From: LEARY Jonathan <Jonathan.Leary@pinsentmasons.com>
Sent: 07 September 2018 15:52
To: TRANSPORTANDWORKSACT
Subject: Network Rail East West Rail TWA Order
Attachments: PM L - East West Rail Bicester -07-09-2018.pdf

Dear Sirs

Please find attached objection to the above referenced scheme submitted on behalf of our client Aviva Insurance Limited.

A hard copy will be in the post.

We would be grateful if you could please acknowledge receipt.

Yours faithfully

Jonathan Leary
Associate
for Pinsent Masons LLP

D: +44 121 260 4067 M: +44 7909 878 957 I: 834067
Jonathan.Leary@pinsentmasons.com

Winner – ‘Law Firm of the Year’ at The Lawyer Awards 2018

IMPORTANT NOTICE: This email is sent on behalf of Pinsent Masons LLP, a limited liability partnership registered in England & Wales (registered number: OC333653) authorised and regulated by the Solicitors Regulation Authority and the appropriate regulatory body in the jurisdictions in which it operates. Its registered office is at 30 Crown Place, London EC2A 4ES.

Reference to ‘Pinsent Masons’ is to the international legal practice of Pinsent Masons LLP and/or one or more of the affiliated entities that practise under the name ‘Pinsent Masons’ as the context requires. The word ‘partner’, used in relation to Pinsent Masons, refers to a member of Pinsent Masons or an employee or consultant with equivalent standing. A list of members of Pinsent Masons LLP, those non-members who are designated as partners, and non-member partners in affiliated entities, is available for inspection at our offices or at www.pinsentmasons.com

The contents of this e-mail and any attachments are confidential to the intended recipient. It may also be legally privileged. If you are not the intended recipient please do not use or publish its contents, contact Pinsent Masons immediately on +44 (0)20 7418 7000 then delete. Contracts cannot be concluded with Pinsent Masons nor service effected on Pinsent Masons by email. Emails are not secure and may contain viruses. Pinsent Masons may monitor traffic data.

For information about how we use your personal data at Pinsent Masons, including your rights, please see our privacy policy.

Further information about us is available at www.pinsentmasons.com

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit http://www.symanteccloud.com
BY E-MAIL AND POST

The Secretary of State for Transport
cl/ Transport and Works Acts Orders Unit
Department for Transport
Zone 1/18
Great Minster House
33 Horseferry Road
London, SW1P 4DR

By email to: transportandworksact@df.gsi.gov.uk

7 September 2018

Dear Sirs

OBJECTION TO THE PROPOSED NETWORK RAIL (EAST WEST RAIL BICESTER TO BEDFORD IMPROVEMENTS) ORDER

1. We act on behalf of our client Aviva Insurance Limited. Our client has received a notice of application to acquire land and rights in land compulsorily, to use land and to extinguish rights over land, served on behalf Network Rail Infrastructure Limited ("the Promoter") in respect of the proposed Network Rail (East West Rail Bicester to Bedford Improvements) Order (the "Draft Order"), to be made under the Transport and Works Act 1992 (the "Act"). The Draft Order if made would authorise the proposed scheme of railway and ancillary works known as the East West Rail Western Section Phase 2 (the "Scheme").

2. Our client objects to the Draft Order on the grounds that the Draft Order seeks an "unrestricted power to acquire land" belonging to our client and the Promoter has not provided a compelling case in the public interest for depriving our client of its interest in land.

3. As such our client is a "statutory objector" within the definition in rule 23(5) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (the "Rules") and within section 11(4) of the Act.

4. Correspondence relating to this objection may be sent to the address in the footer to the first page of this letter quoting our reference number as provided in the header to this letter.

5. Our client considers that the promoter has failed to provide a compelling case in the public interest for depriving our client of its land for the following reasons:

- The unrestricted power of acquisition is excessive and disproportionate. The Promoter's requirement for the land appears to be for a temporary road
diversion yet the Draft Order, if implemented, would permanently deprive our client of its interest in land.

- The Promoter has failed to take reasonable steps to acquire the land by agreement.
- The Promoter has failed to consider alternatives that would avoid the requirement for the use of our client's land.
- The Promoter's proposals in respect of our client's land are vague and uncertain.

6. As the Promoter's proposals in respect of our client's land are vague and uncertain, our client reserves its right to supplement these grounds in response to any further clarifications of the Promoter's proposals.

**The Land**

7. Our client is the owner of the freehold of the land ("Land") identified in the published Book of Reference under the following plot numbers:

   - **0045** - 1973 square metres, or thereabouts, of Service yard forming part of the premises known as Unit B, Bicester Distribution Park, in the parish of Bicester

   - **0053** - 432 square metres, or thereabouts, of Wooded area forming part of premises known as Unit A, Bicester Distribution Park situated to the west of adopted highway known as Charbridge Lane (A4421), in the parish of Bicester

   - **0054** - 247 square metres, or thereabouts, of Wooded area forming part of premises known as Unit A, Bicester Distribution Park and Footpath 129/18/20 situated to the west of adopted highway known as Charbridge Lane (A4421), in the parish of Bicester.

8. The Land forms part of the Bicester Distribution Park and the majority of the Land is leased to Fresh Direct (UK) Limited where it forms an important element of its fresh produce business.

9. The Bicester Distribution Park lies in a triangular area of land bounded to the east by the A4421 Charbridge Lane and to the north east by the line of the existing single track line that the Promoter proposes to upgrade as part of the Scheme. Vehicular access to the Land is via the junction of Charbridge Way with Charbridge Lane.

10. Plot 0045 includes an important section of the delivery yard to the rear of a distribution unit which provides Heavy Goods Vehicles with access to the loading bays to the rear, and to perform manoeuvres to exit the premises. We are instructed that the loss of the Land would render the unit inoperable for its intended and purpose. We are instructed that due to the constraints of the site, bounded as it is by the railway line to the north east and by the A4421 to the east, it is not practicable to reconfigure the unit to maintain equivalent levels of operations.

**The Promoter's proposals for the Land**

11. It appears from the deposited plans, sheet 2 of 126, that the promoter is seeking "unrestricted powers to acquire land" belonging to our client.
12. The application documents do not specify the reason(s) why the promoter requires the Land but our client deduces from sheet 2 of the deposited plans that it may be in connection with Work No. 7 as the centre line of that work is shown broadly over the Land, to the west of the alignment of the existing A4421 Charbridge Lane.

13. Work No. 7 is described in Schedule 1 of the Draft Order as (our emphasis):

"Work No. 7 - Temporary diversion of the A4421 Charbridge Lane, commencing at a point 120 metres north of the junction of Charbridge Way with the A4421 Charbridge Lane and terminating at a point 15 metres south of the roundabout junction with Bicester Road."

14. Other Works in the vicinity of the Land shown on sheet 2 of 126 of the deposited plans include Work No. 5 the centreline of which appears to follow the existing centreline of the A4421:

"Work No. 5 - Realignment of the A4421 Charbridge Lane, (including a bridge over Work No. 1) commencing at a point 25 metres north of the junction of Charbridge Way with the A4421 Charbridge Lane and terminating at the roundabout with Bicester Road."

15. To the east of the alignment of the A4421 Charbridge Lane, sheet 2 of 126 shows the centreline of Work No. 8 which is described in Schedule 1 as (our emphasis):

"Work No. 8 - temporary diversion of the A4421 Charbridge Lane, commencing at a point 23 metres south of the junction of Charbridge Way with the A4421 Charbridge Lane and terminating at a point 293 metres north of its commencement."

16. While article 6(2) of the Draft Order requires the scheduled works to be constructed on the lines or situations shown on the deposited plans, article 7 of the Draft Order permits the works to be constructed within the limits of deviation shown on the deposited plan. In this case this renders the centre line of the work largely meaningless in terms of lateral deviation, as the limits to the west of the centre lines of the above referenced works appear (although this is not clearly stated) to extend to the Order limits.

17. Consequently, while it appears from the position of the centrelines on sheet 2 of 126 of the deposited plans that our client’s Land is required for the Work No. 7 (a temporary diversion of the A4421) it appears that the Promoter is not certain that it may also be required for Work No. 8 (another temporary diversion of the A4421) or Work No. 5 (the realignment of the A4421).

Failure to demonstrate compelling case for the compulsory acquisition

17.1 Powers of compulsory acquisition are draconian measures predicated on the state depriving private persons of their interests in land. The grant of such powers must be considered carefully and can only be justified where there is a compelling case in the public interest that justifies the private loss.

17.2 This principle is confirmed in the Guidance published by the Department for Transport in June 20061 ("TWA Guidance") which is clear that the Secretary of State "will wish to be satisfied that there is a compelling case in the public interest for taking away a person’s land or rights in land, and that all the land in question is required for the Scheme."

---

1Paragraph 1.39, Guidance on the procedures for obtaining orders under the Transport and Works Act 1992, relating to transport systems, inland waterways and works interfering with rights of navigation, Department for Transport (June 2006)
17.3 Our analysis of sheet 2 of 126 set out above reveals that the Promoter is far from clear that all of the Land is required for the Scheme and in the absence of any justification from the Promoter, our client does not accept that its Land is required for the Scheme at all and it should be removed from the Order limits.

17.4 If our client were to accept that there is a requirement for its Land for the Scheme (which at this stage our client does not) then our client maintains that no compelling case in the public interest for "an unrestricted power to acquire land", that would permanently deprive of our client of its Land, could possibly be established by a requirement for a temporary road diversion. This would be excessive and disproportionate when a lesser power could achieve the same aims whilst inflicting a lesser private harm.

17.5 Similarly, given the largely straight alignment of the short stretch of the A4421 between the start and end points of the permanent highway works envisaged by Work No.5 and that the description of Work No.5 does not include mention of any proposed widening of the carriageway it is difficult to understand the justification for the permanent works to deviate so as to stray on to our client's Land. Certainly, the Promoter has provided no such justification.

18. Failure to make a meaningful attempt at negotiation

18.1 The TWA Guidance at paragraph 1.39 urges applicants for Transport and Works Act Orders seeking authorisation for compulsory acquisition to heed the advice on the use of compulsory purchase powers in Circular 06/2004 issued by the former Office of the Deputy Prime Minister entitled "Compulsory Purchase and the Cribbell Down Rules". That guidance has since been replaced by the Guidance on compulsory purchase process and the Cribbell Down Rules, published by the Ministry of Housing, Communities & Local Government in February 2018 ("MHCLG Guidance").

18.2 The MHCLG Guidance is clear that "compulsory purchase is intended as a last resort". It goes on to say at paragraph 17 that:

"Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the costs of a scheme. Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question."

18.3 Clearly, there is no question over the ownership of the Land as our client's interests are registered at the Land Registry and included in the Book of Reference. Yet the Promoter has made no attempt at all, let alone a meaningful and genuine attempt, to negotiate with our client for the purchase of the Land. Perhaps the Promoter was not motivated to engage our client in negotiations as it has no clear rationale for the use of the Land that would justify in the public interest the serious private harm that its acquisition would inflict.

19. No meaningful consideration of alternatives that would avoid the need for unrestricted powers of compulsory acquisition

19.1 Volume 2i, Chapter 3 of the Environmental Statement includes a cursory discussion of the alternatives considered for the new Charbridge Lane bridge. Table 3.3 states the options considered were:

* "dual carriageway sub-structure, single carriageway highway;"
19.2 The table concludes that the preferred option for the project and the corresponding "environmental considerations" comprise:

- "the larger the structure, the greater the land take, but the more flexibility this allows for managing traffic levels in the future without additional disruption. Affected nearby land uses include the allotments adjacent to the east of the crossing and the Tythe Barn wedding venue (and listed building) located just to the south of the crossing."

19.3 The table fails to mention, let alone consider, the effect of the proposed "unrestricted powers to acquire land" sought over our client's Land and the impact that it would have. It follows that no thought at all has been given to alternatives that would limit or mitigate the damage to our client's interests. Furthermore, it appears that the wider dual carriageway structure, and the consequent loss of our client's Land to accommodate a temporary diversion, is predicated on an as yet unspecified future need to manage traffic.

19.4 Taken together it is clear that the Promoter cannot demonstrate that all of the Land is required for the Scheme or that compulsory acquisition of the Land is justified in the public interest.

Conclusion

20. Based on the information provided in the Promoter's application our client's firm view is that the Promoter has failed to establish a compelling case in the public interest for the authorisation of "unrestricted powers to acquire land" over our client's Land. This is especially the case given that the proposal would permanently deprive our client of its interest in Land, and inflict serious detriment to the operations carried out by its tenant, in order to temporarily divert a road, a diversion that appears only to be necessary to accommodate a wider bridge structure than is needed solely to provide future flexibility. The need for future flexibility in the public highway may or may not arise, but the private harm if the Draft Order is fully implemented is certain.

21. Our client is disappointed that the Promoter has not sought to meaningfully negotiate with our client on its proposals for the Scheme in respect of the Land. Despite this disappointment, our client is willing to discuss with the Promoter its proposals with a view to finding a mutually agreeable solution that would enable the Scheme to proceed in a way that avoids harm to the Land appropriately.

Our client reserves the right to expand on these grounds of objection in the light of any further information it may receive from Promoter.

Please acknowledge receipt of this correspondence.

Yours faithfully

Pinsent Masons LLP