

1. INTRODUCTION

1. This Statement of Case ("the Statement") has been prepared on behalf of Bovis Homes Limited ("BHL") in its capacity as an objector to the applications by Network Rail Infrastructure Limited ("Network Rail"), the acquiring authority pursuant to Rule 4 of the Transport and Works (Inquiries Procedure) Rules 2004.
2. BHL was served with Notice of The Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Draft Order and related applications by Winckworth Sherwood LLP in respect of the application by Network Rail for the above draft Order and related applications. BHL has the benefit of a freehold interest or other interest in respect of land the subject of the Draft Order as included in Schedules 1, 2, 3 and 5 thereto and/or as shown on the deposited plans and described in the book of reference.
3. BHL has objected by way of a letter dated 2nd August 2018 to the Draft Order that has been received. The Secretary of State by way of a letter dated 31st August 2018 has given notice of his intention to hold an Inquiry into the objection.
4. This Statement sets out the particulars of BHL's case in relation to its objection to the making of the Order as will be put forward at the Inquiry. If Network Rail produces a statement of reasons, this Statement seeks to supplement but not duplicate the same and should be read along with this Statement.

2. BACKGROUND AND PLANNING POSITION

5. Outline planning permission was conditionally granted by the Borough Council of Wellingborough ("BCW") on 28th January 2008 ("the 2008 outline planning permission"), in respect of planning application reference WP/2004/0600 for: -

"Mixed use development including 87ha of residential development; B1, B2 and B8 development, new public transport links (buses), new and enhanced walking and cycling routes and facilities, Country Park, Neighbourhood Centre, 2 Secondary local centres, construction of access roads, bridges and highway structures, footways, footpaths, bridleways; and associated works and facilities"

at Land Between Finedon Road & The Railway, Neilson's Sidings & Land north of Finedon Road (Bovis) Finedon Road Wellingborough Northamptonshire ("the permission land").

6. A planning obligation was also entered into pursuant to the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") by BCW, Network Rail, BHL and others on 28th January 2008 ("the 2008 planning obligation").
7. The approved route plan was shown on Plan C of the said planning obligation and Route 2, which is of present relevance was shown, as then proposed on Plan D of the said planning obligation.
8. The construction of some 3,200 homes were envisaged by the 2008 outline planning permission.
9. The permission land forms the main part of a Strategic Development Area allocated in the Borough Council of Wellingborough's Local Plan and the permission land is also specifically referred to in the adopted North Northamptonshire Joint Core Spatial Strategy.
10. On 17th September 2014 approval was given by WBC in respect of application for approval of reserved matters, reference WP/14/00475/REM, made under and pursuant to the 2008 outline planning permission for: -

"amendment of part of approved route 2 for the scheme and landscaping to that part".
11. Condition 2 thereof refers to drawings 47069875/3036:001 - Realignment of Irthlingborough Road and 006 Route 2 Realignment - Sheet 1 of 2 in order to define the consent. This shows an approved realignment of Route 2 to the west of the route shown on Plan D of the 2008 planning obligation.
12. On 6th February 2017, conditional planning permission was granted by WBC pursuant to s.73 of the Town and Country Planning Act 1990 (as amended) for: -

"Mixed use development including 87ha of residential development; B1, B2 and B8 development, new public transport links (buses), new and enhanced walking and cycling routes and facilities, Country Park, Neighbourhood Centre, 2 Secondary local centres, construction of access roads, bridges and highway structures, footways, footpaths, bridleways; and associated works and facilities"

on the permission land.

13. A planning obligation was also entered into pursuant to S.106 of the 1990 Act by the BCW, Network Rail and BHL (and others) on 6th February 2017 (“the 2017 planning obligation”).
14. Condition 7 prevents development from taking place unless in accordance with the 2015 Masterplan (drawing ref DE026_001 G). The 2015 Masterplan incorporates the amendment to Route 2 approved in 2014 (above).
15. Condition 9 prevents the development exceeding 3,650 dwellings.
16. Condition 14 also requires the implementation of Route 2 (referred to as Access Road 2) prior to the occupation of the 724th residential property. The residential development is being undertaken by BHL.
17. Phase 1 of Route 2 (as shown on approved drawing 47069875/3036:001) would provide a new road bridge over the Midland Mainline railway east of the existing road bridge, with the new road linking into the existing Irthlingborough Road on the south side of the railway.
18. Phase 2 of Route 2 (as shown on approved drawing 47069875/3036:006) would continue the new road south of the railway in a south-westward direction, maintaining the link to the existing Irthlingborough Road but now without a direct link to it from the new road.

3. THE PURPOSE OF THE ORDER

19. Network Rail is seeking to acquire compulsorily land and rights in land and to use land temporarily in connection with the consented development (including rights to oversail land with a crane) included in the Draft Order (“the Order Land”) in connection with the alteration and improvement of the Midland Mainline railway between London and Corby in the County of Northamptonshire to include the District of Wellingborough.
20. The Order Land is more fully described in Section 3 of this Statement. The interests and rights comprising the Order Land are identified in the schedules to the Draft Order, which refer to the maps accompanying the Draft Order.

4. DESCRIPTION OF THE ORDER LAND

21. Land south of the public highway known as Irthlingborough Road and north of the Midland Main Line, Wellingborough

5. OBJECTION TO THE USE OF COMPULSORY PURCHASE POWERS

22. **Parcels 605, 629, 630 and 631**

Of particular relevance to BHL's objection, the proposed Draft Order seeks, among other things, compulsorily to acquire BHL's land and/or interests in land in connection with the alterations and improvement of the Midland Mainline railway. In particular, the removal and replacement of the existing road bridge (referred to as "bridge 83" in Column 2 of Schedule 1 to the Draft Order) across the Midland Mainline railway on Irthlingborough Road, Wellingborough.

The above stated parcels enjoy the benefit respectively of the planning permissions and approval referred to above.

BHL has the benefit of an option in respect of parcels 605, 630 and 631. Parcel 629 is currently licensed to Babcock Networks Ltd until 28th October 2018.

The compulsory acquisition of Parcels 605, 629, 630 and 631 would preclude the physical delivery of Route 2 / Realignment of Irthlingborough Road, both as shown on drawing 47069875/3036:001 (Phase 1) and as shown on drawing 47069875/3036:006 (Phase 2).

(Parcels 602, 603, 604, 632 and 633 (temporary use) are also required to construct Route 2 / Realignment of Irthlingborough Road.)

The compulsory acquisition of these Parcels would prevent the achievement of more than 724 dwellings on the permission land. Further, no suitable alternative access to Route 2 has been identified. Moreover, securing an alternative access (if any) over land not within the ownership of BHL would be likely to render the implementation of the permitted development unviable.

The consequence of not being able fully (or at all) to build out the permission land as permitted would be contrary to the achievement of sustainable development and be contrary to the statutory development plan and the Revised National Planning Policy Framework (July 2018). Moreover, the BCW would, for example, be more likely to be

unable to demonstrate a 5 year supply of deliverable housing or to meet the Housing Delivery Test (Revised NPPF paragraph 11 d. and footnote 7 refers), with the consequence that a “tilted balance” in favour of unplanned, ad hoc, planning proposals would apply, in accordance with government policy (ibid), to the detriment of plan-led planning.

Network Rail made no objection to the planning applications referred to above.

Phase 1 of Route 2 has been planned by BHL to permit a new bridge to be constructed over the Midland Mainline railway both for proper access to the permission land and the proposed development thereon and so as to avoid any need for Network Rail to reconstruct the existing bridge 83.

The Draft Order wrongly and prematurely seeks powers of compulsory acquisition when discussions and design work are ongoing with Network Rail and BHL having expressed their preparedness to commit to contributing to the cost of the new bridge.

Moreover, the inability of vehicular traffic to access the Leyland industrial estate to the north-west of the existing bridge via the existing bridge and Phase 1 of Route 2, pending the construction of Phase 2 of Route 2, is likely to be a serious detriment and inconvenience to the businesses occupying the Leyland industrial estate

A compelling case in the public interest for the compulsory acquisition of Parcel 605 has, for all the reasons set out above, clearly not been made out.

23. Parcels 621 and 624

These Parcels, as with Parcel 605, have the benefit respectively of the planning permissions and approval referred to above; yet are proposed to be compulsorily acquired. Parcel 621 is currently the subject of an agricultural cropping licence.

By reason of the lack of a compelling case in the public interest for the compulsory of Parcel 605 (above), a compelling case for the compulsory acquisition of Parcels 621 and 624 on the north side of the existing railway bridge has not been made out either. Loss of these parcels will, moreover, reduce the development potential for the land and the overall development capacity.

24. Parcels 602, 603 (and related Parcels 601 and 602), 604, 632, 633

As noted above, these parcels, along with Parcels 605, 629, 630 and 631 are all required (save for 601 and 602) by BHL to construct Route 2 / Irthlingborough Road realignment.

Whilst there would generally be no objection to the temporary use of Parcel 603 (or the temporary use of Parcels 601 and 602 land for access thereto along the private access track off Irthlingborough Road, as also sought by Schedule 2 to the Draft Order), or to the temporary use of adjacent Parcels 604, 632 and 633:

- (i) Parcels 603, 604, 632, 633 form part of the land needed for the delivery of Route 2 / Irthlingborough Road realignment (both Phases 1 and 2) and there is no indication as to for how long the temporary period would subsist, with potential adverse consequences for the delivery of the permission land development (as referred to above). Thus, a compelling case in the public interest for acquisition of these Parcels for temporary use has not been made out;
- (ii) from 2nd July 2018 until 28th October 2018 Babcock Networks Limited ("Babcock") have the benefit of a written licence, dated 26th June 2018, granted by BHL to use the land (Parcel 603, with access thereto via Parcels 601 and 602, and Parcel 604) for the purposes of "a site compound for the storage of materials, plant and equipment in connection with [Babcock's] business, the overnight parking of heavy goods vehicles and the use of temporary portacabins for project offices and welfare facilities".

25. Parcels 618, 619, 621 and 622

These Parcels are all within the permission land (along with Parcels 620, 623 and 628 – see below).

Their proposed temporary use is not time-limited so the potential impact, if any, is unknown and their proposed acquisition for such use has not been shown to be justified.

26. Parcels 620, 623 and 628

These parcels are part of the permission land and are currently licensed for agricultural cropping. The Draft Order proposes (Article 22 of the Draft Order) entry

on, and temporary use of airspace above the surface of the land for the oversailing of cranes. No timescale for the temporary use of these Parcels is provided; so, an effect on the development of the permission land cannot be ruled out and their proposed acquisition for such use has not been shown to be justified.

27. Parcels 502 and 503 (near Irchester Viaduct)

Air rights are proposed to be acquired. Schedule 1 (authorised works) refers; as does Schedule 3 (new rights to be acquired), in both cases in respect of attaching apparatus to existing railway infrastructure.

These Parcels bisect 2 areas of land in BHL's ownership and form part of the approved strategic open space for the proposed development and is designated as a SSSI/SPA for wintering birds. Access is required by BHL under the viaduct and adjoining land at all times for both a public right of way and for maintenance of the land. Such access has not been safeguarded. The acquisition has not therefore been shown to be justified.

28. Parcel 606

For completeness, we have been unable to locate Parcel 606 on any of the plans. We reserve our client's position and maintain a holding objection until its location is clarified.

6. LIST OF DOCUMENTS, MAPS OR PLANS FOR THE INQUIRY

29. In addition to the documents mentioned in this Statement and set out below, BHL intends to refer to or put in evidence the following documents at the Inquiry:

- (a) Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order – Notice of Application To Temporarily Use Land
- (b) Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order – Notice of Application To Acquire Land And Rights In Land Compulsorily, To Use Land And To Extinguish Rights Over Land And To Impose Restrictive Covenants

- (c) Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order – Notice of Application To Temporarily Use Airspace
- (d) Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order – Notice of Application To Acquire Rights in Land
- (e) Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order – Notice of Application To Temporarily Use Land For Access
- (f) Draft Plans and Sections for The Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order
- (g) Hand annotated Draft Plans and Sections from BHL in relation to The Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order
- (h) Network Rail Transport and Works Act 1992 Compulsory Purchase Order Application Letter to the Secretary of State for Transport dated 22nd June 2018.
- (i) Draft Statutory Instrument Order for The Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order
- (j) Explanatory Memorandum for The Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order
- (k) Statement of Aims for The Network Rail (London to Corby) (Land Acquisition, Level Crossing and Bridge Works) Order
- (l) **Title Number NN85772** - BHL Land Registry Official Copies and Title Plan for land on the south side of Irthlingborough Road, Wellingborough
- (m) **WP/14/00475/REM** - Approval of Reserved Matters Issued by the BCW as of 17th September 2014 for Land Between Finedon Road and The Railway, Nielson's Sidings and Land North of Finedon Road (Bovis), Finedon Road, Wellingborough, Northamptonshire
- (n) **WP/15/00605/VAR** - Variation of Planning Permission Approval Issued by the BCW as of 6th February 2017 for Land Between Finedon Road and The Railway, Nielson's Sidings and Land North of Finedon Road (Bovis), Finedon Road, Wellingborough, Northamptonshire

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- (o) **July 2015** - Planning Statement Prepared by Define on Behalf of BHL and submitted to BCW
 - (p) Drawing Number 47069875/3036/001 dated March 14 and entitled "Stanton Cross, Wellingborough – Realignment of Irthlingborough Road"
 - (q) Drawing Number 47069875/3036/006 dated March 14 and entitled "Stanton Cross, Wellingborough – Route 2 Realignment Sheet 1 of 2"
 - (r) **28th January 2008** - Completed S.106 Agreement between BCW, Northampton CC, BHL and others.
 - (s) **22nd December 2015** - Officer's Report to BCW Additional Planning Committee.
 - (t) **6th February 2017** - Completed S.106 Agreement between BCW, Northampton CC, BHL and others.
 - (u) **2nd August 2018** – Letter of Objection on Behalf of BHL submitted to the Secretary of State for Transport.
 - (v) **26th June 2018** - Lease to Occupy Land Known as Kangaroo Spinney, Irthlingborough Road, Wellingborough Between BHL and Babcock Networks Limited.
30. Copies of such documents may be requested by contacting during normal office hours Mr. J Rodrigues at Davies and Partners Solicitors, Rowan House, Barnett Way, Barnwood, Gloucester, GL4 3RT by way of 01452 612345 or jude.rodrigues@daviesandpartners.com until the close of the inquiry.
31. BHL reserves the right to introduce such additional documents as may be relevant to the Inquiry in respect of the Draft Order.