is important that the Order was described with precision and clarity and that the language used in consultation documents was not so basic as to be misleading. Moreover, Network Rail went beyond the requirements of the Rules in holding two public drop-in events in the locality and providing a telephone helpline to assist with any questions about the scheme. I have seen no evidence to indicate that anyone who sought assistance from Network Rail to understand the consultation was denied such help.
- 4.9 Having regard to the above, and its verbal confirmation of the point at the commencement of the Inquiry, I am satisfied that Network Rail has complied with all statutory procedural requirements in promoting the Order **{SoM7}**.

Aims and Objectives and Need

- 4.10 The aim and objective of the temporary possession element of the Revised Order is to provide/operate a temporary construction compound adjacent to a temporary Road Rail Access Point (RRAP) on the main lines of the GWML. This is sought to enable construction of a new station (Old Oak Common) on

the GWML. Network Rail indicates that this station (which would provide interchange with the, currently under construction, Old Oak Common station on HS2) is necessary to allow HS2 to open to Old Oak Common and, in particular, to provide an efficient means of transferring HS2 passengers to/from central London [3.2].

- 4.11 In verbal response to my questions at the Inquiry, Network Rail indicated that in the absence of the Revised Order, opening of Old Oak Common station on the GWML would be delayed by at least 12 months, which would have the potential to also delay the opening to passengers of HS2. Network Rail subsequently submitted INQ-35 which identifies the delivery impact of a Do Nothing option (ie no new RRAP at all) as being “*delay in programme of 1 year*”. Network Rail expands on this point in INQ-37 stating “*As explained at the Inquiry, a one-year delay is considered to be the best-case scenario in the event that the Order is not made (dependant on getting agreements for Network Rail to change access and possessions). The delay may therefore be longer. However even a one year delay would result in significant cost impacts, reduced efficiency of delivery, and further damage to the reputation of the Rail Systems Project*”. Whilst having regard to BPL’s comments on the matter (INQ-33), I accept Network Rail’s argument that the delay of at least a year would be likely, notwithstanding that the envisaged timescale for it securing this Order is itself already delayed [3.105] **{SoM1}**.
- 4.12 In terms of the permanent access right element of the Revised Order, its aim and objective is to provide access from the highway at Horn Lane to a proposed permanent compound and RRAP on the Triangle land to serve the GWML. Network Rail indicates that this is needed because of a lack of RRAPs along this section of track and to enable ongoing repair and maintenance of the railway [3.125]. Whilst only limited evidence of the need for an additional permanent RRAP has been put forward by Network Rail, it is also the case that there is no substantive evidence to indicate that it is not necessary **{SoM1}**.

Impact on businesses, residents and highways

Businesses

- 4.13 The Revised Order land comprises the access to and part of the car parking and outdoor sales/storage area of a builders’ warehouse store, currently operated by STARK (trading as Jewson). However, STARK’s lease of the land (and the adjoining warehouse building itself) will expire on 1 October 2024 [2.23] and, consequently, the Revised Order would be unlikely to have a significant effect on STARK. In fact, if the Secretary of State were minded to make the Order it could be cited to come in to force after 1 October 2024 (assuming that date had not already passed), thereby ensuring no impact at all on STARK.
- 4.14 However, the freeholder of the site (BPL) is also an operator of builders’ merchants and indicates that post 1 October 2024 it intends to use the Order land and adjacent warehouse, initially as a logistics and delivery hub and as a builders’ merchants, either as a facility in its own right or as a replacement

for its existing West Hampstead facility which may, itself, be subject to compulsory acquisition [2.23].

- 4.15 In theory, the site-sharing arrangements proposed by Network Rail in its unilateral undertaking (INQ-82) would mean that the proposed logistics/delivery hub and/or builders' merchants could still operate with the Revised Order in place. However, I share BPL's view that the operation would be "severely compromised" [2.28]: whilst stock currently on display/stored outside (on the Revised Order land) could, instead, be stored/displayed within the warehouse itself, this would significantly reduce the overall floorspace available for display and storage of goods. Moreover, the hours of operation of the business would effectively be limited to those currently operated by Jewson and there would be significant limitations on the ability to service the warehouse (eg for deliveries) outside its public opening hours.
- 4.16 BPL also has planning permission (granted 29 December 2023) for redevelopment of the Order land and warehouse for a mixed-use development comprising a replacement builders' warehouse and 185 residential flats [2.23]. Network Rail argues that the site-sharing arrangements in its unilateral undertaking would enable this development to be constructed and occupied in tandem with use of the site as a temporary construction compound for its railway works [3.91].
- 4.17 However, to my mind, construction of the development, on what is already a relatively constrained site, would be made significantly more difficult by the Order, notwithstanding the unilateral undertaking's proposed site-sharing arrangements. Whilst most of the footprint of the proposed building would be outside the land to be shared, the remainder of the site around it would be either shared with Network Rail or in Network Rail's sole temporary possession. Thus, there would be severe limitations on the ability of the development construction contractor to store construction materials and machinery, or even access the site, outside its permitted hours of construction.
- 4.18 Furthermore, a small part of the building's footprint would be within the land subject to the Order and site-sharing. Consequently the proposed development, as permitted, could not be completed unless, as Network Rail suggests, BPL were to allow it to use adjoining land outside the Order land [2,31].
- 4.19 Overall, I agree with BPL that despite the site-sharing arrangements the temporary possession element of the Order would be likely to make the mixed-use development longer and more expensive to build and may well limit the pool of contractors willing to bid for the project [2.29]. BPL's statement that the viability of the development is, in any case, marginal has not been contested [2.29]. Given this, and the additional construction costs likely to be incurred and the uncertainty as to whether or not the development could be completed in accordance with the planning permission, I envisage that, notwithstanding the proposed site-sharing arrangements, the Revised Order would have significant potential to result in the permitted mixed-use development not being constructed for the foreseeable future. I note that the mixed-use development was specifically designed to enable

access to a potential RRAP on the Triangle land [3.131] and that condition 28 of the planning permission provides for a phasing plan to ensure that the development would not impede the use of the temporary RRAP (page 13 of INQ-71). However, to my mind these matters merely reflect the reality of the situation of the potential for a Transport and Works Act Order to be made affecting the site and is not an indication that the Order would not adversely impact on the implementation of the mixed-use development.

Residents

- 4.20 The Revised Order land is immediately adjacent to, and overlooked by the windows/balconies of the rear elevation of Acton House, a seven storey block of residential flats/ground floor commercial premises. As originally proposed the Order would have suspended residents'/businesses' rights of access to the garages/parking area at the rear of Acton House. However, at my suggestion, Network Rail has ensured that these rights are protected under the Revised Order.
- 4.21 It is common ground that, with the actual railway works taking place a good distance away from the Horn Lane site, noise would be most likely to arise on the Order land from the arrival, departure and manoeuvring of vehicles, machinery, workers and materials. Much of this activity would be likely to take place in the north-eastern corner of the site, adjacent to Acton House. It is the case that no technical evidence has been submitted to indicate the likely level of noise which would arise from this activity [2.69]. However, at the site visit Network Rail arranged for an RRV to be delivered and demounted from a low loader. This took place on land adjacent to the GWML and I observed the activity standing at a similar distance from the low loader as would be the rear windows of Acton House to the proposed temporary construction compound.
- 4.22 In this particular instance and to my mind, this was as, if not more, effective in indicating the likely noise impact of the use than a technical report, particularly given the RRV demonstration location's similarity to Horn Lane in terms of the proximity of the GWML and there being other activity in the area (ie the HS2 construction work). The noise of the shackling/unshackling of the chains securing the RRV to the low loader and the reversing bleeper of both vehicles was clearly audible, including above the background noise of trains passing by and the HS2 construction work. Moreover, the reversing beepers are, by their nature, a noise designed to attract attention, much more so than the "woosh" of passing trains or the general hubbub of most aspects of city life.
- 4.23 Whilst, subject to a risk assessment, I understand that there could be the potential to switch off the reversing beepers, I am not convinced this is likely to be realistic, given the need to move large vehicles in a confined space during the hours of darkness with workers in the vicinity.
- 4.24 The temporary construction compound would primarily operate during overnight hours [3.68] and, based on the verbal evidence at the Inquiry and my observations at the site visit, I envisage that the likely activity would have the potential to prevent from getting to sleep, or to wake up, residents

of Acton House. This would particularly be the case if the residents had their windows open as they may feel the need to do in the warmer months. Indeed, I noticed that the windows of several flats were open during my November site visit. I reach this conclusion having regard to the likely impact of measures to control noise through an Environmental Management Plan which could be secured by condition of planning permission [3.102]. During the Inquiry it was suggested that the RRVs could be delivered to the Horn Lane site during daytime hours in order to minimise the noise associated with their unloading during night-time hours. However, even if this proved to be practicable (bearing in mind the commercial/construction activity likely to be taking place on the site during the working day), the movement/reversing (including warning beepers) of the RRVs on to/from the RRAP during the overnight works would, itself, be likely to be heard by and cause disturbance to the residents of Acton House.

- 4.25 I appreciate that a temporary RRAP was in place nearby during the construction of Crossrail [3.104]. However, this was to the side, rather than the rear, of Acton House, overlooked by fewer and much smaller, secondary windows than the numerous large, main windows of the building's rear elevation.
- 4.26 The proposed conditions of the deemed planning permission (Appendix 1 of this report) include a restriction on the number of occasions on which vehicles/machinery could be moved during night-time hours – to 300 nights during the 5 - 5.5 years life of the permission to 31 December 2029 when using powered RRVs and an additional 175 nights when using non-powered RRVs. In terms of powered RRVs alone this would equate to an average of more than one night per week, although in reality two weekend nights every fortnight would be more likely. I do not agree with Network Rail's description of this being as of "very limited" frequency [3.99].
- 4.27 In my judgement this frequency and level of night-time noise over a period of at least five years would have the potential to cause significant disturbance to the residents of Acton House. Moreover, contrary to Network Rail's contention [3.104], I consider that the impact of this disturbance would be made even more unacceptable if the construction of the permitted mixed-use development were to take place during the same period. The residents would then have both the inevitable daytime noise disturbance of an immediately adjacent major construction project and the regular, albeit not nightly, overnight noise disturbance of operation of the Network Rail temporary construction compound/RRAP.
- 4.28 That only a limited number of Acton House residents have objected to the Order does not mean that the harm I have identified is likely to be caused to them, would not result. Furthermore, whilst Network Rail states that a number of objecting residents were under the misapprehension that the Order works would operate "24/7" [3.29], the original Order itself (and Network Rail's originally-suggested conditions for the deemed planning permission) would not have prevented this and the example consultation letters from 2022 (eg page 53 of CD 06) do not indicate the intention that the timing/frequency of the works would be limited/restricted. Moreover, and crucially, the site-sharing nature of the Revised Order and related unilateral

undertaking means that for around 6 years residents would have the potential to experience disturbance during both the working day and on, numerous occasions, overnight. That part of the concerns of some residents relate to the impact on them of the construction of the, now permitted, BPL mixed-use development [3.15], merely demonstrates the cumulative harm which the Order scheme would have the potential to cause. Indeed in her objection letter in respect of the Revised Order [INQ-74], and with reference to both the BPL and Network Rail schemes, Ms Thompson refers to the “*two pronged attack on her.... peace and quiet*”.

- 4.29 Furthermore, whilst it is the case that Mr Gent has reportedly not experienced a development which could not be made acceptable in terms of residential amenity by planning permission conditions [3.103], in my experience there are numerous planning applications which are appropriately refused on this basis.
- 4.30 Overnight operation of the temporary construction compound would require use of temporary lighting. However, this could be controlled to point both downwards and away from Acton House. Moreover, any remaining light pollution for local residents, could be all but eliminated by the use of blackout curtains/blinds and consequent harm in this respect would be likely to be minimal. I reach this conclusion notwithstanding the lack of specific technical evidence on lighting [2.69].
- 4.31 In terms of air quality, and whilst there is also no technical evidence on this [2.69], given that the actual railway works would take place away from the Order land and that a relatively limited number of vehicles would be required to visit/service the temporary construction compound, it is reasonable to conclude that the Revised Order would be unlikely to give rise to significant adverse impacts.
- 4.32 The permanent access right element of the Revised Order would also be likely to give rise to some disturbance to residents of Acton House, and of the proposed mixed-use development if it were to be constructed. Most notably this would arise from the night-time reversing of large vehicles (likely to be using warning beepers) across the full 150m or so extent of the Horn Lane site from Horn Lane itself to the Triangle land. Some disruption would also be likely to arise from activity at the permanent compound/RRAP itself [2.98]. However, overall the disturbance caused by the access right/permanent RRAP would be likely to be considerably less than that arising from the temporary RRAP/compound because of its envisaged infrequent use (Network Rail envisages a few times a year [3.128]) and because of its greater distance from residential properties, including those on Lynton Road.

Highways

- 4.33 A Transport Statement (JD1 of W4.2) was submitted with Network Rail’s Proofs of Evidence for the Inquiry which concludes that impacts of the original Order on the highway network would be likely to be negligible because there would be a significant reduction in vehicle movements compared to the existing use of the site. Whilst the Revised Order’s site-sharing proposals mean it is no longer the case that there would be a

reduction in vehicle movements compared to the existing situation, it is clear that, nonetheless, a relatively limited number of vehicles would be required to visit/service both the temporary construction compound and to access the permanent RRAP on plot 1. It is the case that traffic on Horn Lane might need to be briefly halted when large vehicles enter or leave the site [2.88]; however, this is not an uncommon occurrence across London. As such the Order's impact on the highway network would be likely to be minimal. Moreover, given their limited number, the mere passing by of residential properties on roads in the wider surrounding area by these vehicles heading to/from Horn Lane, even during the night-time, would in my judgement be unlikely to cause significant disturbance [2.88].

Overall

- 4.34 Whilst impacts on the local highway network, and arising from light and air quality pollution, would be likely to be minimal, I conclude that, having regard to the proposed site-sharing arrangements, the temporary possession element of the Revised Order would be likely to seriously compromise operation of the Horn Lane site as a builders' merchants. Moreover, it would also be likely to increase the costs of/make more difficult construction of the permitted mixed-use scheme for 185 flats, such that there would be the realistic potential for the development not to be constructed for the foreseeable future. Furthermore, the night-time noise arising from the temporary possession would be likely to cause significant disturbance to, and harm to the living conditions of, the residents of Acton House, disturbance which would be exacerbated by the daytime noise associated with the construction of the mixed-use development if that were to proceed at the same time **{SoM3}**.

Alternative Options

- 4.35 In objecting to the Order BPL and STARK suggested a large number of alternative locations for the proposed RRAPs and construction compounds. However, by the time of the close of the Inquiry, the alternatives still seriously advanced were sites to the east and west of the Agility/Hitachi train maintenance facility at North Pole Depot. Based on my site visit inspection of it, I conclude that the eastern of these two alternatives is not a realistic option, as a result of its very limited size, its sloping nature and its lack of level access with the adjoining railway line.
- 4.36 In terms of the western site at the North Pole Depot, Network Rail set out in its Statement of Case (SoC 01), the proofs of evidence of Mr Fleming and Mr Ford (W1.1 – W1.4 and W2.1 – W2.24) and in its closing submissions (INQ-76 and INQ-77, as summarised in section 3 of this report) the reasons why it considers this location to not be a suitable alternative to the Horn Lane site. However, whilst it is clear that the depot site was, at one stage, seriously considered by Network Rail and it indicated that it was the subject of detailed discussion with both Agility/Hitachi and DfT officials [3.9 and 3.80], there is a regrettable lack of contemporary written evidence on these discussions and of how and why this alternative was rejected in favour of the Horn Lane site. Nonetheless, I consider below the main arguments against the western site at the North Pole Depot as now advanced by Network Rail.

- 4.37 However, before doing so, I note Network Rail's contentions that, in only undertaking a desk top analysis of possible RRAP locations at the North Pole Depot and in not discussing the matter with Agility/Hitachi, BPL did not undertake what was incumbent on it to advance a credible case about these locations [3.48 and 3.49] and, with reference to caselaw, "*that where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight*" [3.51]. To the extent that this caselaw is relevant to consideration of an Order under the Transport and Works Act, I consider that the North Pole Depot alternative locations for the RRAP are not "inchoate or vague schemes". In fact they are ones which Network Rail had itself considered, that to the west seriously enough for it to have had email engagement with DfT about its possible use as detailed in paragraphs 4.4, 4.5 and 4.36 above.
- 4.38 In terms of the likelihood/possibility of the alternatives coming about, whilst Network Rail has stated that North Pole Depot is not feasible as an alternative location for the RRAP, as detailed in paragraph 4.4 above there is virtually no contemporary written evidence (from the time the decision was made) to support this. In this context I consider Network Rail's statements about discussions held with Agility/Hitachi (about which there is no contemporary written evidence to corroborate/contextualise them) are worth as evidence for an Inquiry into the Order pretty much the same as a desktop analysis about the alternatives, not supported by any such discussions. Furthermore, since the onus is on Network Rail to demonstrate a compelling case in the public interest for the powers of the Order, it logically follows that the onus is also on it to demonstrate that an alternative to that Order is not a feasible one, rather than on an objector to the Order to demonstrate that it is feasible.
- 4.39 The depot site is served by two vehicular accesses - a main, eastern, one from Mitre Way and a secondary, western, one from Old Oak Common Lane. In my view neither are perfect - both involve level crossings of access lines into the railway depot and the western access is steep and has tight bends, although the evidence (paragraph 3.30 of OBJ-8.3.1) demonstrates that it could be negotiated by a 16.5m articulated vehicle which, based on what I heard at the Inquiry, is likely to be of sufficient size in most instances. Additionally the eastern access involves passage of a single lane, height restricted underpass. Moreover, it is probable that the western access will be closed for a period (or periods) of time when Old Oak Common Lane is closed for improvement as part of the Old Oak Common station works. That said, I find the evidence (and the conflicting interpretations of it) on the likely length of the closure(s) (INQ-50, INQ-51 and INQ-62) to be inconclusive.
- 4.40 However, the issues with the western access are, in my view, not of fundamental importance, given that the potential site for the RRAPs/compound can also be accessed from the east via Mitre Way. That said, to the extent that two vehicular accesses are likely to be available for at least some of the period during the use of the temporary compound/RRAP, this indicates this alternative's superiority over Horn Lane which currently has, and realistically can only ever have, one vehicular access. Indeed, this is

a particular advantage of the North Pole Depot site for the permanent RRAP/compound, which would be likely to become operational only after the full-reopening of the western access/Old Oak Common Lane.

- 4.41 Whilst accepting that it may be possible for some RRVs to negotiate the height restricted underpass on low loaders (their normal mode of movement on roads), Network Rail argues that it may be necessary for others to unload RRVs first which would then need to travel independently as wheeled vehicles [3.66]. However, whilst this cannot be discounted as never being necessary, the submitted evidence (OBJ-08.4.5, Appendix B) shows that a typical RRV is less than 3.3m in height. Given a typical low loader main "bed" height of 0.3 – 0.6m (as verbally referred to at the Inquiry and to my mind realistic) such an RRV on a low loader would readily negotiate the 4.25m height underpass (confirmed on the site visit by the signage). Even then, unloading of any "oversize" RRVs to negotiate the underpass (which itself is only in the order of 50m long), would only be necessary if it was during a period when the access to the RRAP from Old Oak Common Lane was closed.
- 4.42 Furthermore, whilst Network Rail also refers to the need for these vehicles to negotiate the overhead electric lines at the level crossing [3.67] the signage indicates that these are no lower than the underpass.
- 4.43 It is the case that the underpass has only a single lane as also, in places, has the road from there to the depot/the potential site for the RRAP/compound. The route also has a level crossing at which trains would take priority [3.67]. However, there is no evidence to indicate that these constraints cause significant congestion or delay for the numerous vehicles which currently use this route to access the Agility/Hitachi rail depot. Network Rail's Transport Statement (JD1 of W4.2) identifies a relatively small number of vehicles will be required to serve the RRAP/compound. Thus, I envisage that these vehicles would be very unlikely to either cause or suffer significant congestion or delay themselves, even at night which is a generally busy time at the depot. Indeed, the delay caused would be unlikely to be materially greater than that caused to traffic on Horn Lane when large vehicles were to enter or leave that site. Furthermore, now that site-sharing is proposed, the vehicular access (plot 3 at Horn Lane would be subject to significant constraint itself, involving a tight, right-angled bend (to enable construction of the proposed residential/retail development) as shown on the Order Land Plan (Appendix 3 of this report).
- 4.44 Indeed, under site-sharing scenario 2 (to be operational if the proposed development is under construction), Network Rail points out that the reduced area available for vehicle manoeuvring, temporary material storage and plant parking will "*significantly slow the process of delivery*" (INQ-70.10, para 2.5). The same document (para 3.1) notes that some vehicles accessing the permanent RRAP would be required to reverse into the site from Horn Lane. The reversing would need to continue for around 150m through the site to Plot 1, including around the tight, right-angled bend and with the potential for encountering local residents' or warehouse customers'/delivery vehicles.
- 4.45 Network Rail describes as "cavalier" BPL's contention that "management", would satisfactorily address interaction between use of a RRAP at North Pole

Depot and the operations of Agility/Hitachi, particularly as no explanation is provided as to the feasibility of this [3.73 – 3.74]. However, equally, Network Rail has been unable to provide any written evidence from Agility/Hitachi to substantiate its argument that it could not be successfully managed. Moreover, whilst in making the case for the Horn Lane site, Network Rail argues that the carrying out of works pursuant to a possession is such a complex and problematic exercise, it is simply not credible to suggest that the temporary RRAP could be sited in a location where other, external factors add yet further risk and complication to the situation [3.47], this appears to completely ignore the realities of the situation at Horn Lane under the Revised Order and unilateral undertaking.

- 4.46 Whilst the Order as originally proposed would have given Network Rail unrestricted temporary possession of the entire Jewson site at Horn Lane, the Revised Order (and related unilateral undertaking) significantly reduce the amount of land available to Network Rail at the site and provide for a complex range of scenarios, enabling sharing of the constrained site between Network Rail and (i) residents and businesses accessing the rear of Acton House (ii) the operation of (and the arrival /departure of staff, customers and deliveries to) the existing builders' merchants and/or (iii) the construction of a large mixed-use development including 185 flats. Bearing in mind the lack of contemporary written evidence on the point, I do not find it credible that successful management of the interaction between the use of a RRAP at North Pole Depot with the railway operations of Agility/Hitachi (and HS2 itself [3.69]) would be more challenging than management at Horn Lane of the interaction of the operation of a RRAP with the commercial and major building construction activity potentially taking place there.
- 4.47 Furthermore, North Pole Depot also has the advantage over Horn Lane of the absence of residential properties in close proximity to the proposed RRAP/construction compound location. This is of particular significance given the anticipated night-time use of both the temporary and permanent RRAPs and the disturbance to local residents I have identified their use would have the potential to cause at Horn Lane.
- 4.48 Overall I conclude that on the available evidence and for both the temporary and permanent RRAPs the site immediately to the west of the Agility/Hitachi North Pole Depot would in some ways be superior to, and, in most other ways be as good as, the Horn Lane location which is the subject of the Order **{SoM2}**.

Whether there are any impediments to implementation

- 4.49 In terms of the temporary possession element of the Revised Order, planning permission would be required for the related temporary construction compound, although an application for deemed planning permission has been submitted alongside the Order, on which I conclude below. Network Rail has indicated that the related railway works themselves are either permitted development or are approved by HS2 legislation (paragraph 1.6 of CD 11.1).
- 4.50 The permanent access right element of the Order is required to enable the construction/operation of a permanent compound and RRAP on Plot 1.

Network Rail indicates that these works/operations would also constitute permitted development [3.127]. However, Plot 1 is not part of the Order land and is currently held by the Crown Estate bona vacantia. Network Rail contends that the Crown Estate's agents would be likely to sell this plot of land to Network Rail if this Order were to be made [3.136]. However, there are no guarantees of this, and therefore at my suggestion the Revised Order is drafted such that the power to acquire this right of access only comes into force if Network Rail acquires an interest in Plot 1 necessary for it to use it as a permanent RRAP.

- 4.51 In the event of there being dispute over what constitutes the necessary interest in Plot 1 [2.65], this would be for the Courts to determine as with any dispute over whether or not action taken accords with the terms of a Transport and Works Order. Moreover, given that the purpose for which the access is required is stated to be "*permanent maintenance access for road rail vehicles...*" (column 3 of schedule 1 of the Revised Order (INQ-70.02)) it appears to me that a temporary interest in the Triangle land would not be sufficient to be the necessary interest for the access right to come into force [2.65] **{SoM5}**.
- 4.52 CD 04 identifies that both elements of the scheme are fully funded. Whilst arguments have been made that the funding may be insufficient [2.114], Appendix AF1 of W1.2 makes clear that HS2 will fund this project at whatever its cost.
- 4.53 On this basis I conclude that there are unlikely to be any impediments to the implementation of the scheme enabled by the Order if it were to be made and the related deemed planning permission were to be granted **{SoM4ii}**.

Whether all land/rights are needed for the scheme

- 4.54 There is no dispute that the permanent access right element of the Revised Order would be necessary to enable the provision and operation of the proposed permanent RRAP and compound on Plot 1. Whilst as indicated above the fact that Plot 1 is held by the Crown Estate bona vacantia remains a potential impediment to implementation of this aspect of the scheme, the permanent access right (as restricted in the Revised Order) would not come into force until Network Rail acquires the necessary interest in Plot 1.
- 4.55 The Order's power for Network Rail to take temporary possession of land covers the entirety of the Order land as shown on the Order Land Plan (Appendix 3 of this report). However, in proposing site-sharing with BPL, Network Rail indicated that it envisaged an option agreement with BPL allowing "*BPL to buy back any rights so acquired, subject to Network Rail reserving the rights it needs for its scheme.*" (point 3 of INQ-21). Proposing to sell back rights acquired, apart from those Network Rail needs for the scheme, is to my mind an indication that the Order includes rights which are not needed for the scheme. In the light of this I suggested to Network Rail both verbally and in writing during the course of the Inquiry (as quoted in Points 2, 3 and 4 of INQ-16) that, in my view, it would be more appropriate for site-sharing to be provided for through the Order itself. I recognise that this would be likely to require the Order to deviate considerably from the

published model clauses for Transport and Works Act Orders [3.114]. However, the legislation allows for this and it would seem to me to be entirely appropriate given that the site-sharing situation envisaged in this case deviates considerably from the situations to which the model clauses are relevant.

- 4.56 Agreement with BPL could not ultimately be reached and, thus, the site-sharing provisions Network Rail envisaged incorporating in the option agreement are instead provided for in a unilateral undertaking (INQ-82). I accept that there are existing examples of Transport and Works Act Orders (or similar statutory approvals) which have been made subject to side agreements/undertakings [3.115]. However, it appears to me that those which have been referred to, deal with relatively minor side matters in relation to the powers granted: for example, the undertaking associated with the powers to construct the entirety of HS2 to Birmingham (the HS2 Act) merely requires that two roads in London are not simultaneously temporarily closed (paragraph 3.2 of INQ-70.12).
- 4.57 The situation in this case is very different. The unilateral undertaking provides for three scenarios, essentially relating to the extent of construction of BPL's mixed-use development (shown on Site Sharing Scenario Plans 1, 2 and 3 of INQ-82). However, under all scenarios "unrestricted" temporary possession would be limited to a small portion of the Order land (the irregular shaped unhatched area shown on the land plans). In effect sole temporary possession by Network Rail of the majority of the Order land would only apply for four hours prior to, during and for 75 minutes following "possessions" of the railway for implementation of the GWML Systems Project – envisaged to be in place for no more than 475 nights in the period until December 2029. In essence the Order's provision for Network Rail to have sole temporary possession of the Order land would not be required across the majority of the site for the vast majority of the time.
- 4.58 I accept that it would be unlikely to be feasible to include all the details of the practical management of proposed site-sharing in a Transport and Works Act order and that to do so would prevent desirable flexibility [3.113]. However, to my mind it would be feasible for such an order to provide the right for Network Rail to use the land to be shared as a temporary construction compound, including the suspension of access rights to all other parties during relevant railway "possessions". Unlike the Revised Order as proposed, such an order would reflect the rights which Network Rail would actually need in this case. Further operational details of site-sharing could then appropriately be included in a side agreement/unilateral undertaking. Such an agreement/undertaking would then merely provide detail to support the powers granted by the Order rather than seek to substantially curtail them.
- 4.59 Consequently, I conclude that the extent of temporary possession included in the Revised Order is not needed for the scheme. Moreover, BPL's detailed concerns about specific articles of the Order [2.79 – 2.81] serve to echo this general point. Of course, it is the case that when bound by the unilateral undertaking the powers would be restricted to only those needed for the scheme. However, in my judgement, it would be inappropriate to make a

Transport and Works Act Order subject to a separate unilateral undertaking which would fundamentally alter and curtail the provisions of that Order. This is particularly so when, as detailed above, I consider that an alternative approach would be feasible. However, should he be minded, in principle, to make the Order, the Secretary of State may wish to seek his own legal advice on this matter **{SoM4i}**.

Whether the planning application accords with the Development Plan

- 4.60 Alongside the original Order an application for deemed planning permission (essentially for the temporary construction compound) was made by Network Rail, which was also modified during the course of the Inquiry to reflect the discussions held and the proposed modifications as set out in the Revised Order. It is appropriate to consider the planning application's accordance with the Development Plan.
- 4.61 The application accords with policies T1 and T3 of the London Plan which indicate that development proposals should facilitate/allow to come forward a list of named transport schemes (Table 10.1) which includes HS2 and associated Network Rail changes. Policy ACT6 of the London Borough of Ealing Development Sites Plan identifies the planning application site as a small part of a large land allocation for "*consolidation of industrial, aggregates and waste facilities to the north of railway, safeguarding of the rail sidings, and introduction of commercial and residential (potential for student accommodation) uses south of the railway, compatible with the functioning of the station.*" Whilst this wording, and that of the policy's supporting text, does not refer to railway-related development on the planning application part of the site, neither does it seek to prevent it. I therefore conclude that the planning application is neither actively supported by, nor in conflict with, Policy ACT6.
- 4.62 I have identified above that the construction compound element of the Order scheme (and, thus, the application for deemed planning permission) would be likely to give rise to significant disturbance to the residents of Acton House which would be contrary to the requirement of policy 7A (part A(a)) of the London Borough of Ealing Development Management Plan that development must not cause emissions of any sort which erode the amenity of surrounding uses. Whilst part A(b) of the policy refers to reasonable steps being taken to ameliorate emissions, and I note that mitigation measures are proposed as part of the development (eg accordance with an Environmental Management Plan), I conclude that these would be insufficient to not unacceptably erode the amenity of Acton House residents. As such the planning application conflicts with policy 7A.
- 4.63 Given that I have found the planning application accords with some relevant development plan policies but conflicts with another, I set out my conclusion on the application's accordance with the development plan as a whole in my Overall Conclusion below.

Conditions for Deemed Planning Permission

- 4.64 A list of proposed conditions for the Deemed Planning Permission accompanied the application of the Order/permission (CD 12) and this

evolved during the course of the Inquiry to reflect the discussions held and the Revised Order/application. A finalised list of suggested conditions is set out in Appendix 1 of this report and against each condition a reason is given. These reasons should assist in determining the acceptability or otherwise of any subsequent details submitted to the Local Planning Authority in the course of the discharge of these conditions. In essence the conditions are necessary for the avoidance of doubt (condition 2), because only a temporary permission would be necessary (condition 8), to ensure the safety of the site (condition 3) and to minimise the adverse effects of the use on the living conditions of nearby residents, on the appearance of the area and on the operation/safety of the local highway network (conditions 4-7). In addition an implementation condition is required (to accord with the Town and Country Planning Act 1990) - the appropriate period being one year to ensure that the related railway work is completed before the expiry date of the permission.

- 4.65 The addition of words in the conditions such as "*strictly in accordance with...*", as suggested by BPL (INQ-29), is not necessary and, to my mind, would add more, rather than less, ambiguity as to the meaning of "in accordance with". BPL's suggestions of a number of specific requirements in terms of details to be submitted to and approved by the Local Planning Authority are also not necessary. The conditions set out in Appendix 1 make clear the matters which are the subject of the further details required (eg measures to control external lighting, having regard to the relevant named guidance document) and the reason for the condition (to minimise the adverse effects of the use on the living conditions of nearby residents). Further specific requirements as suggested by BPL (eg the prevention of glare and sky glow) are not appropriate, given that there is not the evidence to demonstrate that their prevention is possible. Moreover, such specific requirements could inappropriately be inferred as meaning that other, not specifically listed, lighting impacts do not need to be controlled. BPL's suggested conditions (INQ-29) concerning damage to the highway and emission compliance of diesel generators are controlled by other legislation and are thus unnecessary.
- 4.66 Whilst the conditions would to some extent ameliorate the impacts of the temporary construction compound on local residents, they would not, in my judgement, make the impacts acceptable. Nonetheless, should the Secretary of State be minded to grant deemed planning permission then, to minimise the adverse impacts, that permission should be subject to the conditions set out in Appendix 1 **{SoM6}**.

Overall Conclusion

- 4.67 In relation to the contention that it would not be appropriate for the Secretary of State to reach a decision on the Order, I suggest that he appraises himself of what he/his predecessors/his officials have said to Network Rail in respect of potential sites for the Order scheme (and seeks his own legal advice if necessary) before deciding whether or not he should make a decision on the Order **{SoM8}**.

- 4.68 I am satisfied that Network Rail has complied with all relevant statutory procedural requirements in promoting the Order **{SoM7}** and that there are unlikely to be any impediments to implementing the scheme (having regard to the specific provisions of the Revised Order) **{SoM4ii and SoM5}**. I have also concluded that the Revised Order would be unlikely to adversely affect access/parking to the rear of Acton House or cause significant harm in terms of light, air quality or to the local highway network **{SoM3 in part}**.
- 4.69 However, the Revised Order's temporary possession provisions would be likely to severely compromise the operation of a builders' merchants from the Horn Lane site and/or make more difficult and expensive the construction of the permitted mixed-use scheme incorporating 185 flats, to the extent that there is a realistic potential that this scheme would not be constructed for the foreseeable future. Whilst such impacts would be likely to result in compensation being payable to BPL [3.94], that would not make the impacts themselves disappear. Moreover, possible wider impacts, such as greater difficulty for people in securing a home in the area if the mixed-use development were not to proceed, would not be compensatable. Furthermore, night-time noise arising from the operation of the proposed construction compound would be likely to cause significant harm to the living conditions of the residents of Acton House **{SoM3 in part}**.
- 4.70 There is a regrettable lack of contemporary written evidence to explain how and why alternative locations for the scheme were discounted. Moreover, based on the evidence now put forward and my site visits, I conclude that the site to the west of the Agility/Hitachi North Pole Depot would, in a number of ways be more suitable and, in most other ways be as suitable, as the Horn Lane site for both the temporary and permanent RRAPs and compounds **{SoM2}**. Furthermore, not making the Order (and indeed not providing an additional temporary RRAP at all) would not prevent the GWML Systems Project being implemented. Rather it would be merely likely to delay its completion by at least 12 months.
- 4.71 The construction of the GWML Old Oak Common station, as part of the GWML project, is designed to enable HS2 to open for service **{SoM1}**. However, HS2 is now much reduced in scale from that proposed when this Order was applied for in April 2023, in connection with which Network Rail states (paragraphs 17 – 19 of INQ-76):

"There has been much public debate about the merits of HS2, both in terms of the principle of the scheme, and also in terms of its reduced extent. However, what is beyond any dispute is that HS2 represents the most significant national transport infrastructure project constructed in this country for several decades; indeed Old Oak Common station combined with the HS2 Station will comprise the biggest new railway station in more than a century. Further, what is also beyond dispute is that the project has benefitted from cross-party support in Parliament, and that in the course of its construction it has been the subject of massive investment by successive Governments.

As has been widely noted in the media, delivery of the project has already been delayed and the cost of delivering the project is already (substantially)

over budget. Should the project be further delayed, both the reputational damage to UK plc and the additional financial costs (in terms of overruns and lost/delayed opportunity), will be huge. In these circumstances, it is respectfully submitted that there is a very substantial – indeed overwhelming – public interest in ensuring, so far as it is possible to do so, that:

- *no further delay to HS2 is caused, and that services commence in mid 2030 as anticipated; and that*
- *no further 'financial loss' is incurred in respect of the project.*

It is in these circumstances, and in this context, that the Revised Order – and the objections to it – fall to be considered.”

4.72 However, no evidence has been provided to substantiate or quantify the financial and reputational damage to the UK which Network Rail indicates would result from a further delay to HS2. Moreover, even if the Revised Order were to be made, there is no guarantee that other factors would not themselves cause delay to the GWML Systems Project which would adversely impact on the opening of HS2. Nor can there be any certainty that completion of the much larger HS2 project itself would not be further delayed, such that any delay arising from the absence of the Revised Order would make no difference. In this context I conclude that the likely adverse impact of not making the temporary possession elements of the Revised Order would not outweigh the harm likely to be caused by it to the residents of Acton House, the operation of a builders' merchants at Horn Lane and the implementation of the planning permission for a mixed-use development incorporating 185 residential units.

4.73 Whilst the application for deemed planning permission for a temporary construction compound is supportive of London Plan policies T1 and T3 (which seek to facilitate HS2 and associated Network Rail changes), the harm it would be likely to cause to the living conditions of local residents means that it would conflict with policy 7A (part A(a)) of the London Borough of Ealing Development Management Plan. Bearing in mind the potential alternative site for the scheme and my judgement that the benefit of the scheme would not outweigh the likely harm, I conclude that the planning application conflicts with the development plan as a whole **{SoM8}**.

4.74 In terms of the permanent access right element of the Order, to enable the permanent RRAP/compound on the Triangle land, I have concluded that some harm would be caused by this to the living conditions of nearby residents, although this would be likely to be considerably less than that resulting from the temporary possession powers. However, I conclude that, as with the temporary RRAP, land to the west of the Agility/Hitachi North Pole Depot would be in some ways better and in most other ways at least as good as the Horn Lane site for this element of the scheme. Moreover, since the permanent RRAP is not proposed to be operational until 2030 (as confirmed by Mr Ford for Network Rail in response to my question at the Inquiry), not making the current Order would be unlikely to materially delay the provision of a permanent RRAP/compound at the alternative location.

4.75 Consequently, I conclude that a compelling case in the public interest does not exist to justify conferring on Network Rail the powers to compulsorily acquire and use land for the purposes set out in the Revised Order and nor would these purposes be sufficient to justify interfering with the human rights of those with an interest in the land **{SoM4iii and SoM4iv}**. I also conclude that the application for deemed planning permission should not be approved.

4.76 However, if the Secretary of State is minded to make the Revised Order, I suggest that legal advice is sought on the appropriateness of the approach of site-sharing the Order land being achieved by a unilateral undertaking which fundamentally alters/curtails the provisions of the Order. I also suggest that if the application for deemed planning permission is to be approved it should be subject to the conditions set out in Appendix 1 **{SoM6}**.

5 RECOMMENDATION

5.1 I recommend that the Revised Order is not made and that the application for deemed planning permission is not granted.

Malcolm Rivett

INSPECTOR

Appendix 1 – Schedule of Suggested Conditions

1. The use hereby permitted shall commence within one year of the date the Network Rail (Old Oak Common Great Western Mainline Track Access) Order comes into force.

Reason: to comply with the requirements of the Town and Country Planning Act 1990 and to enable the Great Western Main Line Rail Systems Project railways works related to the use to be completed by 2029.

2. The use hereby permitted shall be carried out in accordance with DRW No. 0388965 Version 1.0 (Date 18/12/2023).

Reason: for the avoidance of doubt.

3. The ramp hereby permitted, the siting of which shall accord with that shown on DRW No. 0388965 Version 1.0 (Date 18/12/2023), shall accord with construction methodology details which shall have been previously submitted to, and approved in writing by, the Local Planning Authority.

Reason: to ensure the safety of the site.

4. No external lighting, cabin, hoarding, fencing or gate shall be erected or operated in connection with the use hereby permitted unless it accords with details of its siting and design which shall have been previously submitted to, and approved in writing by, the Local Planning Authority.

Reason: to minimise the adverse effects of the use on the living conditions of nearby residents and on the appearance of the area.

5. The use hereby permitted shall only be carried out in accordance with an Environmental Management Plan which shall have been previously submitted to, and approved in writing by, the Local Planning Authority. The Environmental Management Plan shall include:

- measures to control noise and vibration (having regard to BS 5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites. Noise)
- measures to control dust (having regard to The Control of Dust and Emissions During Construction and Demolition Supplementary Planning Guidance (2014) GLA)

- measures to control external lighting (having regard to Guidance Note 01/21 for the reduction of obtrusive light (Institution of Lighting Professionals))
- arrangements for the public display of contact details (including telephone number) for the site supervisor(s)
- arrangements for engagement about the use with nearby residents and businesses.

Reason: to minimise the adverse effects of the use on the living conditions of nearby residents.

6. The use hereby permitted shall only be carried out in accordance with a Traffic Management Plan which shall have been previously submitted to, and approved in writing by, the Local Planning Authority. The Traffic Management Plan shall have regard to Construction Logistics Planning Guidance V1.2 (April 2021) by Transport for London and shall include details of:
- the routing of heavy goods vehicles used in connection with the use hereby permitted from/to the strategic road network and the management of their movement into and out of the site by a qualified and certified banksman
 - arrangements for workers in connection with the use hereby permitted to access the site.

Reason: to minimise the adverse effects of the use on the operation and safety of the highway network and on the living conditions of residents in the area.

7. The movement on the site between the hours of 20:00 and 08:00 of people, materials, machinery or vehicles in connection with the use hereby permitted shall not take place on more than 300 nights when using powered road rail vehicles, and an additional 175 nights when not using powered road rail vehicles. For the avoidance of doubt such movement on the site between 01:00 and 23:00 the same day would constitute two nights of movement, whilst such movement between 23:00 and 05:00 (the following day) would constitute one night of movement.

Movement on the site between the hours of 20:00 and 08:00 of people, materials, machinery or vehicles shall not take place until an outline schedule of the dates on which such movement is anticipated to take place has been issued to the occupants of nearby properties, the list of such occupants which shall have been previously submitted to, and approved in writing by, the Local Planning Authority. Thereafter an updated schedule of dates on which such movement is anticipated to take place shall be issued to the same occupants at least every 6 months.

A register shall be kept of each night on which such movement has taken place which shall identify whether or not the movement involved the use of

powered road rail vehicles. The register shall be made available to the Local Planning Authority at its request.

Reason: to minimise the adverse effect of the use on the living conditions of nearby residents.

8. The use hereby permitted shall have ceased no later than 31 December 2029.

Reason: the use is only justified on a temporary basis whilst the related Great Western Main Line Rail Systems Project railway works are being carried out.

Appendix 2 – Appearances at the Inquiry

FOR NETWORK RAIL

Alexander Booth KC, who called:

Jeremy Douch BA(Hons) CMILT(Regional Director, AECOM Ltd)

Colin Field BA(Hons) MRTPI (Town Planning and Heritage Manager, Network Rail)

Andrew Fleming MEng (Project Manager, Colas Rail)

Chris Ford MEng CEng MICE MPWI (Project Delivery Engineering Manager, Network Rail)

Jonathan Sinclair MRICS (Senior Surveyor, Network Rail)

FOR BELLAVIEW PROPERTIES LTD

Douglas Edwards KC and **Annabel Graham Paul**, who called:

Michael Aaronson (Builder Depot Ltd)

Mark Connell BSc (Hons) DipTp MRTPI (Joint Managing Director, Sphere25)

Nicholas Gallop BSc (Director, Intermodality)

Christopher Gent MEng CEng MCIHT MICE (Equity Director, Velocity)

Andrew Rhead (Partner, Gerald Eve)

ANNA KUSZTA (local resident)