

**Position Statement**

**Transport and Works Act 1992: Application for the Proposed Network Rail (East West Rail Bicester to Bedford Improvements) Order**

**MICHAEL DEELEY, AUDREY DEELEY, PETER DEELEY, WILLIAM DEELEY, SIMON DEELEY of THE M R DEELEY AND SON FARM PARTNERSHIP**

**Objection 183**

**26<sup>th</sup> April 2019**

## 1.0 Introduction

This position statement is submitted on behalf of Michael Deeley, Audrey Deeley, Peter Deeley, William Deeley, Simon Deeley of the M R Deeley and Son Partnership (MRD), and is supplemental to the MRD objection letter dated 7<sup>th</sup> September 2018 (The Objection).

Network Rail Infrastructure Limited (The Promoter) has submitted an application (The Application) for the proposed Network Rail (East West Rail Bicester to Bedford Improvements Order) (The Draft Order). The works contained within the Draft Order are known as The Scheme and The Scheme Works.

MRD are the freehold owners and occupiers of Manor Farm, Bicester Road, Launton, Bicester OX26 5DP a working farm with the farmhouse occupied by Mr Peter Deeley and family. The adjoining Tythe Barn, Charbridge Lane, Launton, Bicester OX26 4SR operates as a successful wedding venue by William Deeley. All are collectively known as "The Property".

The Tythe Barn Wedding venue is an established and successful business that has been in operation since 1997. The venue hosts around 100 events per year, with the main focus being weddings in addition to private parties and corporate functions. The business provides a high quality service and having consistently won awards and nominations and more recently won the 2019 Wedding Industry Awards (Regional Winner) and were a National Finalist. The business was also short listed for The UK Wedding Awards 2019, and the Guides for Brides Best Barn in the Country. A wedding venue is quite unlike most standard businesses and is heavily dependant on the specific location, setting and environment of the venue, with its success built upon its reputation and Goodwill. It is fundamental importance to MRD that the extent of The Scheme Works are agreed with MRD, with the minimising of disruption to the Tythe Barn Wedding venue being agreed as a key element to the negotiation and agreement of the scope of works. Furthermore and of equal importance to MRD, the programme of Scheme Works and any necessary land take, pursuant to The Scheme Works in proximity to this venue be approached with careful management to ensure the business can continue to operate, with minimal practical disruption during the works. More importantly, the approach taken by The Promoter in agreeing The Scheme of Works with MRD must be focused on doing as much as practically possible to safeguard the long terms future of the business i.e. The Scheme Works are approached to ensure that the visual impact of The Scheme Works and the noise pollution created by the completed Scheme of Works is further reduced through careful landscaping and the maturing of effective planting. Poor management of the Scheme Works and negatively impacting a single event can destroy the reputation and Goodwill built up over the last 22 years, and financial compensation to an affecting customer will never truly compensate for the disruption, disturbance and loss incurred on their wedding day. It is important to MRD and to The Promoter that all practical steps be taken to minimise the potential for and the scope of any claim for damages made by a customer of the business as a result (be it direct or indirect) of The Scope of Works. To date there are 57 bookings in the diary for 2020 and approximately 73 remaining bookings for 2019 as at 2<sup>nd</sup> May 2019.

## 2.0 Background

MRD submitted the Objection due to the implications of the Draft Order and associated scheme works upon The Property.

MRD did not submit a proof of evidence because of the positive discussions with The Promoter in relation to the impact of The Project, in particular the discussions with The Promoter to re-locate the primary access to the Tythe Barn Wedding Venue to the south of The Property.

MRD have worked with The Promoter to reach voluntary agreements on a number of issues related to the Scheme enabling the Promoter. In summary:

- I. To extinguish rights at Manor Farm level crossing, and grant rights to the affected freeholder across MRD owned land to enable unrestricted access to the field parcels.
- II. Enable the Promoter early entry to commence works by granting a Compound Lease across land identified as parcel 0155 within the Draft Order.
- III. Enable the promoter early entry to commence environmental mitigation measures and preservation of great crested newts by granting a lease of land identified as parcel 0185 within the draft Order.

Discussions have taken place with Network Rail for the past 12-24 months in relation to The Draft Order, and specific reference is drawn to recent correspondence as below:

- **28 November 2018:** meeting at Manor Farm Launton with The Promoter to discuss voluntary agreements to relinquish a right of way at a level crossing. In order to facilitate the relinquishing of a right of way at the said level crossing by MRD and an adjoining landowner, MRD agreed to grant to the adjoining landowner a right of way over land comprised in The Property in order to establish access rights to the severed land of the adjoining landowner. It should be noted that without the voluntary co-operation of MRD, the relinquishing of the right of way at the level crossing by the adjoining landowner would not have been possible. MRD and their advisors requested their Objection be addressed by way of a formal Legal Undertaking to ensure Promoter continues to assist with the creation of the new Tythe Barn Access, and associated bunding, screening and mitigation measures.
- **18<sup>th</sup> February 2019:** Letter from Burton Knowles setting out compensation code provisions for the Wedding Venue. No specific detail or commitments/proposals relating to the handling of the Tythe Barn Business.
- **19 February 2019:** meeting at Manor Farm Launton with The Promoter to discuss voluntary agreements to complete the Lease and Licence Agreements for early entry to the compound site. Once again MRD and their advisors made further requests that their Objection be addressed by way of formal Legal Undertaking as requested at the 28<sup>th</sup> November 2018 meeting. It was agreed that the Public Inquiry date be postponed and re-scheduled to enable progress to be made. Public Inquiry date re-scheduled for 2<sup>nd</sup> April 2019.
- **28<sup>th</sup> March 2019 at 20:39-** Receipt of Draft Statement of Common Ground from Network Rail. Promoter's agent on annual leave on 29<sup>th</sup> April 2019. Appearance at Inquiry scheduled for 2<sup>nd</sup> April 2019. Unreasonable time allowed for consultation and response, agreed to re-schedule without specific date but right to appear reserved to enable further discussions. No

formal Legal Undertaking produced despite repeated requests and assurances that it would be forthcoming.

- **29<sup>th</sup> March 2019, 1<sup>st</sup> April 2019, 5<sup>th</sup> April 2019, 11<sup>th</sup> April 2019-** MRD Agent emails to Promoter's Agent requesting further information and the formal Legal Undertaking. Despite repeated requests for further information and the requests made in the original Objection nothing had been received or progress made.
- **11th April 2019 MRD Agent email to Promoter meeting request**  
Having made repeated requests to provide Legal Undertakings in relation to the access way or mechanisms and procedures to compensate for the impact upon the wedding business, a request for a meeting by MRD agent was made. To date there is no certainty that The Promoter will provide a suitable alternative new access to a suitable specification and timing of construction to enable the effects upon the business to be mitigated. Copies of any plans or designs for the current access, nor scheme designs for the proposed access have not been received. The Promoter has in previous meetings produced draft plans detailing the road re-configuration around the Tythe Barn access and we understand following discussions with Fresh Direct these have now been altered. The following key requests for information remain outstanding:
  - current proposed scheme plans;
  - a strategy and procedure in relation to the current bookings for 2019 and 2020 onwards.Previously discussions have been held about the impact of the business and MRD have requested that The Promoter engages with MRD to ensure that The Promoter and MDR have a clear understanding of the impact of The Scheme Works upon The Property and agreement as to how the business can be most effectively be managed in the short, medium and long term.
- **Fri 19/04/2019 09:01 (Good Friday Public Bank Holiday):** Receipt of draft legal Agreement in response to the objection. No references made to the Tythe Barn Wedding venue and procedure for agreeing the most effective solution for managing the business to mitigate the effects of the Draft Order Scheme.

### 3.0 Extent of land acquisition

MRD are the freehold owners and/ or occupiers of the following land that is subject to the proposed powers of compulsory acquisition within The Application and The Draft Order.

Plots referred to in the Book of Reference Sheet No.2 Revision A02 (Drawing number: 133735\_2A-EWR-OXD-TWAO-DR-T-000002):

- 0029, 0036, 0041, 0042, 0043, 0046, 0048, 0076, 0082, 0084 0085, 0091, 0092, 0095, 0096, 0104, 0109, 0110, 0113, 0124, 0125, 0126, 0128, 0133, 0136, 0148, 0150, 0155, 0156, 0157, 0158, 0159.

Plots referred to in the Book of Reference Sheet No.3 Revision A01 (Drawing number: 133735\_2A-EWR-OXD-TWAO-DR-T-000003):

- 0166, 0168, 0169, 0170, 0173, 0177, 0178, 0182, 0183, 0184, 0185, 0198, 0198A, 0199.

Plots referred to in the Book of Reference Sheet No.5 Revision A01 (Drawing number: 133735\_2A-EWR-OXD-TWAO-DR-T-000005):

- 0249, 0282, 0283.

Below we set out additional commentary and areas of concern:

**Plot 0155 Compound Site:** General concern raised regarding the excessive land identified for acquisition. Subsequently agreed to be reduced and a lease has been taken out over a smaller area. We require the Promoter to confirm in a Legal Undertaking that this plot will not be compulsorily acquired.

**Plot 0113, 0136, 0127:** It is understood that a works access is required. The area identified seems excessive, and is removed from the adjoining public highway. Can the service road can be located in existing public highway land, or within parcel 0127?

**Plot 0127:** Is a severed area as a result of the access road proposal within parcel 0136 and is considered excessive land take.

**Plot 0133:** Farmed and occupied by MRD. Required by Promoter for flood mitigation purposes and lowering of ground levels. We require further information to support these proposals and to include a copy of the management plan.

**Plot 0041:** Identified for use as environmental mitigation. Concerns raised about the suitability and the extent of land required given the land's location adjoining an industrial development and Charbridge Lane/the Railway line.

**Plot 0185:** A lease has been taken out over this area. We require the Promoter to confirm in a Legal Undertaking that this plot will not be compulsorily acquired.

**Plots: 0149, 0150, 0151, 0153, 0154, 0156, 0159:** Required for worksite and access for construction. The Draft Order details the land parcels affecting the main access to Manor Farm; specifically the farm yard and farmhouse. MRD requires details relating to timescales for such works and confirmation the public highway will remain open.

**0076/0110/0109/0095/0085:** Required as a result of the realignment of Charbridge Lane, and overbridge works. In addition parcels 0048,0058,0046,0042,0045,0053,0054,0056 are acquired

#### **Charbridge Lane:**

It is important to note that the extent of the highway works along Charbridge Lane would seem to exceed the remit of the Application. The Scheme is to provide an improved Rail Link between Bicester and Bedford. The Scheme does not exist to future proof the surrounding highways, which is not substantiated in the Application and it is clear from the Application that the new bridge is necessitated primarily by the risk at the existing Charbridge Lane crossing. It is considered beyond the remit of the Application and Scheme to consider highways improvements and acquire land to fulfil this.

#### **4.0 Negotiations to date**

##### **Plots 0155, 0128,0113,0136,0127 pt 0125: Compound Site**

As stated above, The Promoter has agreed that permanent acquisition is not required. A Lease has been completed in relation to the area required for a temporary compound.

For information MRD have submitted a planning application for the Erection of an accommodation building and associated ancillary external works to accommodate gas fuelled demand response electric generation facility to support the National Grid.

##### **Plot 0041 and 0127**

The Proposed draft Legal Agreement from The Promoter confirms this area is subject to temporary possession, provided an Environmental Management Agreement has been entered into. This area was previously subject to permanent acquisition. We request a copy of the Environmental Management Agreement together with information to confirm the entirety of the land parcel is required.

##### **Alternative Access to Tythe Barn**

The Promoter has offered to construct a new Additional Access. To date this proposal has not been formalised nor the necessary permissions or approvals obtained. Given this late stage in discussions, MRD requests that The Promoter agree with MRD a suitable strategy to mitigate the effects in the event that this proposal is not successful.

## **Bunds**

The Promoter has agreed to consult MRD regarding the relocation of the two northernmost bunds. For the avoidance of doubt The Promoter will seek to keep the southernmost bund, in its current location in so far as this is reasonably practicable.

### **5.0 Impact upon MRD and Property**

#### **Manor Farm**

Manor Farm appears in the Domesday Book, with the MRD Family farming here since 1480. Today the Deeley family run a successful mixed farming enterprise with arable land and grassland grazed by cattle and sheep. Peter Deeley lives in Manor Farm House with his family. The Farmhouse is a Grade II Listed Property dating to 17<sup>th</sup> Century and earlier and is of special architectural and historic interest. The Tythe Barn is also individually listed and classified as Grade II\* being a particularly important building of more than special interest; 5.8% of listed buildings are Grade II\*. It follows that due consideration is given and practical steps be taken to ensure the preservation of and to minimise the impact upon the surrounding curtilage and setting of these buildings.

#### **Tythe Barn**

Built in the early 14th Century and forming part of the MRD farm since 1480 the Tythe Barn was originally used for storing grain or as a lambing shed. The Tythe Barn has been sympathetically renovated and restored by MRD into a successful wedding venue which has been in operation since 1997 and has built up a strong reputation.

The Draft Order works require land take and re-alignment of main access to the farm and the Tythe Barn. The impact of the Draft Order works will have a major impact upon the property and in particular the wedding venue business, where the consequences will be significant.

Concerns have been raised about the overall impact on the existing bookings and how they are managed and future enquiries both during and after the scheme.

To mitigate the impact, the proposal for a new alternative access has been made. This alternative access will need to be constructed well in advance of the Draft Order Works and will also require additional landscaping. In isolation these works may have some impact.

In addition to this, the creation of new landscaped bunds or measures to screen the Draft Order Works have been discussed. To finalise these proposals a detailed understanding of the Draft Order Works and the construction programme, to include levels and a visual impact assessment needs to be provided to ensure that the mitigation measures are appropriate. This will need to address both the long term impact and also the short impact during the construction period. There may need to be additional measures to include but not limited to noise mitigation, dust suppression, fencing, signage etc.

Timing of all the mitigation works need to be in advance of the main Draft Order Works.

In general MRD and the Promoter need to formalise how the business is managed in the short, medium and long term.

## **6.0 Request**

### **Access to Manor farmhouse, and yard.**

0149, 50, 51, 53, 54, 56, 59 – Worksite and access for construction.

The Draft Order details the land parcels affecting the main access to Manor Farm; specifically the farm yard and farmhouse.

MRD requests details relating to timescales for such works and confirmation the public highway will remain open.

### **Tythe Barn Wedding Venue**

The Promoter to agree with MRD a strategy to mitigate the effects of the scheme on a sensitive business venture, which due to the nature of the business, is fundamentally and significantly reliant upon its reputation and goodwill in the short, medium and long term. Weddings are booked approximately 12-24 months in advance and, for the reasons stated above, cannot simply be measured by financial compensation. These timescales apply to all the ancillary wedding services provided ie) Entertainment, florist, photographer and catering, all of whom rely upon the wedding booking at The Tythe Barn.

MRD are not seeking to address the quantum of compensation, but simply to agree with The Promoter a process for the management of the business.

Given the length of time in advance these bookings are taken, bookings for 2020 need to be notified immediately and it is not reasonable to wait for final design plans, or be subject to scheme delays.

MRD request a comprehensive summary of the proposed Scheme Works setting out how the Scheme Works and any pre-Scheme Works will be delivered to include timings for the various stages and time estimates for completion. This will assist in assessing the potential impact of the Scheme Works and also the impact during the construction phases e.g. vegetation clearance, earth movement, access and haul routes, drainage works.

Following this MRD can establish whether any additional temporary accommodation works are required. This is required for both for the enabling/pre-scheme works and the scheme works. Without a detailed understanding of the effects of the scheme no business can effectively mitigate their losses. We appreciate timescales are subject to change, however the Promoter has sufficient detail, information and resource available to form the Draft Order, establish Order Limits and scheme costs. It is reasonable to request these details to assist MRD and any other directly affected landowners or occupiers experiencing direct land take to enable them to mitigate their loss.

### **Tythe Barn Access**

It is noted that the Promoter is in discussions with the Third Party owner of area of land between the highway and MRD property that is required for the alternative access. We are aware this area is outside of The Draft Order limits.

We consider at this stage there are three likely scenarios in relation to the relocated access:

1. All consents, permissions, approvals and acquisitions are successful, and MRD and The Promoter need to agree the design details and specifications with immediate effect.
2. All consents, permissions, approvals and acquisitions are successful, but incur time delay. The Promoter to agree with MRD any temporary accommodation works required as a result.
3. All consents, permissions, approvals and acquisitions are not successful. The Promoter to agree with MRD such accommodation works required to enable the business to continue.

We request that, The Promoter enter into meaningful discussions with MRD to discuss alternative actions to mitigate the effects of the Scheme works.

### **Bunds and associated mitigation measures**

We request a Legal Undertaking identifying the retained bunds, and plans detailing the specification, scale, and timescales for installation of the re-located bunds. The bunds are required at the outset of the Scheme works to mitigate the effects of noise, dust and visual impact. As a result of the Scheme works and proposals within Work Numbers 5 and 6 to alter the existing ground levels in relation to the realignment of A4421 Charbridge Lane and Tythe Barn Access. The Promoter is to agree with MRD a suitable size and scale of the re-located bunds to ensure these continue to effectively screen their Property. This may lead to an increase in size and scale and additional land take.

In addition to the bunds MRD request agreement with the Promoter of a wider landscaping and mitigation plan. This plan will need to address the permanent and temporary requirements to mitigate the impact. This is to include, but not limited to, measures such as installation of drainage within the bunds and to the surrounding land, planting schedule to include agreement of suitable species and at suitable levels of maturity to replace the existing, irrigation to ensure suitable conditions to ensure their establishment. Planting schedule to include both relocated trees and newly acquired trees, shrubs, turf or seed mixes as required.

### **Acoustic Mitigation**

Given the setting of The Property and the request made for additional information regarding the Scheme Works above careful consideration of the impact of noise upon The Property and the business needs to be made. We request The Promoter agrees to provide such additional acoustic mitigation as necessary.

### **Environmental Mitigation Land**

Parcels 0041, 0127 owned by MRD and parcel 0136 occupied by MRD form part of a commercial mixed farming enterprise.

Crucially parcel 0041 is located on the edge of Bicester with industrial developments immediately to the north and Fresh Direct to the south of the railway boundary. With reference to the Gov.uk long term flood risk information maps we are aware this area is classified as at high risk from flooding from rivers (or sea). However, so too are the land areas comprised within the Industrial Estate and Fresh Direct. The Bicester road eastern boundary and railway southern boundary provide a development boundary, with this field parcel the land remaining section of in-fill development, subject to suitable flood mitigation measures. The exercise of compulsory rights to acquire the freehold, permanently or subject to long term management restrictions sterilises this land and restrict its use to limited agricultural use. To enable MRD to mitigate their losses, MRD request this area of land does not have rights of compulsion exercised upon it.

In any event MRD request a copy of the proposed Environment Management Agreement that these field parcels are potentially subject to. It is impossible for MRD or any other landowner or occupier to mitigate their losses upon such land when no indication is given in relation to the length of term, and likely restrictions upon their property.

The Promoter fails to adequately demonstrate the need to parcel 0127 as woodland planting. We request this is removed from The Application and Scheme and rights of compulsion are removed.

We request parcel 0136 is subject to relocation and redesign if required permanently at all. We request it is removed from The Application and Scheme and rights of compulsion are removed, or alternatively subject to a re-design to limit land take.