Bond Dickinson

www.bonddickinson.com

5 June 2015

Bond Dickinson LLP

One Trinity
Broad Chare
Newcastle upon Tyne
NE1 2HF
Tel: 0191 279 9000
Fax: 0191 230 8501
DX 727902 Newcastle upon Tyne 28

stephen.dagg@bonddickinson.com
Direct: 0191 230 8977

Our Ref:
SMD4/300932/5126
Your Ref:
TR010008

The Planning Inspectorate
3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

By post & email

Dear Sirs

Proposed A14 (Cambridge to Huntingdon Improvement) Development Consent Order ("the Application")
Planning Act 2008
Infrastructure Planning (Examination Procedure) Rules 2010
Network Rail Infrastructure Limited ("Network Rail")
Unique Reference Number: 10031042

We are instructed by Network Rail Infrastructure Limited ("Network Rail") and enclose herewith the following:

1. Network Rai's Written Representation; and
2. Network Rail's Summary Representation

Network Rail's interests are affected by the Application both as statutory undertaker and as an affected landowner.

We are also writing pursuant to the Examining Authority's letter of 21 May 2015 to notify you of our intention to make oral submissions at the specific issue hearing in relation to the DCO.

Yours faithfully

Bond Dickinson LLP

Bond Dickinson LLP

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

APPLICATION FOR THE A14 (CAMBRIDGE TO HUNTINGDON IMPROVEMENT) DEVELOPMENT CONSENT ORDER (Reference TR10008)

WRITTEN REPRESENTATION OF NETWORK RAIL INFRASTRUCTURE LIMITED (Unique Reference Number 10031042)

---

1. **DEFINITIONS**

In this written representation the words and phrases in column (1) below are given the meaning contained in column (2) below.

(1) Words and Phrases	**(2) Meaning**
1846 Act	The Great Northern Railway Act 1846
Conveyances	The following: 1. In relation to the New Bridge Land a conveyance dated 13 November 1847 between George Deane Sismey and the Company; 2. In relation to Huntingdon Station: a. A conveyance dated 21 July 1851 between The Mayor &c of Huntingdon and the Company; b. A conveyance dated 27 August 1847 between Dame Emma Hussey and the Company; and c. A conveyance dated 18 July 1856 between the Earl of Sandwich & Others and the Company; and 3. In relation to the Corpus Christi Bridge details of a conveyance to be supplied, all made pursuant to the 1846 Act
1990 Act	Town and Country Planning Act 1990
2008 Act	Planning Act 2008
Acquisition Land	Plots 34/30, 34/31a, 34/32a 34/32d, 34/35b and 34/36 in the Book of Reference

Application	The application for the DCO dated 31 December 2014
Authorised Development	The “authorised development” as defined in the Draft DCO
Book of Reference	The Book of Reference submitted with the Application
Brampton Road Bridge	The existing bridge carrying Brampton Road over the East Coast Main Line known to Network Rail as ECM1/148
Company	The Great Northern Railway Company
Corpus Christi Bridge	The existing bridge over the East Coast Main Line on the Corpus Christi Bridge Land known to Network Rail as ECM1/139
Corpus Christi Bridge Land	Plots 9/7, 9/8 and 9/9 in the Book of Reference as shown on Sheet 9 of the Land Plans
DCO	The proposed A14 (Cambridge to Huntingdon) Development Consent Order 201[ ] which is the subject of the Application
DCLG Guidance	DCLG Guidance “Planning Act 2008: Guidance related to the procedures for compulsory acquisition” (September 2013)
Draft DCO	The draft DCO submitted with the Application
EHCR	The European Convention of Human Rights
Existing Access	The existing access road into Huntingdon Station from Brampton Road
Land Plans	The land plans submitted with the Application
Network Rail	Network Rail Infrastructure Limited
Network Rail Land	Plots 9/7, 9/8, 9/9, 9/16b, 34/30, 34/31a, 34/32a, 34/32b, 34/32d, 34/35a, 34/35b and 34/36 in the Book of Reference
Network Rail Rights Land	Plots 34/25b, 34/25d, 34/25e, in the Book of Reference
New Bridge	The proposed new bridge over the East Coast Main Line on the New Bridge Land being Work 5(jj) in the Draft DCO
New Bridge Land	Plot 9/16b in the Book of Reference as shown on Sheet 9 of the Land Plans
New Northern Access	The proposed new access to Huntingdon Station to the east of the East Coast Main Line being Work 36(b) in the Draft DCO shown as New Private Means of Access Number 5 on Sheet 28 of the Rights of Way and Access Plans
New Southern Access	The proposed new access to Huntingdon Station to the east of the East Coast Main Line being Work 36(c) in the Draft DCO shown as New Private Means of Access Number 6 on Sheet 28 of the Rights of Way and Access Plans
New Southern	Plot 34/35b and 34/36 in the Book of Reference as shown on Sheet 34

Access Land	of the Land Plans
North East Car Park	The car park situated to the east of the Existing Access adjacent to Brampton Road
Northern Car Parks	The two northernmost car parks at Huntingdon Station situated to the east of the East Coast Main Line.
North West Car Park	The car park situated to the east of the Existing Access adjacent to Brampton Road
OLE	Overhead Line Equipment (ie the overhead electric line used by electric locomotives)
Promoter	The promoter of the Application
Railway	The railway constructed pursuant to the 1846 Act
Rights of Way and Access Plans	The rights of way and access plans submitted with the Application
Southern Car Park	The southernmost car park situated to the east of the East Coast Main Line.
Statement of Reasons	The Statement of Reasons submitted with the Application
Temporary Possession and Rights Land	Plots 9/7, 9/8, 9/9, 9/16b and 34/35a, in the Book of Reference
Temporary Possession Land	Plot 34/32b in the Book of Reference
Undertaker	The Undertaker as described in the DCO
Water Tank and Outfall	The proposed mew attenuation/treatment tank proposed to be constructed on the Water Tank Land being Work 36(c) in the Draft DCO
Water Tank Land	Plot 34/35a in the Book of Reference as shown on Sheet 34 of the Land Plans

2. **SUMMARY**

2.1 Subject to the proper protection of Network Rail's statutory undertaking, Network Rail does not object in principle to the making of the DCO. However at the time of submission of this document Network Rail's interests are not adequately protected and its objection is therefore sustained. Network Rail's objection is limited to those parts of the proposed DCO affecting its operational land and described in this representation.

2.2 Specifically, Network Rail objects to the following:

2.2.1 The granting of powers of compulsory acquisition over the Network Rail Land. These would cause serious detriment to the carrying on of Network Rail's railway undertaking contrary to Section 127 of the 2008 Act and it would not be in the public interest to grant such powers under Section 122 of the 2008 Act.

2.2.2 The current wording of the Draft DCO and the Application, including:

(a) The absence of adequate protective provisions, in the standard form, in favour of Network Rail.

(b) The transfer of the benefit of the DCO pursuant to Article 9 of the Draft DCO.

(c) The lack of an appropriate mechanism in the Draft DCO for ensuring that the Undertaker is responsible for the maintenance of the New Bridge.

(d) The lack of a vehicle/weight restriction in respect of the Corpus Christi Bridge.

(e) The lack of suitable assurances regarding the maintenance of access to Huntingdon Railway Station during the carrying out of the Authorised Development and after the Authorised Development has been completed.

(f) The lack of suitable assurances regarding the provision of suitable and adequate car parking and replacement car parking at Huntingdon Railway Station during the carrying out of the Authorised Development and after the Authorised Development has been completed.

(g) The installation of the Water Tank and Outfall in the Southern Car Park.

(h) The extent and duration of the permanent and temporary land-take of the Draft DCO in respect of the Railway Land.

2.2.3 Network Rail not being shown in the Book of Reference as the owner of Plots 34/31a 34/35a and 34/35b.

2.2.4 Work to install bridge would interfere with the OLE. Adequate provision not made for the carrying out of these works and the safety of the railway.

2.2.5 Until the above issues are resolved to Network Rail's satisfaction the making of the DCO.

3. POWERS OF COMPULSORY ACQUISITION

3.1 Summary

3.1.1 The Draft DCO contains powers which affect the Network Rail Land which is owned by Network Rail, and the Network Rail Rights Land in which Network Rail has rights. In particular:

(a) The Draft DCO authorises the compulsory acquisition of the Acquisition Land;

(b) The Draft DCO authorises the taking of temporary possession of and rights in the Temporary Possession;

(c) The Draft DCO authorises the taking of temporary possession of the Temporary Possession Land;

(d) The Draft DCO authorises interference with Network Rail's rights in the Network Rail Rights Land.

3.1.2 When considering whether or not to make a development consent order conferring powers of compulsory acquisition in respect of land which is owned by statutory

undertakers or in which statutory undertakers have rights the key tests are set out in Sections 122, 127 and 138 of the 2008 Act. These tests have not been met and accordingly the powers should not be granted.

3.2 **Section 122 of the 2008 Act**

3.2.1 Section 122 of the 2008 Act sets out the principal test for the Secretary of State in determining whether or not to include powers of compulsory acquisition in a development consent order.

3.2.2 Section 122 states as follows:

> ***122 Purpose for which compulsory acquisition may be authorised***
> *(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.*
> *(2) The condition is that the land—*
> *(a) is required for the development to which the development consent relates,*
> *(b) is required to facilitate or is incidental to that development, or*
> *(c)…*
> *(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.*

3.2.3 The first part of this test is that the land is "required" for the development. This word is not defined in the 2008 Act, however Paragraph 11 of the DGLG Guidance states in relation to Section 122(2)(a):

> *"…the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development."*

Paragraph 11 continues in relation to Section 122(2)(b):

> *"An example might be the acquisition of land for the purposes of landscaping the project. In such a case the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that purpose, and that is proportionate."*

3.2.4 The word "required" in Section 122 of the 2008 Act also mirrors the wording of Section 226(1)(a) of the 1990 Act (as that Section was originally enacted). The meaning of that word was considered by the Court of Appeal in *Sharkey v Secretary of State for the Environment* (1992) 63 P. & C.R. 332 where McGowan LJ stated:

> *"…the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word 'desirable' satisfactory, because it could be mistaken for 'convenient' , which clearly, in my judgment, is not sufficient. I believe the word 'required' here means 'necessary in the circumstances of the case'."*

Although *Sharkey* related to a different piece of legislation, in light of the DCLG Guidance set out above it would seem reasonable to conclude that the word "required" in Section 122(1)(a) and (b) should be interpreted in the same manner.

3.2.5 The Secretary of State must also be satisfied that there is a "compelling case in the public interest" for the land to be acquired compulsorily. Paragraph 13 of the DCLG Guidance states:

> *"For this condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss."*

3.2.6 Paragraphs 14 to 16 of the DCLG Guidance continue by explaining that "…the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition." When addressing the question of whether to grant powers of compulsory acquisition the decision maker is also bound to have regard to Article 1 of the First Protocol of EHCR (protection of property).

3.2.7 As land belonging to a statutory undertaker for the purposes of their undertaking, the Network Rail Land is land belonging to a statutory undertaker and is a special species of land. This is recognised by the special protection applied to such land by virtue of Section 127 of the 2008 Act (see section 3.3 below). These protections are necessary because such undertakings provide a public service. The public interest test in Section 122(3) of the 2008 Act therefore falls to be determined not just by weighing the public benefits of the scheme against the private loss of Network Rail, but also against the public dis-benefits caused by the disruption of Network Rail's undertaking, which are inseparable from Network Rail's private interest. The potential detriment to Network Rail's undertaking (and by extension to the public interest) is examined in more detail in Section 3.4 below.

3.2.8 The Draft DCO contains powers which could have the effect of closing the Railway for a period of several years. For example Article 30(1)(a)(ii) of the Draft DCO would allow the Promoter to take temporary possession of Plot 9/16b and to remain in possession for a period of up to six years. This would severely disrupt the East Coast Main Line which is one of the nation's principal rail arteries, and this would have severe adverse consequences for the wider economy.

3.2.9 The consequences of granting the powers of compulsory acquisition set out in the Draft DCO would potentially be very severe both in terms of public and private loss. It follows that the test set out in Section 122 has not been satisfied in respect of the Network Rail Land and the Network Rail Rights Land and that the powers of compulsory acquisition which the Promoter is seeking in relation to this land should not be granted.

3.3 **Section 127 of the 2008 Act**

3.3.1 Compulsory Acquisition of Statutory Undertakers' Land

(a) Section 127 contains provisions conveying special protection for statutory undertakers' land by introducing a special test which must be applied by the Secretary of State before powers of compulsory acquisition are granted. Under Section 127(1):

(1) This section applies in relation to land ("statutory undertakers' land") if—

(a) the land has been acquired by statutory undertakers for the purposes of their undertaking,

(b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and

(c) as a result of the representation the Secretary of State is satisfied that—

(i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or

(ii) an interest in the land is held for those purposes.

(b) It is clear that Section 127 of the 2008 is engaged:

(i) Statutory undertaker is defined in Section 127(8) of the 2008 Act by reference to Section 8 of the Acquisition of Land Act 1981. Section 8(1)(a) of the 1981 Act includes: "any person authorised by any enactment to construct, work or carry on… any railway… undertaking". Network Rail, as successor to the Company, is authorised to carry on the railway undertaking.

(ii) Network Rail has made a representation in respect of the Application.

(iii) The Company acquired the Network Rail Land pursuant to the Conveyances which were made under the 1846 Act which was the enabling act allowing the construction and operation of this part of the East Coast Main Line.

(iv) Network Rail is the successor in title to both the Network Rail Land and to the rights set out in the Network Rail Rights Land and is also the successor to the Company's railway undertaking. The Railway continues to be used for rail traffic. It follows that Network Rail is also a statutory undertaker within the meaning of Section 127(8) of the 2008 Act.

(c) Under Sections 127(2) and (3) a development consent order "may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied" that one of the following is satisfied:

(3) …the nature and situation of the land are such that—

(a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or

(b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

(d) Sections 127(2) and (3) apply to:

(i) The power in Articles 20 of the Proposed DCO to compulsorily acquire the Acquisition Land; and

(ii) The power in Articles 30 and 31 of the Proposed DCO to take temporary possession of the Temporary Possession Land and the Temporary Possession and .

(e) The New Bridge Land forms part of the Network Rail's operational Railway and facilitates the movement of railway traffic. The temporary possession of the New Bridge Land pursuant to the DCO would interrupt this service. The construction of the New Bridge will also necessitate the alteration of the OLE which is fundamental to the operation of the railway and the Draft DCO does not provide adequate safeguards to minimise disruption to services. The granting of powers of compulsory acquisition in relation to the New Bridge Land would therefore cause serious detriment to the carrying on of Network Rail's undertaking (see paragraph 3.2.8 above). The established system of railway possessions under the Network Code provides a far more suitable and balanced mechanism under which these works may be carried out. It is essential that the any closure of the Railway necessitated by the Authorised Development is of a very limited duration (ie limited to a matter of days and not years). As a general principle, the taking of the Network Rail Land may only be with Network Rail's permission, under their supervision and for such period of time as Network Rail stipulates. Network Rail is very concerned that at the time of submission of this document the Promoter has not yet applied for technical clearance for these works.

(f) The Corpus Christi Bridge crosses the East Coast Main Line and was provided as a private accommodation bridge for the adjacent farm. As such it is suitable for use by agricultural vehicles but not by the type of heavy construction vehicle that would be required to construct the Authorised Development. Moreover the powers in the Draft DCO could potentially be used to exclude Network Rail from taking access to the Bridge. Given the of the bridge to the East Coast Main Line, Network Rail needs to maintain free and uninterrupted emergency access to the Bridge both for safety and operational reasons (for example in the event that repairs were required to the OLE). The powers being sought are too general and too weighted in favour of the Undertaker and do not take into account the needs to Network Rail as a statutory undertaker.

(g) The Existing Access provides the only vehicular access to the eastern platforms of Huntingdon Station and the adjacent car parks. The permanent acquisition of the Existing Access pursuant to the DCO would prevent such access. Although powers are being sought in the Draft DCO for the provision of replacement access (ie the New Northern Access and the New Southern Access) there is no certainty that such accesses will be provided and, even if they are, there is no certainty that they will be provided before the closure of the Existing Access (see Section 4.5 below). The permanent acquisition of the North Eastern Car Park together with the temporary acquisition of the Existing Access would also lead to a position where inadequate parking facilities are provided at Huntingdon Station. No replacement car park is being provided under the scheme and Section 127(3)(b) is not therefore engaged. The taking of the New Southern Access Land would prevent access from being taken along this route unless and until a new access road is provided and suitable rights granted, and as stated above, the provision of these works and their timing is not guaranteed under the Order (again see Section 4.5 below). Moreover, the Water Tank Land, over which powers of temporary possession for up to six years are being sought, immediately adjoins New Southern Access Land. Even if the New Southern Access is constructed and made available for use, the temporary possession powers being sought over the Water Tank Land mean that there is no guarantee that access could in fact be taken. These powers of compulsory acquisition would severely disrupt the operation of Huntingdon Station and would therefore cause serious detriment to the carrying on of Network Rail's undertaking.

(h) The Draft DCO contains a number of powers to acquire land both permanently and temporarily which are subject to this test, including Articles

20 (compulsory acquisition of land), 27 (acquisition of subsoil or airspace only), 29 (rights under or over streets), 30 (temporary use of land for carrying out the authorised development, 31 (temporary use of land for maintaining the authorised development) and 32 (statutory undertakers). In light of the issues referred to above Network Rail considers that these powers cannot be taken without serious detriment to the carrying on of its railway undertaking and it therefore objects to these powers applying to the Network Rail Land.

(i) Network Rail is also particularly concerned about Article 32 which relates to the compulsory acquisition of statutory undertakers' land. Unlike the general power relating to compulsory acquisition in Article 20, the Article 32 power is not circumscribed by Article 23(2) (which provides that only new rights may be acquired in relation to the land as referred to in Schedule 5). The Draft DCO as drafted would therefore allow the compulsory acquisition of the Temporary Possession Land and the Temporary Possession and Rights Land. By way of explanation:

(i) Article 32(1) expressly limits the power to acquire statutory undertakers' land by applying the provisions of Article 23(3) (ie that where a right is taken over land the Undertaker need not acquire a greater interest in the land).

(ii) Article 32(1) is silent in respect of Article 23(2) which limits the powers of compulsory acquisition in relation to certain land to the acquisition of rights only.

(iii) The fact that Article 23(3) is expressly referred to but Article 23(2) is not suggests that it is not intended that Article 23(2) should apply to statutory undertakers' land acquired under Article 32.

3.3.2 Compulsory Acquisition of New Rights over Statutory Undertakers' Land

(a) Under Sections 127(5) and (6) a development consent order "may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied" that one of the following is satisfied:

(6) …that the nature and situation of the land are such that—
(a) the right can be purchased without serious detriment to the carrying on of the undertaking, or
(b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

(b) Sections 127(5) and (6) apply to:

(i) The right to construct a track over the Corpus Christi Bridge Land.

(ii) The right to construct the New Bridge over the New Bridge Land.

(iii) The right to construct the Water Tank and Outfall on the Water Tank Land.

(c) The taking of rights to construct a new "track" over the Corpus Christi Bridge takes no account of the structural integrity of the bridge. The nature of the proposed "track" does not appear to be determined by the Draft DCO and it is unclear whether the track could safely be constructed and used on the bridge.

In light of this uncertainty the taking of these rights would be likely to cause serious detriment to the carrying on of Network Rail's undertaking. Network Rail is very concerned that the rights being sought over the Corpus Christi Bridge would allow heavy construction traffic to use it as the bridge is unsuitable for such traffic. Moreover, the Application does not take any account of the increased risk of road vehicle incursion onto the railway or provide adequate preventative measures. In light of these issues the Applicant should carry out an options appraisal in respect of alternative routes and provide evidence as to why this is the only option.

(d) The taking of a right to construct use and maintain the New Bridge over the East Coast Main Line in the uncontrolled way provided for by the Draft DCO would be likely to have severe detrimental impacts on Network Rail's statutory undertaking (see Paragraph 3.3.1(e) above). Moreover, Network Rail is very concerned for the potential for the reintroduction of settlement of Network Rail embankments which could arise due to the loads imposed during and following the road embankment construction.

(e) The taking of a right to construct use and maintain the Water Tank and Outfall over the Water Tank Land is part of a package of measures proposed for Huntingdon Station. The taking of the right to install the Water Tank and Outfall in this location (immediately adjoining the proposed New Southern Access) would potentially prevent the use of the New Southern Access which is vital to ensure continued vehicular access to Huntingdon Station. Again, therefore, the taking of these rights would be likely to have severe detrimental impacts on Network Rail's statutory undertaking.

(f) The Draft DCO contains a number of powers to acquire rights which are subject to this test, including Articles 15 (access to works), 17 (discharge of water), 18 (protective works to buildings), 19 (authority to survey and investigate land), 23 (compulsory acquisition of rights), 32 (statutory undertakers), 36 (felling and lopping of trees and removal of hedgerows). In light of the issues referred to above Network Rail considers that these powers cannot be taken without serious detriment to the carrying on of its railway undertaking and it therefore objects to these powers applying to the Network Rail Land

3.4 **Section 138 of the 2008 Act**

3.4.1 Section 138 contains a special test which must be applied by the Secretary of State before powers of compulsory acquisition are granted which would extinguish a right or way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over land" where that right is vested in a statutory undertaker for the purposes of their statutory undertaking. Under Section 138(4):

> *(4) The order may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.*

3.4.2 The Draft DCO contains a number of powers to extinguish rights, including Articles 13 (permanent stopping up of streets and private means of access), 25 (private rights over land) and 32 (statutory undertakers). An example of the serious issues which would arise if these powers were granted in relation to the Network Rail Land and Network Rail Rights Land are highlighted in Paragraph 3.3.1(g) above in respect of the closing of the Existing Access.

3.4.3 Although the Statement of Matters makes reference to Section 138, no justification has been made out for the removal of Network Rail's rights in the Network Rail Rights Land. Accordingly no case has been made out that the extinguishment of Network Rail's rights is necessary to allow the development to proceed and the powers which are being sought in relation to Network Rail's interests in the Network Rail Rights Land should not be granted.

4. THE DCO

4.1 Protective Provisions

4.1.1 Network Rail has standard protective provisions which it requires to be included in any development consent order or Transport and Works Act order which is likely to affect its railway undertaking. Although the precise detail of protective provisions needs to be agreed on each occasion, a useful starting point is the protective provisions contained in the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015.

4.1.2 Network Rail's protective provisions are designed to balance the needs of the Promoter against the operational requirements of Network Rail's undertaking. The protective provisions deal with issues such as the restriction of the powers of the Promoter to exercise powers of compulsory acquisition except with the consent of Network Rail, the approval of plans, the carrying out of protective works and damage and obstruction arising from the works.

4.1.3 The Draft DCO does not contain any protective provisions in favour of Network Rail notwithstanding the fact that the Promoter undertook some initial discussions with Network Rail about the form of such provisions prior to the submission of the Application. Although negotiations have now begun as to the form and inclusion of protective provisions, unless and until such time as such protective provisions are included in the DCO in a form approved by Network Rail, Network Rail must sustain in the strongest possible terms its objection to the making of the DCO.

4.2 Transfer of the Benefit of the DCO

4.2.1 Article 9 of the Draft DCO authorises the transfer of any or all of the benefit of the provisions of the DCO to a third party either permanently or for a limited period. Under article 9(3) the exercise by that person of such benefits and rights is subject to "the same restrictions, liabilities and obligations as would apply" under the DCO.

4.2.2 Network Rail is concerned in relation to the open-ended nature of this power and considers that he following principles should apply:

(a) The consent of the Secretary of State should be required for any transfer;

(b) Any transfer of powers which affect Network Rail's undertaking should only be made to another competent authority approved by Network Rail;

(c) Any transferee should expressly be subject to all restrictions, liabilities, and obligations (including those under contract) as the Undertaker. Article 9(3) goes some way towards this position, but does not appear to extend to contractual restrictions, liabilities, and obligations.

(d) Where the benefit of the Order is transferred for only a limited period (rather than permanently) under Article 9(1)(b) Network Rail considers that the Order

should expressly state that the obligations on the undertaker will continue upon transfer, albeit that they will also be enforceable against the Lessee.

4.3 **Maintenance Liability for the New Bridge**

4.3.1 Article 12(3)(a) of the Draft DCO provides that "from the date that the authorised development is completed and open to traffic":

(a) the roads described in paragraphs 1 to 9 of Part 6 of Schedule 3 (classification of roads, etc) are to become trunk roads as if they had become so by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads

4.3.2 The New Bridge forms part of the "New A14 Trunk Road" which is described in Paragraph 1 of Part 6 of Schedule 3 of the Draft DCO and shown on the Classification of Roads Plans. A trunk road is a highway which is maintainable by the Secretary of State or a strategic highway company such as Highways England.

4.3.3 Under Section 328(2) of the Highways Act 1980:

(2) Where a highway passes over a bridge… that bridge… is to be taken for the purposes of this Act to be part of the highway.

4.3.4 Section 118 of the Transport Act 1968 applies to "any bridge, including a bridge constructed after the day on which this section comes into force which… carries a highway over" a railway. Section 118(2) provides:

"…it shall be the duty of the person to whom a bridge to which this section applies belongs (in this section referred to as "the owner") to maintain it in such a condition that it is not a source of danger to, and does not interfere with, or require any restriction to be placed on, the traffic from time to time using the railway or inland waterway crossed by the bridge."

4.3.5 The powers set out in Section 118 of the Transport Act 1968 provide the statutory framework which allow the highway and the railway to co-exist and provide a position which is broadly acceptable to Network Rail. However this framework will only arise after the New A14 Trunk Road becomes a highway. Article 12(3) is therefore inadequate to protect Network Rail in two respects:

(a) It leaves the date when the trunk road comes into being entirely to the discretion of the Undertaker (ie in terms of the date when the complete the works and open the road) and does not deal with the situation in the interim.

(b) It appears to require the whole of the Authorised Development (ie all of the works referred to in Schedule 1) to be completed and open to traffic before the trunk road comes into being. This means that here is considerable uncertainty as to whether or not the trunk road will ever come into being.

4.3.6 Until the uncertainty surrounding this issue is resolved, Network Rail objects to the construction of the New Bridge.

4.4 **Corpus Christi Bridge**

4.4.1 The Corpus Christi Bridge crosses the East Coast Main Line and was provided as a private accommodation bridge for the adjacent farm. As such it is suitable for use by agricultural vehicles but not by the type of heavy construction vehicle that would be required to construct the Authorised Development.

4.4.2 The Draft DCO provides a powers to take temporary possession of the bridge under Articles 30 and 31. These powers could potentially be used to exclude Network Rail from taking access to the bridge which crosses over the strategically important and nationally significant East Coast Main Line. It is fundamental to the safe and efficient operation of the railway network that Network Rail needs to maintain free and uninterrupted access to the Bridge both for safety and operational reasons (for example in the event that repairs were required to the OLE). The powers being sought in the Draft DCO in relation to the Corpus Christi Bridge are too general and too weighted in favour of the Undertaker and do not take into account the needs to Network Rail as a statutory undertaker.

4.4.3 Moreover the taking of rights to construct a new "track" over the Corpus Christi Bridge takes no account of the structural integrity of the bridge. The nature of the proposed "track" does not appear to be determined by the Draft DCO and it is unclear whether the track could therefore be safely be constructed and used on the bridge. The Draft DCO does not contain any mechanism to ensure that undertaker would assess the structural capacity of the bridge. Network Rail is very concerned that the rights being sought over the Corpus Christi Bridge would allow heavy construction traffic to use it as the bridge is unsuitable for such traffic. Moreover, the Application does not take any account of the increased risk of road vehicle incursion onto the railway or provide adequate preventative measures.

4.4.4 In light of these issues the Applicant should carry out an options appraisal in respect of alternative routes and provide evidence as to why this is the only option.

4.4.5 Network Rail objects to the making of the DCO until such time as:

(a) Suitable and adequate arrangements are in place to allow Network Rail to gain access to the Corpus Christi Bridge at all times for the purposes of inspection, repair and maintenance;

(b) The nature of the proposed "track" is known;

(c) A restriction is placed on the size and weight of vehicles which would be allowed to use the bridge;

(d) The Applicant has carried out an options appraisal in respect of alternative routes and provide evidence as to why this is the only option; and

(e) It is proved to Network Rail that the proposed "track" would not cause the bridge to become unsafe or increase any maintenance liability Network Rail may have in relation to the bridge.

4.5 **Access to Huntingdon Railway Station**

4.5.1 The Draft DCO authorises the compulsory acquisition of the Existing Access. The Existing Access provides the only vehicular access to the eastern side of Huntingdon Station including car parks and taxi drop-off points and if the scheme is implemented this access would cease to exist.

4.5.2 The Draft DCO does make provision for the replacement access to be provided in the form of the New Northern Access and the New Southern Access. However the Draft DCO does not provide adequate protection in this regard for the following reasons:

(a) No provision is made to compel the Undertaker to construct the New Northern Access or the New Southern Access .

(b) Even if they are constructed, there is no mechanism in the Draft DCO to ensure, and therefore no certainty, that the New Northern Access and the New Southern Access will be constructed and opened before the Existing Access is closed.

(c) Even if they are constructed and opened before the Existing Access is closed, there is no certainty that they will remain open during the construction of the Authorised Works.

(d) Although it is proposed that a private access is built to the station across Plot 34/36 to provide the New Southern Access, there is no guarantee that Network Rail will have any rights over that access. Plot 34/36 is being compulsorily acquired from Network Rail who would not appear to have any rights to use the land thereafter. The same principles apply to the New Northern Access.

(e) Moreover, the Water Tank Land, over which powers of temporary possession for up to six years are being sought, immediately adjoins New Southern Access Land. Even if the New Southern Access is constructed and made available for use, the temporary possession powers being sought over the Water Tank Land mean that there is no guarantee that access could in fact be taken to the station using this route.

(f) The proposals in the Draft DCO provide a considerable degree of uncertainty in respect of the nature and delivery of suitable access to Huntingdon Station and Network Rail objects to the making of the DCO until such time as these issues are resolved to its satisfaction.

4.6 **Car Parking**

4.6.1 The Draft DCO makes provision for the permanent acquisition of the North Eastern Car Park and the temporary acquisition of the North Western Car Park for a period of up to six years. No provision is made in the Draft DCO for replacement car parking to be provided.

4.6.2 The station car park allows members of the public who otherwise would not be able to use rail services (because they do not live within walking distance) safe, efficient and convenient access to the rail system. The provision of suitable and adequate car parking adjacent to the railway station is therefore a vital component of Network Rail's statutory undertaking, and an important way to ensure that journeys can be completed by rail rather than by private car and that the station operates to its full potential as a sustainable transport mode in accordance with Section 4 of the NPPF.

4.6.3 No consideration appears to have been given to the effect of the loss of car parking spaces or whether any alternative provision should be put in place. .

4.6.4 The Draft DCO also makes inadequate provision to ensure that access to the Northern Car Parks and the Southern Car Park is maintained at all times (see Section 4.5 above)

4.6.5 Until these issues are resolved, Network Rail must maintain its objection to the Draft DCO.

4.7 **Book of Reference**

4.7.1 Network Rail is the owner of Plots 34/31a, 35/35a and 34/35b in the Book of Reference. The Book of Reference therefore needs to be amended to reflect this.

4.8 **Overhead Line Equipment**

4.8.1 The construction of the New Bridge over the East Coast Main Line will interfere with Network Rail's OLE because the scheme proposes to provide a headroom from rail to bridge soffit of 6.38m. This is insufficient for current OLE arrangements and also future infrastructure required for 140mph trains. One solution, currently being discussed, would be for mitigation works to be undertaken that would convert existing OLE headspans into fixed portals. This would reduce the OLE system height and allow the bridge to be constructed at the proposed headroom. However these measures do not form part of the Draft DCO.

4.8.2 . To facilitate the removal of the existing A14 flyover from above Huntingdon Station, the scheme requires temporary alterations to be undertaken to the existing OLE infrastructure. However, these measures do not form part of the Draft DCO.

4.8.3 The Draft DCO fails to grapple with these knock-on effects or to provide suitable and adequate protection to Network Rail in respect of the OLE works that would be required before the New Bridge could be installed.

4.9 **Brampton Road Bridge**

4.9.1 The change in road configuration and the removal of headroom restrictions will impact on the usage of the Brampton Road Bridge. Network Rail is particularly concerned about changes in loading and the risk of vehicle incursion. The Application does not assess this increase in risk to Network Rail's undertaking and the Draft DCO does not provide for any mitigation measures to be constructed as part of the scheme.

Bond Dickinson LLP

5 June 2015

ANNEX

CASELAW

Sharkey v Secretary of State for the Environment (1992) 63 P. & C.R. 332

Status: Positive or Neutral Judicial Treatment

*332 Sharkey and Another v Secretary of State for the Environment and South Buckinghamshire District Council

Court of Appeal

14 October 1991

(1992) 63 P. & C.R. 332

(Parker , Mccowan and Scott L.JJ.):

October 14, 1991

Compulsory purchase order—Land required for a planning purpose—Meaning of "required"—Whether local authority should exhaust other planning enforcement powers before using compulsory purchase powers— Town and Country Planning Act, 1971, s.112(1)(b)

Gipsies brought mobile homes onto eight plots in the metropolitan green belt, where there was a presumption against development, without obtaining planning permission. They intended to settle permanently there. The local authority proceeded against the gipsies, initially by way of enforcement notices and then by obtaining injunctions, but finally, finding that these procedures were cumbersome, expensive and ineffective, made a compulsory purchase order seeking to purchase all eight plots on the ground that the land was "required" to achieve proper planning of the area within the Town and Country Planning Act 1971, s.112(1)(b) .

After holding a public inquiry into the compulsory purchase order, the inspector, while accepting that the development was inappropriate and unacceptable in the green belt, recommended that the order should not be confirmed, on the grounds that the council had not satisfactorily shown that this was the only reasonable means of achieving proper planning of the area and that the order was premature. This was not accepted by the Secretary of State, who confirmed the order in respect of four plots on the ground that, on the evidence, successful restoration of the land without the compulsory purchase order would be unlikely in these cases, but deferred his decision in respect of the other four plots where time for compliance with the enforcement notices had not yet expired.

Certain gipsies appealed against the decision of Roch J., [1] who had dismissed their application to quash the compulsory purchase order. They contended that the land was not "required" by the local authority within section 112(1)(b) , since there were various ways in which the clearance of the land could be achieved without compulsory purchase.

Held, dismissing the appeal, that in order to show that land was "required" for a purpose which it was necessary to achieve in the interests of proper planning within the Town and Country Planning Act 1971, s.112(1)(b) , a local authority did not have to show that compulsory purchase of the land was indispensable to the achieving of that purpose, but that it was necessary in the circumstances of the case. It was not enough, however, that such compulsory purchase might be desirable. The Secretary of State was entitled to find that the council was unlikely to achieve successful restoration of the land without compulsory purchase in respect of four plots and to defer a decision in respect of the four further plots where there was a possibility that this might be achieved.

Cases cited:

(1) *Company Developments (Property) Ltd. v. Secretary of State for the Environment and Salisbury District Council [1978] J.P.L. 107* .

(2) *R. v. Secretary of State for the Environment, ex p. Leicester City Council (1988) 55 P. & C.R. 364* . ***333***

(3) *Runnymede Borough Council v. Ball [1986] 1 W.L.R. 353; [1986] 1 All E.R. 629; 53 P. & C.R. 117, C.A.*

Legislation construed:

Town and Country Planning Act 1971 (c. 78), s.112(1)(b) (see now Planning Act 1990, s.226(1)). The provision is set out at page 335, *post* .

Appeal by L. Sharkey and C. Fitzgerald from a decision of Roch J. on May 11, 1990 (*see 62 P. & C.R. 126*) in which he dismissed their application to quash a compulsory purchase order made by the South Buckinghamshire District Council on October 8, 1985, relating to certain plots of land at Swallow Street, Iver, Buckinghamshire, in the metropolitan green belt, upon which they had installed mobile homes without planning permission. The appellants contended that the district council only required clearance of the land, which could be achieved by prosecution, by the council entering upon the land and clearing it, by injunction or by providing a suitable alternative site. Compulsory purchase was not "required."

Representation

Harry Sales for the appellants (applicants).

W. Robert Griffiths for the first respondent.

R. J. Rundell for the second respondent.

Parker L.J.

I will ask McCowan L.J. to give the first judgment.

McCowan L.J.

This is an appeal from a decision of Roch J. given on the May 11, 1990, dismissing an application by the appellants that the South Bucks District Council (Ivor No. 1) Compulsory Purchase Order 1985 be quashed. The first respondent is the Secretary of State for the Environment and the second respondent is the South Bucks District Council.

The order in question, as made by the South Bucks District Council on October 8, 1985, related to plots 1 to 6, 7A and 7B Swallow Street, Iver. The order as confirmed by the Secretary of State related only to plots 1, 5, 6 and 7A. Postponement of consideration of the order in so far as it related to plots 2, 3, 4 and 7B was directed by the Secretary of State.

Between September 15 and 17, 1987, an inspector held a public inquiry into the compulsory purchase order and also into various enforcement notices with which neither the hearing before Roch J. nor the appeal have been concerned. The reason for that, as we understand it, is that before the case started in front of Roch J. it was agreed between the parties that the appellants would not pursue their appeals against the enforcement on the basis that the council for their part would not take action in respect of them before some date in 1991. Those enforcement notices are therefore effective.

That inspector described the site covered by the order thus:

> The order land is on the west side of Swallow Street and in a generally open area between the north-western and south-western extremities of the built-up areas of Iver and Iver Heath respectively. It is approximately 0.28 (0.69 acres) in area and divided

into 7 plots, numbered 1 to 7 consecutively from south to north (Plan A). At the time of the inquiry Plot 7 had been sub-divided into 2, the southern part referred to as Plot 7A and the northern as Plot 7B (Plan Q).

***334**

The inspector went on to make findings of fact about, among other things, the state of occupation of the various plots. He said:

> 5. Plot 1, Cherry Orchard, contains a mobile home and hardstanding and garden areas, and is residentially occupied by Mr. Sharkey and family.
>
> 6. Plot 2, Springfield Rose, contains a mobile home and hardstanding area, and is residentially occupied by Mr. And Mrs. Carey.
>
> 7. Plot 3, Little Apple, contains a mobile home, touring caravan and hardstanding area, and is residentially occupied by Mr. M. Smith and family.
>
> 8. Plot 4, Mill Place, contains a mobile home, touring caravan and hardstanding area, and is residentially occupied by Mr. J. Smith and family.
>
> 9. Plot 5, Silver Birch, contains a mobile home and hardstanding area, and is residentially occupied by Mr. Fitzgerald and family.
>
> 10. Plot 6, Swallows Nest, contains a mobile home and patio, garden and hardstanding areas, and is residentially occupied by Mr. Stubbings and family.
>
> 11. Plot 7A, Summerset Place, contains a touring caravan and hard-standing area, and is residentially occupied by Mr. Brown and family.
>
> 12. Plot 7B, Meadowside, contains a touring caravan and hardstanding and garden areas, and is residentially occupied by Mr. Price and family.

Plots 1 and 5, it is to be noticed, are occupied by the two appellants. The learned judge summarised the situation in this way [2] :

> Those plots were occupied by travellers or gypsies. Often the occupant was the person who had purchased the plot. Entrances were made on to Swallow Street in most cases, although in some cases it was said that existing entrances were used. Hardstanding was put down for caravans and for vehicles, walls were built and gardens cultivated. In addition some septic tanks were constructed.
>
> It seems that the travellers who bought and occupied those plots were travellers who wished to settle, to send their children to school, and to avoid having to move their children from one school to another. In short that the occupants were responsible and orderly people.
>
> However, Swallow Street is within the Metropolitan Green Belt and there was and is a presumption against such development which is only to be displaced in certain exceptional cases. The second respondent, as the local planning authority, were against this unpermitted development and took steps to terminate this unauthorized use of this land.
>
> Enforcement notices were prepared and served under section 87 of the Town and Country Planning Act 1971 . In respect of some of the plots there was more than one enforcement notice.
>
> The history in relation to plot 1 was this: that in 1984 four enforcement notices were served. In August 1985 the second respondent used its powers under section 91 of the Town and Country Planning Act 1971 to enter plot 1 and execute the work set out in the four enforce ***335** ment notices. Consequently, by October 8, 1985 plot 1 was unoccupied and the hardstanding, fences and vehicular access which had existed on plot 1 had been removed.

> In May 1986 a High Court injunction was obtained to prevent plot 1 being used by a traveller. In August of 1986 a second such injunction was obtained by the second respondent. In February 1987 further action under section 91 of the Act was taken. In April 1987 a writ was served on the then occupant of plot 1. Nevertheless by September 1987, at the time that a public inquiry was held by a planning inspector, Mr. Brock, plot 1 was being used by a traveller who had a caravan on the plot sited on hardstanding.
>
> The inspector's report indicates that four enforcement notices were served in respect of plot 2, the first on May 15, 1985 and the remaining three on September 3, 1985. Three enforcement notices were served in respect of plot 6, two on September 5, 1985 and the third on September 20, 1985. Five enforcement notices were served in respect of plot 4, four on September 5, 1985 and the fifth on March 7, 1986. One enforcement notice was served in respect of plot 7 on August 8, 1987.
>
> On October 8, 1985 the second respondent promulgated a compulsory purchase order under section 112(1)(b) of the Town and Country Planning Act 1971 seeking authorization to purchase compulsorily the land described in the schedule which was all eight plots, that is to say, plots 1 to 6 7A and 7B which were described in the schedule simply as plot 7; “For the purpose which it is necessary to achieve in the interests of the proper planning in the area in which the land is.”

It is convenient at this point to read section 112 of the Town and Country Planning Act 1971 . In so far as it is material it provides as follows:

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily

> (a) any land which is in their area and which is suitable for and is required in order to secure the carrying out of one or more of the following activities, namely, development, redevelopment and improvement;
>
> (b) any land which is in their area and which is required for a purpose which it is necessary to achieve in the interest of the proper planning of and area in which the land is situated.

As the judge said, the council relied in this case on subsection 1(b) . The council's case under that subsection before the inspector was summarised by him as follows:

> 167 The need for a compulsory purchase order is due to deliberate flouting of planning control by the occupiers of the land or their predecessors. Normal legal procedures have been shown to be cumbersome, expensive and ineffective. Enforcement procedure has been satisfactory up to a point, but thereafter has been ineffective; prosecutions depend on identification, which is difficult when occupiers come and go, the level of fines imposed is low and injunctions obtained apply only to the persons named. On the Cherry Orchard site [I interpolate that is a reference to plot 1] section 91 action has been found ineffective; twice the land has been cleared, and twice reinstated. A stop ****336*** notice on Plot 7 has been ineffective. No grounds exist for expecting that the land would revert to an appropriate Green Belt use even if section 91 powers were again to be used. All except one of the present occupiers have said that they would not reinstate their land to the condition in which it formerly was. Public money would be wasted by the use of section 91 powers, and the aim of protecting the Green Belt would be rendered futile.
>
> 168. The only effective means of protection is by compulsory purchase. As a housing action area is purchased for the benefit of the community as a whole, so would the purchase of this Green Belt land be of benefit to the community. In the light of that consideration the order should be confirmed. Even if it is thought that it should not be confirmed in respect of Plots 2 to 6 on the grounds that all other avenues have not yet been fully explored, it should be confirmed in respect of Plots 1, 7A and 7B.

The inspector's conclusion on this issue was:

> 189. … I find the development which has taken place on the land to be inappropriate and unacceptable. In my opinion the location is such that the land should not be left in a derelict or neglected state, but should be put to a suitable rural use. That aim seems to me to be one which it is necessary to achieve in the interests of the proper planning of the area.
>
> 190. However, I do not consider that, with the possible exception of Plot 1, the Council have satisfactorily shown that the only practicable means of achieving the aim is by compulsory purchase. With regard to Plots 3 to 6, there is no evidence of prosecutions or attempted prosecutions for non-compliance with those enforcement notices which are not the subject of appeal and should by now have been complied with. Regarding Plots 7A and 7B, action in respect of a breach of the stop notice is apparently still being pursued, and I note that the period for compliance with the enforcement notice issued on September 11, 1987 is not due to and until November 16, 1987. I find insufficient evidence to substantiate a claim that the general level of fines imposed for non-compliance with enforcement notices is so low as to vitiate the value of prosecution.
>
> 191. As to the notices currently under appeal, it might be that the appellants would now decide to accept what I believe to be the inevitability of the situation, and would choose to comply with the requirements within the time allowed. The evidence is that, in the event of non-compliance with the notices if upheld, and of the order not being confirmed, the Council would seek to use its powers under section 91 of the 1971 Act. This course of action would no doubt be open to the Council to pursue if it wished, and it does not seem to me necessarily to follow that, because Plot 1 has been reoccupied after such action in the past, further action would fail to have the desired effect in the future.
>
> 192. Even if past experience provided a good reason for the compulsory purchase of Plot 1, the purpose which it is necessary to achieve would be unlikely to be realised by the acquisition of an individual plot in isolation. The Council's restoration and landscaping scheme could not be implemented by the use only of Plot 1. With regard to that ***337*** scheme, it seems to me that an appropriate rural use would equally lie in the return of the land to grazing land, whether as a parcel on its own or in conjunction with adjoining land. It could be that the present owners of the land, notwithstanding the evidence given at the inquiry, would be finally convinced that they should dispose of their land, and would offer it for sale to an owner of adjoining or adjacent land for use by him for an appropriate purpose.

I interrupt the reading at this point to make the comment that nothing has happened since to justify the inspector's optimism. He continued:

> 193. I conclude that, whereas it may eventually be found that, in order to achieve the necessary purpose on planning grounds, no practicable alternative exists to compulsory purchase of the land, the making of the order at this stage is, at the least, premature.

He went on to recommend that the compulsory purchase order be not confirmed.

In turn the Secretary of State had this to say on the issue in his decision letter of the February 24, 1989:

> The Secretary of State agrees that the interests of the proper planning of an area within the Metropolitan Green Belt are served by the removal of development which is detrimental to the visual amenities of that area.
>
> 5. In considering the Inspector's conclusions in the light of the council's statement of reasons, the Secretary of State agrees that the development which has taken place on the order land is inappropriate and unacceptable in this generally open area which is within the Metropolitan Green Belt and the Colne Valley Park. He shares the Inspector's opinion that the implementation of the council's proposed landscaping scheme (which

> was prepared only after the order had been submitted for confirmation) whilst consistent with Green Belt policy, is not the only purpose to which the land could appropriately be put. He agrees that the land should not be left in a derelict or neglected state.
>
> 6. On the basis of the evidence presented at the inquiry, the Secretary of State does not accept in its entirety the Inspector's conclusion that the council have not satisfactorily shown that the only practicable means of achieving the aim of putting the order land to a suitable rural use is by compulsory acquisition. The Secretary of State has had particular regard to the evidence presented by the council as to the result of enforcement action in respect of various sites in the district, including sites which are also the subject of this order. He has concluded, on the balance of probabilities, that successful restoration of the land as a consequence of the upholding of the enforcement notices is unlikely as respects plots 1, 5, 6 and 7A since the evidence of the owners of those plots is to the effect that they would not, or in one case could not afford to restore the land, even if the notices were upheld. Accordingly he has decided to confirm the order in relation to those plots.
>
> 7. The evidence given by the owners of plots 3 and 4 suggests that the land would be restored if the enforcement notices were upheld. In relation to plots 2 and 7B the owners either expressed no view or were undecided about restoration. The Secretary of State considers that it ***338*** would be appropriate in relation to these plots to defer his decision on the order until the period for compliance with the relevant enforcement notices has elapsed. He will then form a view as to the necessity for confirmation of the order in respect of those plots.

I need not read paragraph 8, which deals with certain modifications. In paragraph 9 he went on to say:

> 9. Accordingly, in exercise of the power conferred on him by section 132(2) of the Town and Country Planning Act 1971 , he hereby confirms the South Bucks District Council (Iver No. 1) Compulsory Purchase Order 1985 insofar as it relates to plots 1, 5, 6 and 7A subject to the modifications shown thereon in red ink. He hereby directs that consideration of the order insofar as it relates to plots 2, 3, 4 and 7B be postponed until September 28, 1989.

In challenging this decision in the courts the appellants put forward two grounds in their notice. First, it is said that:

> the first respondent treated the likelihood of the applicants carrying out works of restoration in accordance with enforcement notices as the determining factor and in so doing ignored the powers of the Second Respondent to carry out works of restoration under section 91 of the Town and Country Planning Act 1971 .

Secondly, that:

> the first respondent considered it unnecessary to confirm the compulsory purchase order in respect of plots owned by other than the applicants and thereby and by his express conclusions concluded that the avowed purpose of the order in the form of the second respondent's proposed landscaping scheme did not justify confirmation of the compulsory purchase order.

The provisions of section 91(1) of the Town and Country Planning Act 1971 there referred to read as follows:

> If, within the period specified in an enforcement notice for compliance therewith, or within such extended period as the local planning authority may allow, any steps which by virtue of section 87(7)(a) of the Act are required by the notice to be taken (other than the discontinuance of a use of land) have not been taken, the local planning authority may enter the land and take those steps, and may recover from the person who is then

the owner of the land any expenses reasonably incurred by them in doing so.

It is to be observed, however, that, in practical terms, to do this it would be necessary first to get occupiers off the site.

The appellants submitted before Roch J. that compulsory purchase of the land was not required for the purpose in question, because that purpose could be achieved by other means, notably under section 91 . Roch J. was referred to two authorities on the word “required” in this context, as have we. Both cases involve consideration of section 112(1)(a) but, as the judge said, and it has not been disputed, the word “required” must have the same meaning in (*b*) as in (*a*).

In *Company Developments (Property) Ltd. v. Secretary of State for the Environment and Salisbury District Council* Sir Douglas Frank held that ***339** the word “required” in this context does not mean “essential,” but only that the acquiring authority and the Secretary of State consider it desirable to acquire the land to secure the carrying out of the activity in question.

In *R. v. Secretary of State for the Environment, ex p. Leicester City Council* McCullough J. considered that the word “required” meant more than mere desirability. Roch J., in this case, dealt with that argument as follows. [3]

> Because of the nature of the power given to local authorities by section 112 , namely, to deprive the owner of his land against that owner's will, I prefer and adopt the stricter meaning of the word “required” suggested by the judgment of McCullough J. In my judgment the word means that the compulsory acquisition of the land is called for; it is a thing needed for the accomplishment of one of the activities or purposes set out in the section. However, I accept the dictum of Sir Douglas Frank QC to this extent that neither the local authority nor the Secretary of State have to go so far as to show the compulsory acquisition of the land is indispensable to the carrying out of the activity or the achieving of the necessary planning purpose. The local authority need not have tried to use all their other powers before resorting to compulsory purchase, provided there is evidence on which they and the Secretary of State can conclude that, without the use of compulsory purchase powers, the necessary planning purpose is unlikely to be achieved.
>
> In this case the Secretary of State in paragraph 5 of the letter of his decision correctly, in my view, identified the purpose which it was necessary to achieve in the interest of proper planning of the area in which the land was situated, namely, to remove the development which had taken place and which was inappropriate and unacceptable and to ensure that the land should not be left in a derelict or neglected state. The Secretary of State then went on to consider whether acquisition of the land by compulsory powers was required in the sense of being needed for the accomplishment of the purpose because he has concluded, on the balance of probabilities, that successful restoration of the land was unlikely in respect of plots 1, 5, 6 and 7A, unless the order was confirmed in relation to those plots. In my judgment there was evidence on which the Secretary of State was entitled to reach that conclusion. If the Secretary of State had asked himself the question, is the compulsory acquisition of this land desirable for the accomplishment of the purpose, I would have held that he had applied the wrong test.
>
> Had the Secretary of State gone on to refuse to confirm the compulsory purchase order with regard to the other four plots, then in my opinion there may have been some prospect of his decision being overturned on the grounds of irrationality. However, that is not the decision reached by the Secretary of State and I assume, in his favour, that he will confirm the compulsory purchase order in respect of those plots if, despite the removal of caravans and so forth from those plots, those plots are not restored to some use suitable for the area but are ***340** left in a state where they become or are likely to become derelict and neglected.
>
> I may confess in this case that had the decision been mine, I would have reached the same conclusion as that reached by the inspector, namely, that the making of the compulsory purchase order at that stage was premature. However, it is a well established principle of administrative law that such judgments are for the local authority and the Secretary of State and not for this court.

> Consequently the conclusion that I have reached is that I must dismiss these applications for judicial review.

I agree with Roch J. that the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word “desirable” satisfactory, because it could be mistaken for “convenient,” which clearly, in my judgment, is not sufficient. I believe the word “required” here means “necessary in the circumstances of the case.”

Before this court the appellants put their case in this way. It is said by Mr. Sales that the seven grounds of appeal in the notice of appeal all relate to different aspects of the same point, which is that the land, the subject of a compulsory purchase, is not required by the second respondent. Compulsory purchase by, for example, local authorities can be authorised when they require land for the carrying out of their function, such as by-ways, housing, parks, etc. In all cases it is the land itself which is required for the purpose for which there is statutory authority to acquire compulsorily. In the case of section 112(1)(b) of the 1971 Act, this, he points out, is an express requirement. But, he says, in this case there is no requirement whatever of the second respondents for the land itself. Their requirement is only the clearance of the land and that could be achieved without compulsory purchase of the land itself by any of the following methods or a combination of them: (1) prosecutions under section 179 of the 1990 Act for non-compliance with enforcement notices; (2) execution of work by the local planning authority plus entry on to the land for that purpose, pursuant to section 178 of the 1990 Act, coupled with a right to recover from the owner expenses reasonably incurred in so doing; (3) injunction proceedings pursuant to section 222 of the Local Government Act 1972 ; (4) the provision of an acceptable alternative site for the appellants.

I am bound to say, however, that the planning history of the site, notably that of plot 1, gives one little faith in the efficacy of these remedies in dealing with these occupiers. It is indeed important, in my judgment, not to lose sight of two sections of the evidence which was before the Secretary of State. The first of these was the history of the unsuccessful attempt by the council using other methods to get these plots cleared, which history was recounted by Roch J. in a passage which I have quoted from his judgment.

The second section concerned the intentions of the occupants themselves. These the inspector summarised on the evidence they gave as follows. He recounted that Mr. Sharkey, one of the appellants, who occupies plot 1, said in evidence that “they could not afford to restore it to green field land.” Mr. Carey's evidence in respect of plot 2 was that he would not be prepared to move to any council owned site. Mr. M. Smith said in respect of plot 3 that he would be prepared, with the council's help, to ***341** reinstate it. Mr. J. Smith from plot 4 said that he would reinstate it to green meadow. Mr. Fitzgerald, the other of the appellants, said of plot 5 that he could not reimburse the council for any costs of reinstatement. Mr. Stubbings from plot 6 said that he would not restore it to its former condition. Mrs. Brown from plot 7A said that they would not themselves clear it. Mr. Price from plot 7B on the other hand, said that he did not know if he would reinstate it.

In the light of all that evidence the Secretary of State was, in my judgment, entitled to arrive at the conclusion that the council were not likely to achieve successful restoration of the land including plots 1, 5, 6 and 7A without compulsory purchase but that in respect of the remaining plots it was still possible that they might.

I agree with Roch J. that, had the Secretary of State refused to confirm a compulsory purchase order with regard to those remaining four plots, some force might have been given to an argument that he had acted irrationally, but, as it is, the plain implication of his decision is that if these plots are not restored to a use suitable for their area he will confirm the compulsory purchase order in respect of them.

As I indicated, a subsidiary argument was advanced by the appellants that by deferring a decision in respect of those plots the Secretary of State has put it out of the council's power to carry out their landscaping scheme. I am satisfied however that this scheme was only put forward at the inquiry as a possible scheme should the order be confirmed in respect of all eight plots. The scheme is not essential to the planning purpose, which is to restore the land to rural use.

That purpose can be achieved in respect of a single plot by removal of a caravan, hardstanding, etc., and reversion to grass or shrubs and trees.

For all these reasons I agree with Roch J.'s decision and would dismiss the appeal.

Scott L.J.

I agree with the judgment that McCowan L.J. has given and would add only one point.

Both before us and before Roch J. Mr. Sales submitted that the power of compulsory purchase given by section 112 of the 1971 Act was a power which should be used only as "a last resort," as he put it. That may be so as between the various statutory powers available to the local authority under the Town and Country Planning Acts. If, however, the choice is between an exercise of the power of compulsory purchase and the alternative route by means of which a local authority may seek to enforce the planning law, namely High Court proceedings for a civil injunction, then I do not agree.

There are statements in a number of cases at levels all the way up to the House of Lords to the effect that the use of civil proceedings for injunctions in order to enforce the public law should be confined to exceptional cases (see, *e.g.* Runnymede Council v. Ball and the cases there cited). A civil injunction involves the substitution of an unlimited power of imprisonment, available in contempt of court proceedings against persons who disobey the injunction, for the limited penalties for disobedience of the law prescribed by Parliament. I do not doubt that in many cases local authorities are entirely justified in taking High Court proceedings for injunctions so as to obtain the additional sanction of committal for contempt in order to enforce obedience to the statutory offences in question. But to say that a compulsory purchase power is only to be used as a matter of last ***342** resort after a civil injunction has been shown to be ineffective is a proposition I find entirely unacceptable. Which of the two, compulsory purchase or High Court proceedings, is to be preferred may depend upon the facts of a particular case. Which ought to be the last resort may be a matter of debate in a number of cases. But in the circumstances with which the council was faced in the instant case, I do not regard an application for a High Court injunction, with the possibility of contempt proceedings following, as something which had to be tried before the compulsory purchase procedure could be invoked. I agree that this appeal should be dismissed.

Parker L.J. I agree. Both the inspector and the Secretary of State came to the clear conclusion that this land was necessary to be acquired in the interests of proper planning and that, unless that purpose could be achieved by other means, a compulsory purchase order was justified. The inspector had a somewhat rosier view of the situation than the Secretary of State and apparently took the view that the purpose might be achieved without a compulsory purchase order. The Secretary of State considered that it could not be achieved in respect of certain of the plots, but that it might conceivably be achieved in respect of others and therefore deferred his decision with respect to those others.

In my view the Secretary of State not only came to the right conclusion but no other conclusion was really open to him. I would also dismiss this appeal.

Representation

Solicitors— Lance Kent & Co . Chesham, Buckinghamshire; the Treasury Solicitor ; the Solicitor to the South Buckinghamshire District Council.

Appeal dismissed with costs. Application for leave to appeal to the House of Lords refused.

***343**

---

1. *See (1991) 62 P. & C.R. 126* .

2. *(1991) 62 P. & C.R. 126* at p. 128.

3. *(1991) 62 P. & C.R. 126* at pp. 133–134.

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

APPLICATION FOR THE A14 (CAMBRIDGE TO HUNTINGDON IMPROVEMENT) DEVELOPMENT CONSENT ORDER (Reference TR10008)

SUMMARY WRITTEN REPRESENTATION OF NETWORK RAIL INFRASTRUCTURE LIMITED (Unique Reference Number 10031042)

---

1. **DEFINITIONS**

In this written representation the words and phrases in column (1) below are given the meaning contained in column (2) below.

(1) Words and Phrases	**(2) Meaning**
1846 Act	The Great Northern Railway Act 1846
Conveyances	The following: 1. In relation to the New Bridge Land a conveyance dated 13 November 1847 between George Deane Sismey and the Company; 2. In relation to Huntingdon Station: a. A conveyance dated 21 July 1851 between The Mayor &c of Huntingdon and the Company; b. A conveyance dated 27 August 1847 between Dame Emma Hussey and the Company; and c. A conveyance dated 18 July 1856 between the Earl of Sandwich & Others and the Company; and 3. In relation to the Corpus Christi Bridge details of a conveyance to be supplied, all made pursuant to the 1846 Act
1990 Act	Town and Country Planning Act 1990
2008 Act	Planning Act 2008
Acquisition Land	Plots 34/30, 34/31a, 34/32a 34/32d, 34/35b and 34/36 in the Book of Reference

Application	The application for the DCO dated 31 December 2014
Authorised Development	The “authorised development” as defined in the Draft DCO
Book of Reference	The Book of Reference submitted with the Application
Brampton Road Bridge	The existing bridge carrying Brampton Road over the East Coast Main Line known to Network Rail as ECM1/148
Company	The Great Northern Railway Company
Corpus Christi Bridge	The existing bridge over the East Coast Main Line on the Corpus Christi Bridge Land known to Network Rail as ECM1/139
Corpus Christi Bridge Land	Plots 9/7, 9/8 and 9/9 in the Book of Reference as shown on Sheet 9 of the Land Plans
DCO	The proposed A14 (Cambridge to Huntingdon) Development Consent Order 201[ ] which is the subject of the Application
DCLG Guidance	DCLG Guidance “Planning Act 2008: Guidance related to the procedures for compulsory acquisition” (September 2013)
Draft DCO	The draft DCO submitted with the Application
EHCR	The European Convention of Human Rights
Existing Access	The existing access road into Huntingdon Station from Brampton Road
Land Plans	The land plans submitted with the Application
Network Rail	Network Rail Infrastructure Limited
Network Rail Land	Plots 9/7, 9/8, 9/9, 9/16b, 34/30, 34/31a, 34/32a, 34/32b, 34/32d, 34/35a, 34/35b and 34/36 in the Book of Reference
Network Rail Rights Land	Plots 34/25b, 34/25d, 34/25e, in the Book of Reference
New Bridge	The proposed new bridge over the East Coast Main Line on the New Bridge Land being Work 5(jj) in the Draft DCO
New Bridge Land	Plot 9/16b in the Book of Reference as shown on Sheet 9 of the Land Plans
New Northern Access	The proposed new access to Huntingdon Station to the east of the East Coast Main Line being Work 36(b) in the Draft DCO shown as New Private Means of Access Number 5 on Sheet 28 of the Rights of Way and Access Plans
New Southern Access	The proposed new access to Huntingdon Station to the east of the East Coast Main Line being Work 36(c) in the Draft DCO shown as New Private Means of Access Number 6 on Sheet 28 of the Rights of Way and Access Plans
New Southern	Plot 34/35b and 34/36 in the Book of Reference as shown on Sheet 34

Access Land	of the Land Plans
North East Car Park	The car park situated to the east of the Existing Access adjacent to Brampton Road
Northern Car Parks	The two northernmost car parks at Huntingdon Station situated to the east of the East Coast Main Line.
North West Car Park	The car park situated to the east of the Existing Access adjacent to Brampton Road
OLE	Overhead Line Equipment (ie the overhead electric line used by electric locomotives)
Promoter	The promoter of the Application
Railway	The railway constructed pursuant to the 1846 Act
Rights of Way and Access Plans	The rights of way and access plans submitted with the Application
Southern Car Park	The southernmost car park situated to the east of the East Coast Main Line.
Statement of Reasons	The Statement of Reasons submitted with the Application
Temporary Possession and Rights Land	Plots 9/7, 9/8, 9/9, 9/16b and 34/35a, in the Book of Reference
Temporary Possession Land	Plot 34/32b in the Book of Reference
Undertaker	The Undertaker as described in the DCO
Water Tank and Outfall	The proposed mew attenuation/treatment tank proposed to be constructed on the Water Tank Land being Work 36(c) in the Draft DCO
Water Tank Land	Plot 34/35a in the Book of Reference as shown on Sheet 34 of the Land Plans

2. **SUMMARY**

2.1 Subject to the proper protection of Network Rail's statutory undertaking, Network Rail does not object in principle to the making of the DCO. However at the time of submission of this document Network Rail's interests are not adequately protected and its objection is therefore sustained. Network Rail's objection is limited to those parts of the proposed DCO affecting its operational land and described in this representation.

2.2 Specifically, Network Rail objects to the following:

2.2.1 The granting of powers of compulsory acquisition over the Network Rail Land. These would cause serious detriment to the carrying on of Network Rail's railway undertaking contrary to Section 127 of the 2008 Act and it would not be in the public interest to grant such powers under Section 122 of the 2008 Act.

2.2.2 The current wording of the Draft DCO and the Application, including:

(a) The absence of adequate protective provisions, in the standard form, in favour of Network Rail.

(b) The transfer of the benefit of the DCO pursuant to Article 9 of the Draft DCO.

(c) The lack of an appropriate mechanism in the Draft DCO for ensuring that the Undertaker is responsible for the maintenance of the New Bridge.

(d) The lack of a vehicle/weight restriction in respect of the Corpus Christi Bridge.

(e) The lack of suitable assurances regarding the maintenance of access to Huntingdon Railway Station during the carrying out of the Authorised Development and after the Authorised Development has been completed.

(f) The lack of suitable assurances regarding the provision of suitable and adequate car parking and replacement car parking at Huntingdon Railway Station during the carrying out of the Authorised Development and after the Authorised Development has been completed.

(g) The installation of the Water Tank and Outfall in the Southern Car Park.

(h) The extent and duration of the permanent and temporary land-take of the Draft DCO in respect of the Railway Land.

2.2.3 Network Rail not being shown in the Book of Reference as the owner of Plots 34/31a 34/35a and 34/35b.

2.2.4 Work to install bridge would interfere with the OLE. Adequate provision not made for the carrying out of these works and the safety of the railway.

2.2.5 Until the above issues are resolved to Network Rail's satisfaction the making of the DCO.

Bond Dickinson LLP

5 June 2015