



Appendices to Support the
Proof of Evidence of Pippa Cheetham
(on behalf of O&H Properties Ltd) in
relation to the lack of meaningful public
engagement and negotiation leading up
to the submission of the Transport and
Works Act Order for the East West Rail
Bicester to Bedford Improvements.

156/1/2

January 2019

Appendices

Appendix 1 Extract on Consultation from 'A Guide to Transport and Works Act Procedures' (2006)

Commented [MR1]: Given the limited extent of the extract, this element can stay in.

Appendix 2 List of Meeting Dates between Network Rail and O&H

Appendix 3 A Selection of Meeting Notes

Appendix 4 List of Requirements

Appendix 1

Extract on Consultation from 'A Guide to Transport and Works Act Procedures' (2006)

Introduction

2.1 This Part of the Guide explains the statutory procedures that prospective applicants must comply with **before** making a TWA application. It also provides advice on what prospective applicants should do on a non-statutory basis at the pre-application stage and draws attention to a number of matters that they should consider in preparing an application.

2.2 It is very clear to the Department, from its experience of handling TWA applications, that the carrying out of wide and thorough consultations in advance of an application is a crucial part of the whole authorisation process; and it will usually follow that the larger and more contentious a scheme is, the more extensive the pre-application consultation should be. A comprehensive consultation exercise, involving an open and constructive dialogue with those likely to be affected, can provide helpful feedback into the design development process, which can lead to desirable changes being made; help to allay fears and suspicions that can sometimes arise simply from lack of information about what is proposed; and can help greatly to limit the objections arising once an application is formally made. Generally speaking, a thorough consultation exercise before an application is made will be likely to repay 'with interest' the investment of resources involved.

2.3 Promoters of major infrastructure projects may wish to study the "Code of Practice on the Dissemination of Information during Major Infrastructure Developments" issued by the former DETR in October 1999. The purpose of the Code is to ensure that people are given as much information as possible at all stages of a development. Whilst it was drawn up for Government projects, it is also commended to local authorities and private sector developers who may be promoting major infrastructure projects.

Consultation - General

2.4 Before embarking on the statutory pre-application procedures, all prospective applicants are advised to consult thoroughly on their proposals with relevant statutory authorities, with statutory utilities whose services may be affected, and with all other persons likely to be affected by the proposals. The larger the project is, the more critical it is to engage properly with such authorities and affected persons. Experience has shown that it can be easy for applicants to under-estimate the amount of opposition engendered by TWA projects, especially those involving linear works through residential areas and/or town or city centres. Engaging in a constructive dialogue during the formative stages of a project, and being seen to be listening to objections, can often significantly reduce the size and strength of opposition. (Very often, objections are made to a TWA order, which are later withdrawn, simply because the objector has not had a clear understanding of what the project entails; and this can often include statutory bodies and public utilities as well as private individuals.) Even where consultations fail to satisfy some objectors, as is always likely to be the case where private interests are adversely affected, the applicant will at least be better informed about the nature of the objections and therefore better placed to respond to them later (for example, at a public inquiry).

2.5 Consultation can take many forms, such as informal discussions with officers of statutory bodies and with local residents, more formal written consultations, public exhibitions and meetings, information leaflets, websites, etc.. For a typical linear project, the applicant may first wish to publish route alignment options before settling on a preferred route in the light of consultation responses. The consultation process does not lend itself therefore to a rigid regulatory approach.

But failure to carry out adequate consultations or to take into account issues or concerns raised increases the risk of the TWA application not succeeding. At the very least, inadequate consultation is likely to result in a greater number of objections and hence a more drawn out process before the application is determined. Experience suggests that if meaningful discussions with concerned parties (including statutory undertakers) are left until after an application has been made, this can lead to requests to the Secretary of State to delay progressing the case until negotiations have been concluded; or result in a public inquiry being held where it might have been avoided; or lead to the inquiry taking an unnecessarily long time. It is therefore likely to be counter-productive to take forward a TWA application without first having undertaken an extensive consultative process.

2.6 Who should be consulted, and what type of consultation is most suitable, will depend to a large extent on the size and nature of the project. Those who are applying for the first time may find it helpful to ask previous applicants about their experiences. Where an application would involve new works, it will usually be desirable to consult the local planning authority and, if different, the local authority where the proposed works would be carried out, at the earliest possible stage. Such consultations might usefully focus on how the proposals relate to relevant local, regional and national development policies and plans. Applicants who intend seeking deemed planning permission when applying for an order are also advised to discuss proposed planning conditions with the local planning authority, including the matters to be reserved for the authority's subsequent approval, as the applicant must provide statements on these matters when applying for an order (rule 10(6) refers). The authority may also wish to ask the applicant to prepare a code of construction practice. A prospective applicant should also consult the relevant parish council (in England) or community council (in Wales) in regard to any matters of local interest.

2.7 Closer to the time of application, the applicant may wish to discuss with the local authority such matters as the choice of venues for depositing application documents, the choice of local newspapers for publishing notices of the application (see Part 3) and the number of copies of the application documents the authority would need for internal use and for consultation with parish or community councils. Local authorities should, for their part, consider at what stage before a TWA application a scheme should be added to their register for land searches; this should normally be done no later than 4 weeks before the application is made.

2.8 Prospective applicants are also advised to consult at an early stage all those who, in addition to the local authority and parish or community councils, **would be entitled to receive a copy of the application and supporting documents or a notice of the application**, as set out in Schedules 5 and 6 to the Applications Rules. (If those persons are not consulted about a proposed application, the applicant will have to explain why this was not done in the consultation report which must accompany the application under rule 10(2)(d) - see paragraph 3.5(d).) For example, where works in marine waters are involved, **Defra** would wish to be consulted at a very early stage on the proposals and on the Environmental Statement, as it can take a considerable amount of time to assess properly the effects on the marine environment (and there may be a related need for a licence under the Food and Environment Protection Act 1985 - see Part 7). Applicants may also wish to consult the relevant Government Office for the Region for information on any national or regional planning, transport or other policies that might be relevant to the proposed project. For consultation with Government Offices on public funding for the project see also paragraph 2.12.

2.9 Applicants and their advisers who are unfamiliar with the procedures may find it helpful to discuss procedural and timing matters with officers of the TWA Orders Unit. The Unit will not be able to comment on the merits of the scheme or give any indication as to the prospects of it being approved; nor would they wish to receive a private presentation on the scheme, in order not to compromise their impartiality. Officials will however be able to offer procedural guidance which may

help the prospective applicant to take forward the application and to make informed choices. **It is in any event very useful for the Unit to know the likely timing of future TWA applications, to assist in planning its future workload.**

Who else should be consulted?

2.10 Bearing in mind the very wide range of matters that might be included in a TWA order, it is only possible to provide some general guidance on those (in addition to those named in Schedules 5 and 6 to the Applications Rules) whom it would be prudent to consult prior to making an application. Much will depend upon the nature and effects of the proposals as to which persons or authorities should be consulted and at what stage. The local authorities may be able to provide helpful advice, in particular regarding relevant local community organisations and interest groups. In some cases, local pressure groups may be formed as a result of the proposed project. Applicants should be alive to the formation of new interest groups and should seek to maintain regular contact with them. It is important also that local communities are kept informed of significant developments in working up a scheme. **Openness can build confidence and trust, whereas secrecy may fuel suspicion and hostility.** Prospective applicants for larger, more contentious schemes may find it worthwhile to establish a telephone hotline for the purpose of handling public enquiries and/or to provide up-to-date information on the Internet.

2.11 Prospective applicants should also consider which national or regional organisations are likely to have a relevant interest and should therefore desirably be consulted at the pre-application stage. A list of organisations (not already mentioned in Schedule 5 or 6, or only mentioned in regard to different circumstances) who should be consulted prior to making an application for an order, depending on the particular nature of the works, is set out in **Annex 4**. Prospective applicants should note that this is not an exhaustive list. There may well be others who should be consulted in particular cases.

2.12 Where it is intended to finance a scheme wholly or partly from public funds, **the relevant Government Office and/or the relevant policy division** in the Department concerned (**or the Assembly, for schemes in Wales**) should be consulted at a very early stage. They will be able to explain what sources of funding might be appropriate, what the applicant will need to do before making any formal application and how and when such an application should be made. See also paragraphs 1.31 to 1.38, especially if it is wished to bid for funds for a scheme through a Local Transport Plan.

2.13 Where the project would involve the compulsory acquisition of land or rights in land, the prospective applicant should normally consult the **owners, lessees, tenants and occupiers** of such land at an early stage. The timing and nature of such consultation will need careful consideration according to the particular circumstances of the project. In many cases this should best be undertaken prior to any public announcement of the intended location or alignment of the project. Before the TWA application is made it will almost certainly be necessary to make direct contact with the owners, lessees and tenants of land proposed to be compulsorily acquired, for the purpose of compiling the book of reference (see paragraph 2.60 below). The prospective applicant may also want to gain temporary access to certain land in order to carry out soil surveys. Any such access prior to the making of the order would have to be obtained by agreement with the landowner.

2.14 It would also be prudent to consult the owners and occupiers of land which would be affected by the proposed works but which is not itself subject to compulsory purchase. This should include, but not necessarily be confined to, persons living in properties close to the proposed development. (Some of these may, in any event, be entitled to receive a notice of application under paragraph 16

of Schedule 6 to the Applications Rules, if the applicant considers that they are likely to be entitled to make a claim under section 10 of the Compulsory Purchase Act 1965 for a reduction in the value of their land because of the proposed works.) A street-running tramway scheme, for example, may have effects during construction and/or in operation on residential properties and businesses located in roads that link to, or cross, the actual line of route. Meetings with residents will enable the prospective applicant to explain the likely effects of the scheme on the persons concerned and to answer any points raised. It is possible that additional mitigation measures (such as noise barriers or new planting) may be agreed as a consequence of discussions with landowners. Such measures should be included in the environmental statement. Prospective applicants should also consider whether there are persons or bodies using the land with the owner's consent (for example, a restoration or conservation body) who may not properly be regarded as "occupiers" as such, but who should desirably be consulted.

2.15 In selecting a route or location for a works project, prospective applicants should pay special attention to local and national land use policies as set out in the relevant local development plan, regional planning guidance and planning policy guidance notes and statements. The relevant local authorities and Government Office for the Region (or the Assembly for schemes affecting Wales) should be able to offer advice on relevant policies. It is of course for applicants to decide upon their preferred scheme in the light of relevant policies and to defend their choice. Sometimes that preferred choice may be in accordance with some policies but conflict with others, and the Secretary of State will in due course have to make a judgement on where the balance of public advantage lies. Generally, though, applicants should seek to avoid where possible (or have compelling justification for) carrying out works on environmentally sensitive sites, or so near to them that they are adversely affected, including in particular:

- European sites or European marine sites (as defined in regulations 2(1) and 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994)³;
- Areas of outstanding natural beauty designated by order made by the Countryside Agency (for England) or Countryside Council for Wales (for Wales) under the Countryside and Rights of Way Act 2000 ("the 2000 Act");
- Land designated as Green Belt in a development plan;
- Land in a National Park, within the meaning of the National Parks and Access to Countryside Act 1949 ;
- Land within the Broads as covered by the Norfolk and Suffolk Broads Act 1988;
- Sites of Special Scientific Interest which have been notified under section 28(1) of the Wildlife and Countryside Act 1981 ("the 1981 Act");
- Land which is subject to a nature conservation order under section 29(3) of the 1981 Act;
- National Trust land;
- Open space, common and other land to which section 19 of the Acquisition of Land Act 1981 applies (and which by virtue of section 12 of the TWA would be subject to special parliamentary procedure (SPP) if it were to be acquired compulsorily without suitable land being offered in exchange);
- Marine Nature Reserves designated under section 36 of the Wildlife and Countryside Act 1981;
- Ramsar sites;
- National nature reserves designated under section 35 of the Wildlife and Countryside Act 1981; or
- Sites used by species protected by statute, in particular those listed at Annex IV to the Habitats Directive.

2.16 Applicants should also seek to avoid, so far as practicable, proposing works which would involve the demolition or alteration of, or damage to the setting of:

a property on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage;

a listed building or any building situated within a designated conservation area under the Planning (Listed Buildings and Conservation Areas) Act 1990; or

a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979.

2.17 The local planning authority should be able to offer advice in selecting suitable route alignments or locations for proposed schemes. The authority may also be able to identify environmentally sensitive areas, such as archaeological sites, of which the applicant may be unaware. If, after considering the options, a prospective applicant can see no reasonable alternative to encroaching on an environmentally sensitive site, the local planning authority and the relevant environmental or heritage statutory agencies should be consulted at an early stage, with a view to discussing how the effects on the site might be minimised. Any proposed mitigation measures should be included in the environmental statement.

2.18 Finally, applicants should be aware that MPs with a constituency interest and, in Wales, Members of the Assembly who represent areas involved, may wish to make representations to the Secretary of State in support of, or in opposition to, a proposed order. In the case of a scheme of national significance, the constituency MPs could play an influential role in the debate and vote in the House of Commons. Applicants are therefore advised to seek to involve relevant MPs and, in Wales, Assembly Members in the consultation process at an appropriate stage. For larger schemes this might take the form of a presentation of the proposals.

Appendix 2

List of Meeting Dates between Network Rail and O&H Properties Ltd

- 23rd January 2013
- 3rd November 2014
- 10th August 2015
- 21st August 2015
- 23rd November 2015
- 17th May 2016
- 3rd October 2016
- 30th November 2016
- 16th January 2017
- 23rd January 2017
- 15th February 2017
- 18th April 2017
- 24th April 2017
- 22nd May 2017
- 19th June 2017
- 24th July 2017
- 25th September 2017
- 23rd October 2017
- 20th November 2017
- 18th December 2017

Appendix 3

List of Requirements Drafted by O&H in July 2016

O&H Properties and East West Rail Alliance

The purpose of this note is to summarise the land use interactions between O&H and the East West Rail Alliance between Bletchley and Bedford. It is anticipated that it will form the agenda for a meeting to determine whether the arrangements can be formalised through a Development Agreement outside of the Transport and Works Act process.

East West Rail Requirements

1. To secure the use of Bletchley Brickworks as a compound from 2019-2024
EWR will need to secure it earlier than 2019 as occupiers could be on site by the end of 2016
2. Woodleys Crossing and compound moved eastwards to be secured across a single landownership.
3. Safeguard land for improvement / relocation of Woburn Sands station and / or car park, and ultimately close the level crossing when electrified
4. Secure O&H land north of Brogborough Middle Farm. Is additional land required to the south of the railway line?
5. Land take to facilitate the preferred Lidlington crossing?
6. Secure a compound at Kempston Hardwick
O&H land holding adjacent to Kempston Hardwick station is a potential site for education provision

7. Secure O&H land at Rookery North for the purposes of improvements to Stewartby station.
8. Additional land take through the Marston Vale to allow for realignment necessary for electrification.

O&H Properties Ltd Requirements

1. Upgrade Woodleys Crossing to a full highway crossing.
2. Upgrade the bridge to Middle Farm and / or create access to Middle Farm across Bedford Estates Land
3. O&H would like to understand EWR's future plans for the Millbrook crossing to understand how O&H can incorporate this within the Marston Valley proposal for the Millbrook Link.
4. Clarity on Green Lane interface.
5. Establish what EWR view is on the potential for upgrading the underbridge to the north of Newton Longville. There is a clear desire from AVDC/MKC/NL PC to facilitate the delivery of this route in the future.

Pippa Cheetham 15 July 2016

Appendix 4
Selection of Meeting Notes