

**TRANSPORT AND WORKS ACT 1992**  
**TRANSPORT AND WORKS (INQUIRIES PROCEDURE)**  
**RULES 2004**

**THE NETWORK RAIL (LONDON TO CORBY)**  
**(LAND ACQUISITION, LEVEL CROSSING AND BRIDGE**  
**WORKS) DRAFT ORDER**

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**REBUTTAL PROOF OF EVIDENCE**

**OF**

**MR. PAUL BOATMAN**

**BOVIS HOMES LIMITED**

## Introduction

1. This Rebuttal has been prepared in response to the 4 proofs of evidence submitted on behalf of Network Rail.
2. On 19<sup>th</sup> December 2018, Mr. John of Network Rail wrote to me regarding Bovis Homes Limited's ("Bovis") letter of objection of August 2018. I attach a copy of that December letter (Appendix 1). There have been meetings since between the parties and Bovis then formally responded by letter dated 21<sup>st</sup> January 2019 (also attached, Appendix 2).
3. Network Rail were one of the original landowners of the Stanton Cross Landowner Group until 2017, when they disposed of their development land holding, they have been party to all planning applications, planning obligation agreements and other legal processes that the group have been involved in.
4. Network Rail entered a Bridge Option in 2004 to facilitate four crossings of the railway, three highway bridges and one footbridge. That agreement is referred to in my letter dated 21<sup>st</sup> January (Appendix 2 above) and I append relevant extracts of it to this Rebuttal as Appendix 3. The construction of Stanton Cross Route 2 was included within this agreement and further acknowledged in an agreement in 2017 in respect of which I also attach relevant extracts as Appendix 4.
5. Detailed discussions have been progressing since 2015 with Network Rail with respect to the Stage 1 Irthlingborough Road realignment design and construction. Bovis are presently waiting for Network Rail to send through engrossments of the Development Service Agreement Grip 5 (Detailed Design): I was informed by our solicitor on 23<sup>rd</sup> November 2018 that the parties are agreed as to the content of that draft agreement. Bovis have also discussed the form of a Contribution Agreement / Implementation Agreement for the Route 2 bridge construction works (to be carried out by Network Rail) with a target programme which would enable the remainder of Stanton Cross Route 2 to be completed by mid-2021.
6. In my view there is no need for a T&WA Order/CPO. The Irthlingborough Road Bridge (SPC2/83) was demolished by Network Rail over Christmas 2018, electrification of the line is thus now possible and is in no way dependent upon the Order/CPO.
7. Bovis are content for Network Rail to construct the new Route 2 bridge and are keen that that work be carried out expeditiously so that the Stanton Cross development is not in any way

delayed. Moreover, the houses which are to be built on the Stanton Cross development will contribute towards the cost of the works to Wellingborough station and other transport infrastructure.

8. There is no need whatsoever to build a new bridge in the location of the previous bridge, indeed Network Rail would not wish to continue to incur the maintenance liability that it would have in respect of the latter bridge (which would not arise in respect of the former). It would be wasteful of Network Rail's resources and thus of public money for a replacement bridge to be constructed in the location of the previous bridge for which there is no need.
9. In my view it is difficult to see how it can be maintained that there is a compelling case in the public interest to confirm the Order/CPO in such circumstances.
10. Further, Northamptonshire County Council (NCC) have again made clear at recent meetings, that they are content to continue to make temporary road closure orders until the new bridge has been built and opened to traffic since Bovis and Network Rail are working together to deliver the Route 2 bridge and NCC would wish to see the Route 2 bridge built in preference to a reconstruction of a bridge in the location of the previous bridge. The highway over the (now) recently demolished bridge does not therefore have to be permanently in place in the short or long term. The shared vision – of all three parties – to not reconstruct Irthlingborough Road Bridge therefore will not be frustrated.
11. There is no need for NR to reconstruct the bridge and there is therefore simply no need for an Order/CPO to achieve a reconstruction. Moreover, to continue to pursue the Order/CPO of Bovis' land and rights in or over land is likely severely to prejudice the delivery of the Stanton Cross development, as set out in my letter dated 21<sup>st</sup> January 2019.

#### **Mr Butterworth's Proof**

12. There is no reasoning that explains why the original Irthlingborough bridge requires reconstruction in its original position. I have, however, already referred to NCC's position: they will not require reconstruction if Route 2 is built; and Network Rail have it within their control to achieve Route 2 by entering into the Design and Construction Contracts referred to above. Furthermore, Bovis need to see Route 2 constructed so that their Stanton Cross development can proceed beyond 724 dwellings.

13. At paragraph 2.1 Mr Butterworth states that “the reconstruction ... does not preclude the later construction of Route 2”. Whilst it does not *physically* preclude it, as my letter makes clear Mr Butterworth’s statement overlooks the important point that the Order/CPO would extinguish Bovis’ existing rights.
14. The extinguishment of such rights would extinguish Bovis’ entitlement to construct and use the new bridge (and its approach roads). This is of course totally unacceptable. It would be wholly unsatisfactory if rights were extinguished leaving Bovis in a position where they must reacquire such rights from Network Rail. This could result in the Stanton Cross development becoming unviable by reason of ransom strip demands; at the very least uncertainty will result and delay the delivery of this important sustainable urban extension until the matter is favourably resolved.
15. There are no proposals either for the land that is the subject of the Order/CPO to have the rights reinstated, or for the land to be dedicated as highway or to be transferred gratis to Bovis Homes to facilitate the Route 2 works.
16. Bovis also need to have demonstrated to them by Network Rail the extent and location of the necessary realignment (including land ownership) of the route on the south side of the railway, quite apart from being reimbursed its full expenses relating to the amendment to the planning permission which Mr Rivero (at paragraph 11.10 of his proof) acknowledges as required.
17. At paragraph 3.1.7 reference is made to Plot 605 it is confirmed that Network Rail already own Plot 605 which is subject of part of the Order/CPO. The intention can only be therefore to extinguish the rights held by Bovis in and over that land pursuant to the 2004 and 2017 agreements.
18. At paragraph 3.1.9 it is stated that “Irthlingborough Road will be downgraded to a bridleway upon the construction of Route 2”: this is incorrect as can be seen by the approved scheme for Stanton Cross Route 2 (Appendix 5). Irthlingborough Road is retained as a highway for all purposes: it will serve several properties to the west of the original bridge location and will also connect both pedestrian and cycle routes to the new Stanton Cross Route 2. As can be seen from the drawings neither of the consented schemes for Phase 1 Irthlingborough Road

realignment (Appendix 6) and Stanton Cross Route 2 make provision for, or have requirement for, any access over the original rail crossing.

19. As regards paragraph 3.1.10 the illustration and drawing referred to in the appendix are incorrectly referenced in that they do not show the “extent of Route 2 bridge and its associated earthworks” but only show the interim Phase 1 Irthlingborough Road realignment, not the final extent of works associated with Stanton Cross Route 2.
20. As regards paragraph 3.1.11 there is no evidence that NCC support the statement that the replacement rail crossing would or could be transferred by Network Rail into NCC’s ownership and responsibility. Why would the highway authority adopt a second crossing of the railway? There is an important statement here that “Network Rail and Bovis Homes Limited are in agreement that the preferred solution for access to the Stanton Cross development is via the new Route 2 bridge”. This can also be said of Northamptonshire County Council (Highway Authority) and Borough Council of Wellingborough (Planning Authority).
21. As regards paragraph 4.1 without detailed construction drawings and a further essential consideration of ownership and rights to land the statement that the reconstruction would not prevent the Route 2 bridge, nor its associated approaches cannot be substantiated.

#### **Mr Akers’ Proof**

22. Mr Akers provides a detailed assessment of the projects associated with the improvements to the rail service including the need for the electrification for the rail line. For Irthlingborough Road this is facilitated in full by the removal / demolition of the original rail crossing in December 2018. There is no requirement within the documentation for construction of a replacement rail crossing in the same location as the one that has been removed.
23. As regards paragraph 10.3.1 Network Rail were a party to the original Landowners Agreement 18<sup>th</sup> February 2004 relating to Stanton Cross and have been extensively involved in the scheme since inception pre-2004. Revised landowner agreements were entered in 2017 to reflect the acquisition of development land within the Stanton Cross scheme land from both Network Rail and Cambridge University at the request of both parties.

24. Regular meetings are indeed held with Network Rail and agreements are well progressed to enable completion of a Grip 5 Development Services Agreement shortly for the Phase 1 Irthlingborough Road realignment and the principle of entering a Contribution Agreement (or Implementation agreement) to enable Network Rail to construct the new rail crossing and associated road works. Current programme is to provide the new crossing by mid-2020.

#### **Mr Rivero's Proof**

25. The principles of rail improvement (including station improvement – acknowledged at paragraph 6.3.5 of his proof) and other public transport infrastructure) and the link to planning policy are not contested. Planning policy at all levels also strongly supports the Stanton Cross development, in particular it will meet important housing and employment needs.

26. The removal of the original Irthlingborough Road rail crossing has already facilitated the construction of the electrification of the railway line. No further works are required to facilitate the electrification.

27. As regards paragraphs 6.3.1 & 6.3.5 it should be noted that the Stanton Cross development provides for the following enhancements and improvements for the rail facilities in the area: -

- Enhancement of the access to the existing station – including an improved drop off and parking area, new public realm
- Extension of the existing footbridge over the fourth rail line position to connect to the fourth platform to the east of the railway
- Provision of a new station building and associated facilities to the east of the railway
- Provision of enhanced parking to extend the overall parking at the station to 1000 parking spaces.
- Public Transport hub to the east of the railway incorporating bus and taxi facilities

All at no cost to Network Rail or the rail users.

28. All of the works are included in the planning obligations for the development and programmed for completion at the same time as the completion of the Stanton Cross Route 2 (in this respect required before occupation of more than 724 dwellings) and all of the station. Any impact on the development of Stanton Cross Route 2 due to the actions of Network Rail on

Irthlingborough Road is likely therefore to impact also on the timing of the provision of the station improvements.

29. At paragraph 7.5, Strategic Policy 18 is referred to: “to improve the highway infrastructure and transport network in the county to provide better access to jobs and training for the people living and working in Northamptonshire”. This is important to the development of Stanton Cross, not only with the provision of a significant amount of employment but infrastructure that is acknowledged as having County wide benefit. Potential impact on the delivery of Stanton Cross due to the Irthlingborough Road issues raised earlier should be avoided so as to not impact upon the development.
30. As regards paragraph 11.5, the statement in the last part of this paragraph – “would provide a direct link to the south but without direct access onto the original Irthlingborough Road” - is incorrect: the Stanton Cross Route 2 design incorporates pedestrian and cycle connectivity to the southern section of Irthlingborough Road. Connectivity to the remainder of Irthlingborough Road is maintained by Route 2 to the north of the railway.
31. It is worthy of note again that Network Rail Infrastructure are a party to all of the planning consents and planning obligation agreements related to Stanton cross including the 2017 s106 Agreement; therefore, Network Rail will, or should, be well aware of the consented schemes.
32. As regards paragraph 11.7, the subsequent consequences of precluding or delaying the implementation of Route 2 will impact on not only housing land supply but delivery of jobs and potentially impact upon the delivery of improvements at Wellingborough Station
33. As regards paragraph 11.8, the stopping up process for the original rail bridge is already in process and as a gesture of goodwill Bovis Homes submitted the application in support of Network Rail. This is currently being processed by DfT and drafted in consultation with Northamptonshire County Council. A copy of the associated plan for the stopping up is attached (Appendix 7)
34. As regards paragraph 11.9, no case has been made for the need to reconstruct the original Irthlingborough road bridge and the Proofs of Evidence referred to have been commented upon above.
35. There will be no downgrading of Irthlingborough Road as part of the Stanton Cross Route 2 design, this is fundamentally incorrect as can be seen from the approved scheme for Stanton Cross Route 2 (Appendix 5). Irthlingborough Road is shown retained as a highway, it serves several properties to the west of the original bridge location and will also connect both

pedestrian and cycle routes to the new Stanton Cross Route 2. Construction of Stanton Cross Route 2 will not be possible without sufficient land and rights being available – this CPO does not provide for that.

36. As regards paragraph 11.12, it is suggested that due to the presence of Anglian Water sewers part the land to the north of the railway cannot be developed and is only suitable for landscaping. Anglian Water pumping mains are present both over the railway and within the land on both sides. These are in the process of being diverted to suit the electrification scheme using Bovis' land to facilitate the works. Clearly it is practical to divert existing sewers to clear development land of such constraints should the viability of the development scheme when it is developed justify these works then they can be carried out. We work in close liaison with Anglian Water on such matters.

#### **Mr Glynn's proof**

37. The proof states that "every effort will be made to reach agreement in advance of using compulsory purchase powers" – this has clearly not been the case so far as concerns Bovis. Bovis Homes have offered to license any areas of land required by Network rail to enable works if they are needed. This has been rejected. Compulsory acquisition has not therefore been shown to be necessary.

Concerns have been raised directly with Network Rail over the potential loss of rights to be able to construct Stanton Cross Route 2 but no productive response has been received from Network Rail.

38. As regards paragraph 7, the timescales for the temporary use of land have yet to be confirmed.
39. As regards paragraph 9.2.2, Network Rail's response states "that there is no engineering impediment to the delivery of Route 2 arising from the implementation of the Order" but, as already mentioned, the use of CPO powers to acquire land and rights may prevent the ability for Stanton Cross Route 2 to be constructed even if it was feasible in engineering terms.
40. As commented upon in paragraph 36 above it is practical to divert existing sewers should the viability of the development scheme justify the works and we work in close liaison with Anglian Water on such matters. The statement is incorrect.
41. As regards paragraph 9.2.4, the programme outlined is clearly not practical and presumably relates to the reconstruction of the original Irthlingborough Road bridge. Plot 603 and the



access thereto is currently under license until 30<sup>th</sup> June 2019 to Anglian Water Services to enable the diversion of their pumping mains so that they do not impede the electrification of the railway line. This has been agreed without reference to Network Rail and is illustrative of the fact that Bovis Homes have cooperated throughout this process.

## Conclusions

1. Network Rail already own some of the land being requested for CPO. The Order/CPO can only be intended therefore to extinguish legal rights which have previously been negotiated by Bovis Homes to construct a new crossing of the railway.
2. Network Rail do not have a requirement to reconstruct the original Irthlingborough Road rail crossing which is the subject of this Order/CPO. The existing structure has been removed and provides clearance for the overhead line installation. All parties wish the Route 2 bridge to be built.
3. Network Rail, Northamptonshire County Council and Bovis Homes (as part of the development Landowner Group) are all in agreement that the final scheme will be the single new rail crossing as designed for Stage 1 Irthlingborough Road realignment and Stanton Cross Route 2.
4. Acquisition of land by Network Rail and or extinguishment of rights will restrict the use of the land to construct both Stage 1 Irthlingborough Road realignment and Stanton Cross Route 2 and impact on the development of Stanton Cross.
5. There is no certainty that Network Rail will offer or be prepared to dedicate as public highway the new construction of either the approaches to or the bridge crossing associated with the replacement Irthlingborough Bridge and a potential ransom situation is created by the Order/CPO process. This is not simply a matter of compensation but of delaying the delivery of much-needed housing and related development.
6. A replacement bridge could adversely affect the Stanton Cross development. Network Rail (Mr Rivero's proof at paragraph 11.10) acknowledges that an amendment of the line of the western end of Route 2 would be needed. Quite separately the effect of the CPO is to extinguish Bovis rights under existing agreements for the construction, use and adoption of the Route 2 bridge crossing. This is likely to mean that Network Rail will then have a ransom

over land needed by Bovis. This is not only an important matter of CPO compensation but will create uncertainty and preclude development unless and until favourably resolved. If not favourably resolved the CPO is likely to render unviable the Stanton Cross development and, in the meantime, will create uncertainty and delay.

Paul Boatman – Project Director

Bovis Homes Limited – January 2019