Department for Transport

Natasha Kopala
Head of the Transport Infrastructure Planning Unit
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

OUR REF: TWA/23/APP/02

Tatiana Volodina
Addleshaw Goddard LLP
3 Sovereign Square
Sovereign Street
Leeds
LS1 4ER

9 January 2025

By email.

Dear Tatiana,

TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED NETWORK RAIL (OLD OAK COMMON GREAT WESTERN MAINLINE TRACK ACCESS) ORDER

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Inspector Mr Malcolm Rivett BA (Hons) MRTPI, who held an Inquiry between 14 November 2023 and 08 March 2024, into the application made by your client Network Rail ("the Applicant"), for the proposed Network Rail (Old Oak Common Great Western Mainline Track Access) Order ("the Order") under sections 1 and 5 of the Transport and Works Act 1992 ("the Act") and for a deemed planning permission, subject to conditions, under section 90(2A) of the Town and Country Planning Act 1990 ("TCPA") for the works that are the subject of the Order. Enclosed with this letter is a copy of the Inspector's Report. All "IR" references in this letter are to the specified paragraph in the Inspector's Report. References to "conditions" are to those in Appendix 1 to the draft Planning Permission as recommended and set out in the IR at pages 78 – 80.
2. Consideration has also been given to the responses to the further consultation undertaken by the Secretary of State in response to the separate letters seeking comments, clarification and information from parties, dated 12 July, 16 August and 25 September 2024. Consideration has also been given to an additional objection received in response to the consultation on the revised Order, as it was to further comments received from an existing objector.
3. This decision has been allocated to and made by the Parliamentary Under Secretary of State for Aviation, Maritime & Security, Mike Kane. While this decision has not been taken by the Secretary of State in person, by law, it must be issued in the name

of the Secretary of State. All references to the Secretary of State are therefore to the Parliamentary Under-Secretary of State acting on behalf of the Secretary of State.

4. There are two separate elements to the Order's provisions. If made, the Order would authorise the construction of a temporary road rail access point ("RRAP") and construction compound in connection with works for the new Old Oak Common station, part of the wider Great Western Main Line Systems Project and the High-Speed Rail project ("HS2"). A direction for deemed planning permission is also sought, to be able to use the land as a temporary construction compound including provision of a temporary ramp. Secondly, the Order would also allow the Applicant to compulsorily acquire permanent rights of access over land at Horn Lane in the London Borough of Ealing, in order to access a permanent RRAP on adjoining land, in connection with continual maintenance works on the Great Western Main Line. These matters are collectively referred to as "the Scheme" within this letter.

5. Due to the scale of the Scheme it is not one for which an Environmental Statement would be required (IR 1.13).

6. It is noted that the Scheme was revised during the course of the application and Inquiry proceedings, most notably to reduce the extent of the temporary possession of land required but to also slightly realign the footprint of the permanent access rights. The Secretary of State is satisfied that none of the changes, either individually or cumulatively, result in a significant change to the proposed Scheme to the degree that a new application would be required.

Summary of Inspector's Recommendations

7. The Inspector recommended that the Order should not be made, and that deemed planning permission should not be granted.

8. The Inspector however also recommended that should the Secretary of State be minded to make the Order, they should satisfy themselves on the appropriateness of the approach of 'site-sharing' of the land between the Applicant and Bellaview Properties Ltd ("BPL"). Furthermore, that if the application for deemed planning permission is to be approved, it should be subject to the suggested conditions set out in Appendix 1 of the IR (IR 4.75-5.1).

Summary of Secretary of State's views

9. For the reasons explained at paragraphs 10 to 82 of this letter, the Secretary of State considers that they are not yet in a position to decide whether to accept the Inspector's recommendation. The Secretary of State is currently minded to approve the application. However, this is on the condition that the Applicant can provide further information or evidence to demonstrate how the following issues can be satisfactorily addressed:

    - In relation to the Triangle land ("Plot 1") comprising Crown Land, the Applicant must provide further reassurances, within 6 months of the date of this letter, (no later than 9 July 2025) that the land in question is not an impediment to the making of the Order and that agreement has been or will be secured for transfer of this land to the Applicant.
    - Should the Applicant state that agreement will be secured, this must be accompanied by supporting documentation.
    - Both the Applicant and BPL are invited to provide the Secretary of State with an update on the Unilateral Undertaking.

Procedural Matters

10. The Applicant applied for a waiver direction under rule 18 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 ("the 2006 Rules") to disapply the requirements of rules 10(2) and 13(1) of the 2006 Rules, which require the Applicant to submit hard copies of each of the application documents. The Applicant requested permission to submit an electronic copy of the application documents to the then Secretary of State and serve the documents on affected local authorities electronically; undertaking to provide hard copies should this have been required or requested. On 5 December 2022, the then Secretary of State confirmed they were content that the application documents could be submitted electronically and that further hard copies be made available upon request at any time before a decision on this application is issued, for example, should a Public Inquiry be held.

11. The Secretary of State has complied with the Public Sector Equality Duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not.

Secretary of State's Consideration

12. In response to the application, a total of 8 objections were received. At the close of the Public Inquiry, 7 objections remained.

13. Careful consideration has been given to all the arguments put forward by, or on behalf of, all parties. The Secretary of State's initial consideration of these, the further clarification and comments received from all parties following the consultation requests of 12 July, 16 August and 25 September 2024, and the Inspector's report, is set out in the following paragraphs. Where not specifically stated, the Secretary of State can be taken to agree with the findings, recommendations and conclusions put forward by the Inspector.

Aims, objectives and need for the Scheme

14. The Scheme is essentially in two parts, the temporary RRAP and compound, which is expected to be required over the next six years to enable delivery of Old Oak Common Station on the HS2 line; and permanent access rights from the Horn Lane site to a permanent RRAP and compound, for ongoing maintenance of the railway line.

15. The Inspector accepted there has been no substantive evidence put forward to indicate the Scheme is not necessary and acknowledges that not granting the Order is likely to delay the delivery of Old Oak Common Station, and in turn HS2, by at least a year. The Applicant asserts that any delay would result in significant cost impacts, reduced efficiency of delivery, and reputational damage (IR 4.10-4.12).

16. It was also the Inspector's view that even if the Order was granted, delays to HS2 could be caused for a number of other reasons (IR 4.70-4.72). Therefore, any delay caused by a decision not to make the Order could be immaterial and will not prevent the wider HS2 project from being completed, albeit over a longer period. Additionally, the Inspector noted the permanent RRAP is not proposed to be operational until 2030, so is unlikely to suffer any knock-on effects from the Order not being made, even including the possibility of the RRAP needing to be relocated to an alternative site (IR

4.74). Consequently, the Inspector concluded that there is no compelling case for the Scheme as currently drafted, to justify interfering with the human rights of those with an interest in the land and conferring the Order powers on the Applicant (IR 4.75).

17. After thorough consideration, the Secretary of State is inclined to disagree with the Inspector and believes that there is, in principle, a need for the Scheme. The London Plan (Policies T1 and T3 (including Table 10.1)) aims to bring forward developments that support schemes such as HS2 and lists HS2 as one of the schemes identified in the City of London Transport Strategy evidence base, as one being able to either accommodate London's growth sustainably, achieve the wider economic, health and environmental objectives of the plan or as being required to unlock growth (IR 4.61). The Secretary of State affords this great weight.

18. The Secretary of State agrees with the Applicant that a delay to HS2 is a significant consideration (IR 3.105-3.107) and is inclined to disagree with the Inspector's suggestion that any delay caused by not making this Order is immaterial to the wider Scheme and benefits, simply because other delays could occur. There is currently no indication or evidence before the Secretary of State of any identified or known delays and the Secretary of State is not content to factor potential or hypothetical delay into considerations on this matter. What is evident is that if the Secretary of State were minded not to make this Order, it will cause a known delay of at least one year to the wider HS2 project. Whilst noting the lack of quantified evidence of either financial or reputational damage caused by delays to HS2 (IR 4.72), it is reasonable to assume damage would be caused, in part given the high-profile nature of the project.

19. When asked to provide further clarity regarding the knock-on effects of a refusal on the permanent RRAP, the evidence provided by the Applicant in their response of 26 July 2024, indicates that if the Order were not granted, their ability to construct and operate the permanent RRAP will be impossible as the Crown Land, which is proposed to be used for the proposed permanent RRAP has no access from the public highway, meaning the Crown Land would need to be accessed via the Order Land unless an alternative access can be secured. However, an alternative access is over private land currently occupied by residential and commercial properties, a number of which would need to be acquired and demolished.

20. The Secretary of State is content that a case has been put forward to justify the aims, objectives and need for the Scheme and agrees with the Inspector that there is no substantial evidence indicating the Scheme is not necessary (IR4.12). Furthermore, should the Order not be granted the Secretary of State considers it would cause delays to the HS2 scheme.

Compliance with statutory requirements

21. In making the application, the Applicant is required to comply with the publicity requirements of the 2006 Rules. This includes serving copies of the application and accompanying documents on the persons specified in the 2006 Rules and making the documents available for public inspection. As is also required by the 2006 Rules, the Applicant must display and publish notices giving information about the application and how to make representations. The Secretary of State has had sight of the Applicant's sworn affidavits in relation to the publication and service of notices.

22. However, the Inspector noted prior to the Inquiry that not all specified persons had been appropriately consulted and so this was undertaken alongside the Inquiry. The

Inspector has now satisfied himself that correct procedure has been followed by the Applicant and where key revisions to the documents have occurred, that relevant parties were notified and allowed an opportunity to comment (IR 4.7). The Secretary of State is content that the statutory requirements have been complied with.

Alternatives considered

23. The Secretary of State understands there are significant concerns as to why the current site at Horn Lane was chosen for the location of the Scheme, above other potential locations that may not have required compulsory acquisition. BPL, the current owners of large parts of the land in that location, particularly refer to the land west of the North Pole Depot site (via either what are called "Hitachi East" or "Hitachi West", named after the Agility/Hitachi Depot) which they believe is more suitable given its current operations already include a RRAP, it is closer to the new Old Oak Common Station and the land is already owned by the Secretary of State for Transport (IR 2.58). BPL assert that the Applicant has failed to sufficiently demonstrate why this is not a viable alternative and so they have failed to meet the criteria for justifying compulsory purchase powers, as set out in MHCLG's 'Guidance on compulsory purchase and the Crichel Down Rules' (IR 2.60). The Secretary of State notes that this guidance was revised and separated into two documents in October 2024 but notes that the relevant text in Guidance on the Compulsory Purchase Process 2024 is not materially different.

24. In the Statement of Aims submitted with their application, the Applicant set out their consideration of alternative sites for the temporary RRAP, also explaining that the site at Horn Lane (by way of clarification, the Statement of Aims refers to this as Jewson's Yard) was chosen because of both the operational and geographical constraints elsewhere, including at the North Pole Depot via Hitachi East or Hitachi West. Further evidence was put forward at the Inquiry confirming that access via Old Oak Common Lane was expected to be impossible for significant periods due to road lowering works and, in any event, that the complications around the access and interaction with existing compound activities would make alternative options unsuitable, identifying Horn Lane as being the optimum site (IR 3.48-3.75, with specific consideration of the North Pole Depot at IR 3.54-3.69). The Applicant also sought to rebut a number of ancillary criticisms made by BPL (IR 3.76-3.81).

25. The Inspector found that despite several alternative site options being put forward by objectors, his view was that there is only one *realistic* alternative which is the land west of the North Pole Depot, which is as good as, if not better than, Horn Lane due to the absence of residential properties nearby. The Inspector agreed with BPL and STARK Building Materials UK Ltd (lessee of the warehouse site until 1 October 2024) that the Applicant had not sufficiently demonstrated that the North Pole Depot site was not feasible (IR 4.35-4.48).

26. Although noting that the Applicant did provide evidence as to why the site at Horn Lane was the preferred option and was being pursued, the Secretary of State errs on the side of the Inspector in that there was a lack of clarity as to the deciding factors which determined the current site as the only viable option. Therefore, additional clarification was requested from the Applicant by letter of 12 July 2024. In their response the Applicant stipulates that the North Pole depot is the main depot on the Great Western Main Line route with the ability to process and service the high-speed

fleet. The Applicant argues that if this site was used for the RRAP there would be circumstances where the depot's operator, Hitachi, would not be able to fulfil their contractual obligations under the Master Availability and Reliability Agreements ("MARA") which were entered into between Agility Trains (a consortium that Hitachi is part of) and DFT and the Train Availability and Reliability Agreements ("TARA") entered into with Great Western Rail ("GWR"). MARA and TARA regulate Hitachi's obligations to GWR and DFT as a manufacturer and maintainer of the high-speed fleet. Any breach of agreements would result in a significant impact on the availability and viability of passenger services and the customer experience. Also detailed in their response, the Applicant set out the constraints and limitations of the land west of the North Pole depot including insufficient space and accessibility issues. Commenting on this response, BPL continued to refute these constraints, particularly noting that no evidence or statements have been received from Hitachi directly, to confirm how their operations would be impacted.

27. The Secretary of State also notes Mr Aston's comments on the response provided by the Applicant. His email of 16 August 2024 suggested consideration of the land east of the North Pole Depot towards Barlby Road (Hitachi East). The Secretary of State notes this area was considered by the Applicant within the application documents and was further explored during the Inquiry where, following representation from the Applicant (IR 3.42 and 3.66-3.72) it was determined by the Inspector to be inappropriate to meet the needs of the Scheme (IR 4.35). The Secretary of State therefore considers that Hitachi East has been addressed and does not require any further consideration of this option.

28. The Secretary of State is satisfied that with the supplementary information and clarifications submitted in the responses to the consultation letters, the information provided by the Applicant demonstrates adequate exploration and consideration of the alternatives to compulsory purchase.

29. BPL's specific comments regarding the former Secretary of State's involvement in the consideration and determination of the choice of site location are addressed under 'other matters' below.

Likely impacts of the Scheme on local residents

30. The Applicant asserts there are many beneficial impacts of the Scheme, most prominently the delivery of the new Old Oak Common Station and resultantly HS2. The permanent RRAP is also critical for the safety and reliability of the network in this region and will reduce the backlog of maintenance works, meaning less disruption to rail users (IR 3.105–3.107). Whilst the benefits of the Scheme appear largely undisputed, objections were received from local residents, particularly those of Acton House, about the impacts of the proposals on their amenity including access difficulties, noise, air quality and traffic (IR 2.118-2.123).

31. It is noted at paragraph 6 of this letter that revisions were made to the Scheme during the course of proceedings and the Inspector's report confirms one such revision resulted in the removal of powers from the Order that would extinguish the access rights to the rear of Acton House (IR 3.28). The Inspector is satisfied that this removal has protected the existing rights of access and parking for the residents of Acton

House (IR 4.20 and 4.68). The Secretary of State agrees that objections on this particular issue have been alleviated and the Scheme no longer poses an interference with residents' access.

32. A primary concern of objectors living at Acton House is the noise resulting from the Scheme and one objector Ms Kuszta, particularly comments that the noise from Network Rail operations is already a problem which will be exacerbated should the Scheme go ahead without any measures to mitigate this (IR 2.98-2.99).

33. The Applicant argues that the works which the temporary RRAP facilitates, take place on the railway lines rather than on the Order land itself and so would not cause any adverse noise effects to residents. Furthermore, works would continue to be carried out in this specific point of the railway line, regardless of where the RRAP is located, insofar as works to the railway are necessary, whether the Order is granted or not. As it is anticipated the use of the temporary RRAP would be very limited in extent and frequency, with no industrial or construction activities carried out at the compound, the Applicant believes this will therefore cause very limited noise with the level of activity limited through the imposition of conditions in the deemed planning permission (IR 3.98-3.99).

34. The Inspector did concur that the noise from the railway line works would be taking place a good distance from the Horn Lane site. However, it was the noise from the road-rail vehicles using the RRAP that would have the biggest impact on the residents (IR 4.21). During a site visit, the Inspector observed that the noise from the shackling and unshackling of chains on these vehicles and the noise from their reversing bleepers was clearly audible above the more general noise from trains and other construction work (IR 4.22). As this activity would be expected to occur mostly at night, he concludes that this will likely cause significant disturbance to residents, potentially made worse should other planned developments (for example associated HS2 works or works related to a residential planning permission granted to BPL) be taking place in the same period (IR 4.24 and 4.27).

35. It is the Inspector's view that the level of night-time noise, even at the 'limited' frequency proposed by the Applicant, is unacceptable and so the proposals would conflict with policy 7A (part A(a)) of the London Borough of Ealing Development Management Plan as the noise unacceptably erodes the amenity of Acton House residents (IR 4.60-4.62). Notwithstanding the proposed condition for an Environmental Management Plan ("EMP") to be submitted and approved to the local authority in order to minimise the adverse effects of the use on the living conditions of nearby residents, the Inspector noted these as insufficient and concluded that the application conflicts with the Development Management Plan as a whole (IR 4.73) and ultimately the Order and deemed planning permission should not be granted.

36. Whilst respecting the Inspector's position and expertise, the Secretary of State's own view is that the proposed conditions within the Order, particularly for an EMP to be submitted to the local authority for approval, would amount to a reasonable level of mitigation and would be subject to the controls and safeguards built into the approval mechanism. Whilst noise from the road-rail vehicles using the RRAP would undoubtedly impact Acton House residents, until the details of the EMP were submitted to the local authority, it could not be certain, or indeed probable, that measures 'would be insufficient to not unacceptably erode the amenity of Acton

House residents', as suggested by the Inspector; more so when taking into consideration that the noise assessment was based on a single site visit without any baseline or technical analysis being put before the Inspector.

37. For the avoidance of doubt the Secretary of State wrote to the Applicant on 12 July 2024 seeking, further clarification in respect of noise and in particular, the impact on residents and the proposed management of any impacts identified. As part of their response dated 26 July 2024, the Applicant provided a proposed EMP, to demonstrate that they have fully considered noise impacts and mitigations; committing to using equipment with reduced potential to create noise, where this is possible. The proposed EMP also provides escalation routes or means of redress for complaints. This sets out a range of control measures and standards to be implemented on the Order Land during the operation of the temporary RRAP, as well as how the commitments will be implemented, to discharge planning condition 5. The Secretary of State is satisfied with these proposals and has modified conditions to the deemed planning permission that, should the Order be made, will ensure the required EMP is not materially different from the version which has been submitted and seen by all interested parties.

38. The Secretary of State is sympathetic to residents' concerns about new night-time noise causing disturbance, as well as impacts from dust and lighting. However, the Secretary of State is satisfied that overall, the concerns relating to the Scheme, are appropriately addressed noting the proposed conditions for an EMP. The Secretary of State is satisfied that the proposed condition to limit activity to a maximum of 475 nights (300 when using powered road rail vehicles, and an additional 175 nights when not using such vehicles) over the 6 year period, means the temporary nature of the element causing the most noise disturbance, and having regard to the condition within BPL's planning permission for a phasing plan which could significantly reduce any 'cumulative' noise impacts/harm, is unlikely to cause any conflict with policy 7A of the London Borough of Ealing Development Management Plan or D14 of the London Development Plan.

39. The likely impacts of the Scheme on BPL and their business are dealt with separately below, under 'other matters'.

40. The Secretary of State is content with the Inspector's assessment at IR 4.31, 4.33 and 4.68 that due to the limited number of vehicles using the RRAPs and the frequency of the activity, it is reasonable to assume there would be no significant impact on either light or air quality in the area, nor any significant disturbance to the local highway network as a result of any additional traffic. The Secretary of State is satisfied these issues do not require further consideration.

Crown land

41. The site of the permanent RRAP, comprising Plot 1 is not itself the subject of this Order application, which seeks the compulsory acquisition of permanent access rights to the RRAP, across the Horn Lane site and temporary possession to operate a temporary construction compound to enable works on the railway. This is because Plot 1 is held by the Crown Estate *bona vacantia* and the Crown's interest cannot be

acquired compulsorily; it must be acquired via agreement with the appropriate Crown department. To date, this has not been agreed.

42. The Secretary of State notes the objection made by BPL in respect of the Crown Land, namely that if the land cannot be acquired, then there is an impediment to the Scheme and the granting of the Order (IR 2.64, 2.90 and 2.93 and in BPL's consultation responses dated 9 October 2024).

43. The Applicant confirms that while they have approached the Crown Estate, the Crown Estate are not willing to enter into an agreement for the transfer or sale of the land until such time as the Order is granted. The Applicant asserts there is a strong indication, with past precedent, that should the Secretary of State grant the Order, then the acquirement of the Crown Land will go ahead. As such, they do not think this can be considered an impediment to the Scheme (IR 3.134-3.136).

44. The Inspector appears to agree that this is only a potential impediment and goes on to state that this could be mitigated by including a clause within the Order that prevents the permanent access and operation rights over BPL's land from coming into effect, should the Crown Land not be acquired (IR 4.50 - 4.51 and 4.54). The Inspector had noted BPL's view that should the Crown Land not be acquired then the North Pole Depot site was another feasible option for the permanent RRAP to be located (IR 3.126) and concluded that the site immediately to the west of the North Pole Depot via Hitachi West would in some ways be superior to, and, in most other ways be as good as, the Horn Lane location which is the subject of the Order (IR 4.48).

45. The Secretary of State felt it appropriate to request clarification from the Applicant on their proposed options for the permanent RRAP location and access, should agreement from the Crown Estate not be forthcoming. In their letter of 26 July 2024, the Applicant confirmed there were no other viable sites that could accommodate the required RRAP. When invited, the Crown Estate clarified their position, and in their letter of 20 August 2024 they stated that once the outcome of this Order application was known, an opportunity would be provided to others with an interest in acquiring the land to make representations, before the Crown Estate then identified the most appropriate purchaser. PBL stated in their letter of 9 October 2024 that in March 2024 they had re-registered their interest in acquiring the Triangle Land (also known as Plot 1) and had advised Crown Estate representatives of this on a number of occasions, most recently on 27 August 2024.

46. On the evidence presented thus far, the Secretary of State is not persuaded that including a 'Grampian' style clause as suggested by the Inspector (i.e. a planning condition attached to a decision notice that prevents the start of a development until off-site works have been completed on land not controlled by the Applicant) within the Order is appropriate in this instance. While it would appear to ensure that the acquisition of BPL's land could not proceed until the outcome of the acquisition of Crown Land was known, the Secretary of State is mindful that without further stipulations or time limits being imposed, this could leave the land at risk of being unusable by either party for an unspecified period.

47. Given the Applicant's confirmation that there is no other alternative for the permanent RRAP and that the Crown Estate have not been able to provide a positive response, the Secretary of State considers this a concern to granting the Order at this time and that it could act as a potential impediment to the Scheme. BPL registering an interest in the land has also generated further uncertainty on this issue. As stated at paragraph

9, the Applicant has 6 months from the date of this letter to provide the Secretary of State with additional assurances that the Crown land does not provide an impediment to the rights being sought and the Scheme as a whole and that agreement has been, or will be, secured for transfer of this land to the Applicant.

Planning Conditions

48. As referenced at paragraph 2, there have been several revisions to the draft Order since the time of the original application. As such, it has also been necessary for the Applicant to revise the conditions which were proposed to be attached to the deemed planning permission.

49. The evolution of conditions during the course of an Order application is not unusual as parties discuss and seek ways to limit the adverse impacts of a proposed development. The Secretary of State notes and agrees with the Inspector's comments that conditions were revised during the Inquiry in this case to reflect the discussions held and to assist in determining the acceptability of subsequent details to be submitted to the local planning authority (IR 4.64).

50. BPL, when given an opportunity to comment on the proposed conditions, did have some objections. The main objection relates to the provision of the EMP, which they feel cannot provide effective control or mitigation for impacts such as noise, when the extent of the cause of noise has not yet been properly assessed and identified (IR 2.71-2.72). They state that residents deserve to know their amenity will be protected (IR 2.73). BPL suggested a number of changes to the proposed conditions (Inq-29) but the Inspector was not persuaded that they were necessary (IR 4.65).

51. The Inspector listed suggested conditions which would need to be imposed to minimise the adverse effects on nearby residents, should the Secretary of State be minded to make the Order and grant deemed planning permission (IR 4.64, 4.76 and Appendix 1). However, overall, as set out above, he found the impact and harm of the development on residents to be unacceptable and in conflict with the Ealing Development Management Plan (IR 4.66, 4.73). This contributed to his recommendation not to grant the Order or deemed planning permission (IR 4.69, 4.75, 5.1).

52. As outlined at paragraphs 30 to 40, the Secretary of State is satisfied that the EMP, alongside other conditions, will provide sufficient mitigation for noise impacts on residents especially having now had sight of the proposed EMP from the Applicant. As such, the Secretary of State is satisfied with the planning conditions in this respect.

Use of compulsory purchase powers

53. The Applicant is seeking powers to compulsorily acquire and use the land at Horn Lane for the purposes set out in the Order and it is incumbent on the Secretary of State to carefully consider the granting of any compulsory purchase powers. BPL stated in their closing statement that it is a matter of 'principle' that the Applicant should show whether the Scheme can be achieved by means other than compulsory acquisition. This is a matter supported by case law. R (Hall) v First Secretary of State [2007] EWCA Civ. 612, among others, confirms that to assess the necessity of compulsory purchase, adequate consideration should be given to obvious alternatives. The Secretary of State's deliberations have taken account of this, and all relevant compulsory purchase legislation and guidance.

54. The Secretary of State is satisfied that the Applicant did undertake sufficient exploration of alternatives to compulsory purchase as outlined at paragraphs 23 to 29. The Secretary of State is satisfied that the land west of the North Pole Depot site was not a suitable alternative and the Horn Lane site owned by BPL, is the only viable option. The Secretary of State is also satisfied that any Order made would be made within the scope of the enabling powers of the Act.

55. Following a request for further clarification, both the Applicant and BPL provided a timeline of engagement regarding attempted agreement for the Horn Lane site, dating back to 2021. The Secretary of State notes the information provided and although there were periods where either party were not proactive, on the whole, the Secretary of State considers that meaningful attempts were made by the Applicant to acquire the land by voluntary agreement prior to their application. This is consistent with the expectations of the 'Guidance on the Compulsory Purchase Process'.

56. After careful review, the Inspector was not persuaded by the Applicant's submissions summarised at IR 3.108-3.110 and came to the conclusion that the extent of the land being sought for the temporary RRAP and compound was not entirely necessary for the Scheme. He noted this was evidenced by the Applicant suggesting a Unilateral Undertaking, where they would commit to sharing the land temporarily in their possession with BPL, at times when it was not required, since the majority of works would be taking place at night (IR 4.55 - 4.59).

57. The Secretary of State agrees with the conclusion that not all of the original land proposed was necessary but notes that revisions to the draft Order were made. The Secretary of State further notes that revisions to the extent of land within an Order is not uncommon during the course of proceedings of this nature, particularly where negotiations are on-going. The Secretary of State notes the Inspector's conclusions at IR 4.55 to 4.59 but does not agree that the Unilateral Undertaking suggested by the Applicant demonstrates that the extent of the land being sought for the temporary RRAP and compound exceeds what is necessary. The Secretary of State agrees with the Applicant that it needs to be able to assert rights of exclusive possession so as to exclude all others from parts of the compound at particular times and that no powers less than the powers of temporary possession will guarantee that outcome and avoid undue risk posed by parties having an unrestricted right over the site (IR 3.108-3.111). Rather than demonstrating that the extent of the land being sought for the temporary RRAP and compound exceeds what is necessary, the Unilateral Undertaking demonstrates the Applicant taking steps to put arrangements in place to provide some certainty and mitigate the effects of the Scheme. The Secretary of State is content that the revised draft Order, contains only that land necessary to implement the Scheme and that the Applicant has presented a clear case for how the land will be used.

58. The Secretary of State is satisfied that there are no financial resource impediments to the Scheme, which it is clear will be funded by HS2 (IR 4.52). However, as discussed above at paragraphs 41 - 47, there is a potential non-financial impediment to the Scheme due to the need to reach agreement in respect of Plot 1, which is currently held by the Crown Estate *bona vacantia* (IR 2.64).

59. Given the uncertainty relating to Plot 1, the Secretary of State is not yet in a position to decide whether to approve the application from the Applicant, until they can provide further information or evidence to demonstrate there is a reasonable prospect of the

Scheme being implemented. Without this information it is not possible to determine whether there are likely to be any impediments to the Applicant exercising such powers, whether there is compelling case in the public interest to justify conferring on Network Rail powers to compulsorily acquire and use land for the purposes set out in the Order, or whether the purposes for which the powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected.

60. The specific issue of site-sharing with BPL is dealt with separately below, under 'other matters'.

Other matters

Secretary of State for Transport as decision-maker

61. BPL expressed concern about the former Secretary of State's potential involvement in this case, set out at IR 2.6 – 2.22. They submit that the Secretary of State was engaging with Network Rail prior to their application submission and that it appears the Secretary of State (or officials at DfT acting on their behalf) sought to influence the choice of site for the Scheme and potentially directed the Applicant away from the North Pole Depot site and towards BPL's land at Horn Lane. As this is a central part of BPL's objection, they believe the Secretary of State for Transport cannot fairly determine this Order application (IR 2.21), more so when considering the DfT is the sponsoring department for HS2 with an interest in its outcome (IR 2.12).

62. The Applicant maintains that any discussions with the former Secretary of State or officials were not unusual or improper given their ownership of the North Pole Depot and any view expressed as to the suitability of this site was not a predetermination as to the decision on whether or not to make an Order (IR 3.7 – 3.11). Any written evidence on this issue is limited. The Inspector notes that while an email trail of January 2021 suggests the Applicant was in discussion with the DfT about the use of the land west of the North Pole Depot, DfT confirms in that email trail that no consent can be given for use of the land without liaising with the lessee, Agility Trains (IR 4.4). As there is no evidence of how and when the final choice of site was made, whether this was influenced in any way by the Secretary of State or officials and whether an indication of any Transport and Works Act approval being granted hinged on the site choice, the Inspector could not draw any conclusions and suggested the Secretary of State satisfy themselves as to whether it was appropriate for them to determine the application (IR 4.5 – 4.6).

63. It may be helpful to explain that decisions on all transport planning applications are quasi-judicial in nature and can be challenged in the courts. The roles and responsibilities of all parties is set out in the Planning Propriety Guidance (Guidance on planning propriety: planning casework decisions - GOV.UK). As such, the decision-making process must be seen to be fair, open and impartial, with no appearance of bias. To support this, there is a separation of duties at official level within DfT, between planning and other areas, such as policy or sponsorship. This is also the case at Ministerial level. This means the Inspector's report and recommendation on planning applications are only shared/discussed within the planning team and with the Minister making the planning decision, in this case the Minister for Aviation, Maritime & Security. Any recommendation or advice from the planning team to the Minister is not informed or influenced by any other team or policy Minister. This ensures the

decision is made on its planning merits only, based on evidence presented during a publicly scrutinised process.

64. Nonetheless, conversations with DfT regarding the viability of the North Pole Depot site would not be unusual or unreasonable given its ownership (IR 3.8-3.9).

65. Also noting the particular points of:

- the change in government since the discussions with the Applicant in 2021;
- the structured separation of duties within DfT at both policy and ministerial level

the Secretary of State is satisfied that propriety has been maintained and that the decision on this application has been approached with an independent and open mind.

Specific impacts on BPL, including site sharing

66. As already established earlier in this letter, BPL own the land which is the subject of the Order application and so are most impacted by the proposals. At the time of the Inquiry this land was leased and operated by Stark/Jewson as a builder's merchant who would lose part of the car parking area, and outdoor sales and storage area should the Order be granted (IR 2.23 and 4.13). Although Stark objected to the proposals in their own right, the Inspector identified that they were unlikely to be significantly affected given their lease of the land was surrendered on 1 October 2024, after which BPL had other intentions for the site (IR 4.13-4.14). The Secretary of State agrees that Stark's objection can only be given minimal consideration in the planning balance when the granting of any Order would not come into effect before October 2024 and noting that this date has passed.

67. BPL have options for the site post the Stark/Jewson lease ending. As they are also an operator of a builder's merchants, they indicated that they initially intend to operate from the site as a logistics and delivery hub (IR 2.23). However, they have concerns that business operations would be severely reduced as a result of the Order because of the lack of external display and storage areas and lack of customer parking, which would have a significant impact on trade. In addition, only being able to operate at certain hours and the need to obtain consent to open the gate outside operational and delivery hours, could impact flexibility and operation (IR 2.26 – 2.28).

68. Should BPL wish to pursue their planning permission for a mixed development of a new builders' depot and residential homes, they are concerned that the constraints placed on the site by the Applicant would effectively make the development more costly and more time consuming, as well as the proximity to the RRAP and compound being a deterrent for new homeowners. Ultimately, these may affect whether the development, including 35% affordable residential housing, is actually built. They are also concerned that arrangements in respect of Plot 3 risk discriminating against blue badge holders with parking spaces accessed via it (IR 2.29–2.30 and 2.80).

69. As referenced above at paragraph 56, the Inspector found the extent of land applied for was not entirely necessary and believed this was further evidenced by the Applicant suggesting a Unilateral Undertaking, with the intent of sharing the use of the site with BPL and allowing both developments to proceed. BPL maintain their concerns are not addressed by the Unilateral Undertaking and, in any event, consider

it neither necessary nor appropriate for site-sharing to be provided in a Unilateral Undertaking, rather than in the Order itself (IR 2.76).

70. The Inspector considered the proposed site sharing arrangements and Unilateral Undertaking against BPL's concerns. With regard to the operation of their logistics and delivery hub, he found that although BPL could still operate in theory, there would be severe restrictions on floorspace available and on operating hours (IR 4.15).

71. With regard to the mixed-use development, the constraints of the land being in the Applicant's possession and subject to their permissions, led the Inspector to share BPL's view that the development was likely to take longer and cost more. Regardless of the proposed Unilateral Undertaking, the Inspector believes there is a realistic potential that the development would not be constructed in the foreseeable future (IR 4.16 – 4.19; 4.34 and 4.69).

72. It was also the Inspector's views that the Unilateral Undertaking was not the best approach and that it would be more appropriate for site sharing arrangements to be incorporated into the material clauses of the Order instead, with the Unilateral Undertaking simply providing supporting detail. The Unilateral Undertaking may then support the Order's powers rather than act as a separate entity, which may even curtail powers (IR 4.55 – 4.59).

73. The Secretary of State acknowledges and commends the efforts of the Applicant and BPL to seek co-existence through attempts to agree terms for the Unilateral Undertaking. It is particularly noted that BPL engaged in this despite their own concerns about the Unilateral Undertaking and the reliance on it to enforce their rights, which could only be done through private law (IR 2.76).

74. The Secretary of State agrees with the Inspector that this issue would be better addressed by an agreement and appropriate drafting in the Order, and this is preferable to relying solely on a Unilateral Undertaking. Although the Secretary of State notes the Applicant's concerns that this would set a precedent for future Orders which include compulsory acquisition, as well as resulting in the Order document being far outside of the TWA model clauses (IR 3.114 – 3.115), the Secretary of State sees no substantive reason why such an agreement could not be included in an Order with provision that it could be varied by agreement between the parties concerned, and would consider it acceptable in such unusual circumstances. As such, the Secretary of State sought to build on the efforts already made by the parties and both the Applicant and BPL were asked by letter of 16 August 2024 to suggest proposed agreed wording to incorporate in the Order, should it be granted.

75. It is noted that both parties have been unable to reach agreement. The Applicant particularly asserts that they are unable to accommodate BPL's wishes any more than they have done so already. They state the site-sharing was proposed to enable BPL to start implementing their planning permission so that the 5-year time limit would not expire. It is noted that the Applicant asserts this would have only involved minimal work by BPL which could then be continued at a later date and that BPL have subsequently altered their position to be able to complete the development and asked that the site sharing arrangements are extended to also allow occupiers of the residential development to be allowed passage through part of the Order Land on which it is proposed the operational compound be temporarily located. The Applicant was unable to agree this for safety reasons. Furthermore, BPL assert that the Applicant has failed to properly engage or negotiate with them for some time, choosing

to maintain their position that no further changes can be made. The Secretary of State notes this has essentially led to a stalemate which, at this point, has precluded the possibility of including an agreement as part of the Order.

76. The Secretary of State has considered the severity of the impacts on BPL and is of the view that the Applicant has tried to limit these, both by reducing the temporary land take and proposing a site sharing agreement that both parties initially considered viable, even if not the ideal outcome for either party. What is also clear is that in granting BPL's planning permission for the mixed-use development, the planning officer had considered the Applicant's TWA application and had imposed conditions allowing a longer (non-standard) time limit for BPL to implement the permission and a condition for a phasing plan to be submitted to minimise any conflict of works. This indicates they did not foresee any obvious issues with the co-existence of the developments.

77. After careful consideration, the Secretary of State agrees with the Inspector that the reality of the impacts on BPL will still be substantial, both for their operation as a business and as a developer. The Secretary of State has also had regard to the financial viability assessment provided by BPL by letter of 9 August 2024, which concluded that should the Order be granted, their development would not proceed as it would not be profitable and would result in an overall financial loss. The Secretary of State notes this would result in affordable homes not being brought forward and considers this to carry significant weight.

78. However, this has been considered and weighed against the backdrop of delivering a scheme of significant national interest and public benefit (HS2), which would suffer critically, should the Old Oak Common station not be delivered. The Applicant confirmed that HS2 services cannot run until the Old Oak Common station is completed as services would terminate at a location that offers no (or alternatively inadequate) options for onward travel (IR 3.17).The Secretary of State recognises that, should it be demonstrated that agreement has been or will be secured for transfer of the Plot 1 land to the Applicant, there is a compelling case in the public interest to support the Scheme and the wide range of benefits it will bring to a wide range of people.

79. In addition, the Secretary of State continues to encourage both the Applicant and BPL to reach agreement on the matters currently contained within the Unilateral Undertaking.

Secretary of State's overall views on the Inspector's conclusion

80. For the reasons given in this letter, the Secretary of State is minded to make the Order and grant deemed planning permission, subject to the issue of Crown Land being resolved, recognising the public benefits to be delivered.

81. The Secretary of State has concluded that the proposals are necessary and can be delivered via the Order. Where the Inspector has recommended the Secretary of State is satisfied that they are the appropriate person to make the decision on this application, for the reasons set out above, including the fact that the decision is being made by the Minister for Aviation, Maritime & Security (who had no prior role in this Scheme), the Secretary of State is content that propriety has been maintained and the decision has been made based on the planning issues only.

82. The Secretary of State notes and agrees with the Inspector's proposed Conditions to be attached to any deemed planning permission and is satisfied that they meet the tests set out in paragraph 57 of the NPPF and would be necessary, relevant, precise,

enforceable and reasonable. Overall, the Secretary of State agrees with the conditions proposed by the Inspector and included at Appendix 1 of the Report (IR 4.76), but proposes modifying condition 5 (environmental management plan) to clarify that no development may commence until the plan has been approved and that it would be required that the final version of the plan is not materially different to the version submitted to the Secretary of State on 26 July 2024. The Secretary of State also proposes requiring the production of a disability parking plan and the provision to nearby residents and businesses of information on escalation routes and means of redress available. The conditions which the Secretary of State is minded to attach to any future Deemed Planning Direction are set out in the Annex to this letter.

Proposed modifications to the Order

83. The Secretary of State is proposing to make a number of minor textual amendments to the Order in the interests of clarity, consistency and precision should the Order be made.

84. Further to the textual amendments the Secretary of State also makes the following modifications, which it is considered do not materially alter the effect of the Order to the point where a new application would be required.

- In the Preamble, the paragraphs of Schedule 1 to the TWA 1992 cited have been modified to address the full scope of the Order.
- In article 2(1) (interpretation), the definition of "the associated development" has been modified, noting the Inspector's comments at IR 2.77 about some also being located outside of the Order limits.
- Article 6(2) (power to acquire a new right) has been omitted given the Secretary of State's comments above in respect of a "Grampian" style condition.
- Article 7(1)(c) (temporary use of land in connection with the development) has been omitted, noting BPL's comments and the Applicant's clarification outlined at IR 2.79.

Next Steps

85. The Applicant is invited to respond within 6 months of the date of this letter (by 9 July 2025) to transportinfrastructure@dft.gov.uk to address the matters in paragraph 9 above. If it is not possible for the Applicant to address the issue within that time, the Applicant should explain their reasons for this.

86. The Applicant's response will not be published but will be shared with interested parties and comments invited on the issue of Crown Land only. The Secretary of State will consider the Applicant's response and any related comments in reaching a final decision.

87. Both the Applicant and BPL are invited to provide the Secretary of State with an update on the Unilateral Undertaking.

Distribution

88. Copies of this letter are being sent to those who appeared at the Inquiry and to all statutory objectors whose objections were referred to the Inquiry under section 11(3) of the TWA 1992 but who did not appear.

Yours sincerely,

Natasha Kopala

ANNEX
Schedule of Suggested Conditions

1. The use hereby permitted shall commence within one year of the date the Network Rail (Old Oak Common Great Western Mainline Track Access) Order comes into force.

   Reason: to comply with the requirements of the Town and Country Planning Act 1990 and to enable the Great Western Main Line Rail Systems Project railways works related to the use to be completed by 2029.

2. The use hereby permitted shall be carried out in accordance with DRW No. 0388965 Version 1.0 (Date 18/12/2023).

   Reason: for the avoidance of doubt.

3. The ramp hereby permitted, the siting of which shall accord with that shown on DRW No. 0388965 Version 1.0 (Date 18/12/2023), shall accord with construction methodology details which shall have been previously submitted to, and approved in writing by, the Local Planning Authority.

   Reason: to ensure the safety of the site.

4. No external lighting, cabin, hoarding, fencing or gate shall be erected or operated in connection with the use hereby permitted unless it accords with details of its siting and design which shall have been previously submitted to, and approved in writing by, the Local Planning Authority.

   Reason: to minimise the adverse effects of the use on the living conditions of nearby residents and on the appearance of the area.

5. No development may commence until an Environmental Management Plan which is not materially different to the version submitted to the Secretary of State (and seen by all interested parties) on 26 July 2024 and has been to submitted to, and approved in writing by, the Local Planning Authority. The development and its use shall be carried out in accordance with the approved Environmental Management Plan. The Environmental Management Plan shall include:

   - measures to control noise and vibration (having regard to BS 5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites. Noise)
   - measures to control dust (having regard to The Control of Dust and Emissions During Construction and Demolition Supplementary Planning Guidance (2014) GLA)
   - measures to control external lighting (having regard to Guidance Note 01/21 for the reduction of obtrusive light (Institution of Lighting Professionals)
   - arrangements for the public display of contact details (including telephone number) for the site supervisor(s)

- arrangements for engagement about the use with nearby residents and businesses
- a disability parking plan outlining arrangements for ensuring that adequate parking facilities, and access to them, are maintained for people with disabilities throughout the development
- provision of information on escalation routes and means of redress available to nearby residents and businesses.

Reason: to minimise the adverse effects of the use on the living conditions of nearby residents.

6. No development may commence until a Traffic Management Plan has been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved Traffic Management Plan. The Traffic Management Plan shall have regard to Construction Logistics Planning Guidance V1.2 (April 2021) by Transport for London and shall include details of:
    - the routing of heavy goods vehicles used in connection with the use hereby permitted from/to the strategic road network and the management of their movement into and out of the site by a qualified and certified banksman
    - arrangements for workers in connection with the use hereby permitted to access the site.

    Reason: to minimise the adverse effects of the use on the operation and safety of the highway network and on the living conditions of residents in the area.

7. The movement on the site between the hours of 20:00 and 08:00 of people, materials, machinery or vehicles in connection with the use hereby permitted shall not take place on more than 300 nights when using powered road rail vehicles, and an additional 175 nights when not using powered road rail vehicles. For the avoidance of doubt such movement on the site between 01:00 and 23:00 the same day would constitute two nights of movement, whilst such movement between 23:00 and 05:00 (the following day) would constitute one night of movement.

    Movement on the site between the hours of 20:00 and 08:00 of people, materials, machinery or vehicles shall not take place until an outline schedule of the dates on which such movement is anticipated to take place has been issued to the occupants of nearby properties, the list of such occupants which shall have been previously submitted to, and approved in writing by, the Local Planning Authority. Thereafter an updated schedule of dates on which such movement is anticipated to take place shall be issued to the same occupants at least every 6 months.

    A register shall be kept of each night on which such movement has taken place which shall identify whether or not the movement involved the use of powered road rail vehicles. The register shall be made available to the Local Planning Authority at its request.

Reason: to minimise the adverse effect of the use on the living conditions of nearby residents.

8. The use hereby permitted shall have ceased no later than 31 December 2029.

   Reason: the use is only justified on a temporary basis whilst the related Great Western Main Line Rail Systems Project railway works are being carried out.