



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.

156/1/1

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Introduction

- 1.1 I am Philippa Cheetham and have been a Chartered Town Planner since 2002. I was awarded an MPhil in Town Planning from the Bartlett School of Planning, University College London in 2001.
- 1.2 My professional experience began in local authorities where I held Planning Officer posts at both Wycombe and Aylesbury Vale District Councils before moving to David Lock Associates as a consultant town planner in 2003 where I stayed for five years reaching the position of Associate.
- 1.3 In 2008, I began working in-house for O&H Properties Ltd (hereafter O&H) as their Planning Manager, where I stayed until 2018. During this time, I was responsible for progressing their planning projects across a nationwide portfolio. This included all of the land subject to this Inquiry. I have experience of strategic land promotion, moving sites through the planning process and delivering planning permissions. This process requires building long term relationships with stakeholders in the local area, including Network Rail. I have also managed a number of public engagement campaigns.
- 1.4 In 2018, I set up Varsity Town Planning to provide town planning services across the Oxford to Cambridge Arc. I am retained by O&H in my new role, and in this matter am instructed to represent them directly.
- 1.5 The evidence which I provide for this inquiry is true and has been prepared and given in accordance with the guidance of my professional institution.

Site Context

- 2.1 O&H is the freehold owner of a substantial portion of the land included in the Order. The extent of O&H land that East West Rail will pass through is also significant and includes growth locations identified in emerging Local Plans. O&H are a London based property company with a diverse, nationwide portfolio.
- 2.2 O&H operate as strategic master developers across the region and seek to work in partnership with local agencies and authorities to bring forward sustainable developments on their land to meet local need. In the short to medium term, the land is managed through a combination of agricultural tenancies, leases to community and sporting organisations with some commercial and residential lettings.
- 2.3 The Draft Order is having an immediate impact on O&H's ability to enter into long term leases with prospective tenants. It is also preventing their agricultural tenants from being able to plan into the medium term. Equally concerning is the impact that the fragmentation of the estates by virtue of the Draft Order will have on their ability to comprehensively plan for either strategic development or sustainable agriculture into the long term.
- 2.4 The direct impacts of these matters on O&H are addressed in the proofs of evidence of my colleagues. The method of stakeholder engagement employed by Network Rail has frustrated the ability of O&H to properly manage and plan for their estate in recent years and is the focus of this proof of evidence.

Overview of the Evidence

- 3.1 O&H Properties Ltd support the principal of the East West Rail scheme and applaud the aspiration to connect Oxford through to Cambridge by rail.
- 3.2 However, the methods employed by Network Rail to achieve this goal have resulted in confusion and a feeling of disengagement by stakeholders from the planning and CPO process. This, in turn, has frustrated O&H's ability to properly manage parts of their estate and has resulted in conflicting uses being proposed for the same land parcels.
- 3.3 My proof of evidence aims to highlight that the lack of meaningful public engagement is contrary to Government Guidance on preparing Compulsory Purchase Orders and the process underpinning the Transport and Works Act.
- 3.4 I will contend that all direct engagement that took place between the two parties prior to the submission of the Order was at O&H's request in an attempt to work in partnership with Network Rail in order to properly plan for the growth of the area. There was no intent for meaningful engagement from Network Rail's side. Further, I suggest that the way in which the GRIP stages of a rail project are executed means that it is impossible for Network Rail to take third party comments on board at any stage of the pre-submission process.
- 3.5 It has only been since the submission of the O&H objection at the end of 2018 that Network Rail have approached O&H to discuss how matters can be resolved to the mutual satisfaction of both parties. These discussions are making good progress but are very late in the day and to date, nothing has been formally documented and O&H's original objections must stand.
- 3.6 This proof of evidence specifically addresses matters relating to the lack of meaningful negotiation leading up to the submission of the Transport and Works Act Order. It should be read alongside the proofs of evidence prepared by Mrs Heather

Pugh, which addresses compliance with EIA Regulations and the locally proposed growth, Mrs Amy Hensler, which deals with flood risk, Mr Neil Perrins, which deals with viability of O&H's agricultural holdings and Dr Jim Fairclough, which deals with ecology.

- 3.7 Section 6 of this proof of evidence also documents O&H's rebuttal statements following review of the Network Rail Proofs of Evidence.

Policy Context

- 4.1 In paragraph 2 of the Guidance on Compulsory Purchase Process and the Chrichel Down Rules (MHCLG 2018), it sets out “*When should compulsory purchase powers be used?*” and goes on to detail the following:

“Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

***The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement.** Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.*

*Compulsory purchase is intended as a **last resort** to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for **negotiations to break down** before starting the compulsory purchase process, valuable time will be lost.”*

(my emphasis in bold).

- 4.2 The Guide to Transport and Works Act Procedures (DfT 2016) contains a section on consultation (Appendix 1) and is clear that pre-application consultation should be, “*thorough*”, “*extensive*” and “*comprehensive*”. I refer to these tests as ‘meaningful consultation’ throughout.

- 4.3 At paragraph 2.13 of the Guide, there is further advice about how to work with landowners affected by the scheme, “*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.***” (my emphasis in bold)

The Case Against the Making of the Order

- 5.1 There is no suggestion that Network Rail have either failed to carry out formal consultation steps or missed out any consultees in the methods that they have employed (Core Document NR12 is clear in what was done).
- 5.2 Rather, O&H's objection is that the method of consultation is contrary to Government guidance. The acquiring authority have not pursued reasonable steps to reach an agreement with O&H; negotiations did not break down, they were abandoned by Network Rail. O&H fully engaged at every stage of the formal consultation process and also sought out informal consultation over four years. Their comments have not been adequately reported and that there is no clear demonstration of design evolution surrounding the scheme as a result of the consultation.
- 5.3 Conversations between the parties were frequent but were not meaningful. I will use a series of case studies along the route to draw out these points.
- 5.4 O&H are a significant stakeholder along the route and meaningful consultation should have been happening from a very early stage of the project. Network Rail require O&H's land for many components of the scheme, including:
- i.) acquiring land on a temporary basis for site compounds;
 - ii.) permanent acquisition of land for compensatory flood storage;
 - iii.) permanent acquisition of land for ecological mitigation; and
 - iv.) land for the construction of new railway crossings.
- 5.5 This has the effect of:
- v.) impacting on agricultural holdings in terms of access and workable plots;
 - vi.) removing land from development schemes that are being planned for alternative uses; and
 - vii.) creating an unsuitable commercial environment within which to secure short or medium-term leases for alternative uses.

- 5.6 These matters are all dealt with in other proofs of evidence and are mentioned here simply as a mechanism to underline the impact that the Bedford to Bletchley Rail Improvement Scheme has on O&H's ability to properly manage their land holdings.
- 5.7 Meetings between Network Rail and O&H have occurred since 2013 and a list of meeting dates is set out in Appendix 2. These meetings were instigated by O&H in the knowledge that the East West Rail scheme was being prepared and on the basis that both parties were stakeholders in an area of proposed growth and it was good practice to work together to see where shared understanding of an area could benefit both parties. The meetings were an opportunity for both parties to share their plans for the area and to see whether the evolving design of each project could be concluded in such a way that neither scheme was prejudiced. A selection of early meeting notes are contained in Appendix 4.
- 5.8 An output from one of these meetings came from O&H and was the identification of a List of Requirements (Appendix 3) setting out what each party required from the other and looking towards agreeing this prior to the Transport and Works Act Order being submitted. Initially, Network Rail seemed keen to try to agree issues in side agreements outside of the Transport and Works Act Order and O&H's Board ratified this approach. However, the opportunity to negotiate these points outside of the Transport and Works Act was soon abandoned by Network Rail in favour of pursuing the whole scheme under the Act. It is worth noting that many of the points set out in the List of Requirements are those which are now being re-visited with Network Rail. These matters could have been addressed earlier and need not have been subject to Compulsory Purchase under the Act.
- 5.9 Instead, there followed a sporadic set of enquires about the potential for Network Rail to use O&H's land for temporary compounds and to take access for surveys. When O&H first reviewed the submitted version of the scheme there were many environmental mitigation areas that formed part of the scheme that had not formed part of any discussion up to that point.

5.10 Below are four case studies illustrating some of the failings of Network Rail's engagement exercise:

Case Study A Environmental Mitigation at Bletchley

5.11 In the early stages of consultation, O&H were advised that part of their Bletchley estate would be required for ecological mitigation. The initial parcel required would have been in the middle of the agricultural holding rendering part of the holding unworkable. No explanation was given as to why this particular parcel had been chosen. The boundaries appeared to be arbitrarily drawn and based on a quantum of land rather than site suitability.

5.12 Through consultation, O&H requested that the parcel was moved to the most eastern boundary of their estate, allowing for continued use of the remaining by the agricultural tenant.

5.13 Whilst this point was taken into account and the ecological mitigation area moved eastwards, when the Transport and Works Act Order was published, there was a further area required by Network Rail for compensatory flood storage, which had never been raised as a requirement.

5.14 The effect of this additional land take, combined with the severing of the only agricultural access route through the Bletchley Brickworks site has rendered the agricultural holding unworkable. The parties are now in discussion about an outright purchase of all of the agricultural land lying within O&H's Bletchley estate.

- 5.15 O&H have repeatedly made the case that the way Network Rail are dealing with Woodleys Crossing, and the impact of the whole scheme on Woburn Sands is a missed opportunity for the wider public interest. This has not been documented in Network Rail's Consultation Report (NR12).
- 5.16 Mrs Pugh's Proof of Evidence deals with the issue of the potential for Network Rail to contribute to wider growth of Milton Keynes. However, pertinent to my Proof is the fact that we have presented opportunities for Network Rail to minimise the number of land owners that they need to serve a CPO on and offered to enter discussions about safeguarding land for improvements that are likely to be necessary in later stages of the East West Rail scheme. The detail is contained in all of O&H's consultation responses to the project (dated 16th October 2015, 21st June 2016, 11th August 2017 and 9th February 2018) and is not re-presented here.
- 5.17 Network Rail appear to only be able to deal with the issue immediately in front of them. ie. The Bicester to Bedford Improvements. No thought is given to future-proofing the impact on later stages of the scheme, notably the impact on the Woburn Sands level crossing when more trains are using East West Rail. Section 2 of the meeting notes from 10th August 2015 illustrate the point that there is recognition that it is likely that further alterations will be needed at Woburn Sands as a result of later stages of the East West Rail project (Appendix 4). I suggest that the failure to futureproof the project is due to the restrictive nature of the GRIP process and the way the projects are funded. It is not good planning and is a poor use of resources.
- 5.18 Designing Woodleys Crossing so that it could be upgraded in the future should Network Rail need to mitigate the impact of more trains on the highway network by providing a bypass to Woburn Sands seems eminently sensible and a good use of public money. This issue has been raised many times and has effectively been ignored in the Consultation report and the scheme itself.

- 5.19 The location of Woodleys Crossing will cause temporary difficulties for O&H's agricultural tenants to access their land to the north of the railway. Constructing the new crossing off line from the existing crossing would immediately solve this problem but has not been considered by Network Rail. This matter is addressed more fully in the proof of evidence of Mr Neil Perrins.
- 5.20 A related point is an offer from O&H to safeguard land for a new station or ancillary uses at Woburn Sands should the existing site not be able to cope with future requirements. Again, this matter has not been pursued by Network Rail and seems short-sighted.

Case Study C Re-design of the Marston Crossing

- 5.10 O&H actively engaged with the piecemeal schemes that were put in front of them and in the case of the Marston Crossing suggested different ways in which the bridge crossing could be re-designed that would have less of a detrimental impact on their Marston Valley scheme. The message consistently came back that the designers had moved on from that particular stage of the GRIP Process and would not be re-visiting the design.

Case Study D Severing access at Kempston Hardwick

- 5.11 The design of the compound and balancing pond at Kempston Hardwick is such that it severs the agricultural access from Manor Road. This was raised again with Network Rail at the first opportunity we had to meeting with them on 29 November 2018 and they have been able to respond quickly to addressing this.
- 5.12 With more thorough consultation at the pre-application stage, this sort of issue could have been designed away without the need for the matter to form the basis of one of O&H's formal objections to the application. This is a waste of time and resources for all concerned.

Rebuttal of Network Rail's Proofs of Evidence

Environment (NR48)

- 6.1 Table 9.3 of the above Proof suggests that O&H have accepted the location of some of the compensatory flood storage areas. This is conditional on the detailed design of the area being approved by the Forestry Commission as being suitable for wet woodland and thus being able to make a future contribution to the Forest of Marston Vale. Network Rail have not yet confirmed that this additional layer in the design process is practicable and so O&H's objection remains for the time being. This applies to plot numbers 1255 and 1300.
- 6.2 Paragraph 9.4.29 of the above proof is correct that the amended arrangement for the use of land for CFSAs is now broadly acceptable to O&H but until matters have been properly documented, their objection remains.
- 6.3 O&H welcome the confirmation that an agricultural access will be re-provided at Manor Road in Kempston Hardwick as set out in paragraph 9.4.33 of the above.

Construction (NR50)

- 6.4 O&H note the objection from Swan Hill Homes (SoC OBJ 144) to Network Rail's intention to install a temporary access track through their land to facilitate the construction of the Woodleys Crossing. O&H are sympathetic to Swan Hill Homes objection given that their land is also allocated for development as part of the South East Milton Keynes allocation. Further, it has been suggested to O&H by Network Rail that this route could also provide agricultural access to O&H's land during the construction phase. O&H wish to underline their position in Case Study B (above) that by moving the Woodleys Crossing eastwards and off line from the current track, Network Rail could maintain an agricultural access in this location whilst Woodleys Crossing is constructed.

6.5 Mr Holland is correct at paragraph 4.3.101 that Network Rail and O&H are now in discussions about the temporary use of O&H's land. These discussions are making satisfactory progress. If matters are concluded prior to the opening of the Inquiry then O&H intend to remove their objection in these matters.

Engineering (NR51)

6.6 O&H wish to clarify Mr Croft's summary at paragraph 7.14.16. There are a number of uncertainties delaying O&H's preparation of an outline application for their land at Woburn Sands. O&H are working with Milton Keynes Council and other developers on the preparation of a Comprehensive Development Framework that will guide the development of the area. They are also waiting for the Government's announcement on the route of the Oxford to Cambridge Expressway. The pertinent point being that the land is likely to remain in agricultural use for the short term until all of these matters are resolved. The confusion caused by Network Rail's proposal is one of a number of factors delaying a planning application from being prepared for this part of the estate.

6.7 At paragraph 7.14.21 of the above, Mr Croft suggests that O&H are working on an alternative location for the CFSA at Woburn Sands. O&H's agreement is to work in partnership with Network Rail's engineers to try to find a more sensitive solution. To date, the conversation has focussed on understanding Network Rail's assumptions and this matter is more fully addressed in the proof of evidence of Mrs Amy Hensler.

Ecology (NR54)

6.8 O&H are working with Network Rail to better understand their requirement for the Ecological Compensation Sites to reach an informed position as to their compatibility with planned development. The proof of evidence of Dr Jim Fairclough refers.

Summary and Conclusions

- 7.1 At the point of submission of the Transport and Works Act Order, Network Rail had met with O&H on a number of occasions but progress to resolve matters of objection was limited and piecemeal. This, despite O&H having engaged with Network Rail at every formal stage of public consultation and instigated their own informal consultation meetings. As such, O&H can currently see no basis on which the Secretary of State can conclude that the making of the Order would be a measure of last resort, as required by the CPO Guidance (February 2018).
- 7.2 It is O&H's contention that Network Rail has failed to take into account the potential impact of their proposals on O&H's land, despite having ample opportunity to negotiate outside of the Transport and Works Act. Given the very significant amount of O&H's land that Network Rail propose to acquire, it would have been reasonable and proper to assume that O&H would have been closely involved with Network Rail in working up their proposals for the rail improvement scheme and discussing the impact of the proposals on O&H's land. In reality, only limited discussions have taken place and Network Rail have failed to take any of O&H's concerns, or alternative suggestions, into account in the design of the proposed improvement works, or the extent of the land and rights included in the Draft Order.
- 7.3 The GRIP Process that Network Rail follow for the preparation of their schemes appears to be very inflexible and does not allow for comments from third parties to be taken on board through the pre-application process. This is at odds with the advice in the DfT Guide on the Transport and Works Act Process.
- 7.4 To that end, I must conclude that the Order should be refused, or the Inquiry delayed allowing further time for these matters between the parties to conclude.