

Application by North Somerset District Council for Portishead Branch Line – MetroWest Phase 1

Examining Authority's Further written questions and requests for information (ExQ2)

ExQ2	Question to	Question
CA.2.1	<i>Freightliner</i> The Applicant Freightliner	Provide an update on the negotiations regarding the acquisition of plots 17/05, 17/15, 17/20 and 17/10 with particular reference to plot 17/15 (the access across the site) where there were concerns regarding the operational viability for the current users. Indicate whether these are likely to be successfully concluded before the close of the Examination and if so whether the objection to CA of these plots is likely to be withdrawn before the close of the Examination.

Response on behalf of Freightliner

Plots 17/05 and 17/10

As noted in our Deadline 2 written representations dated 23 November 2020 Freightliner is negotiating heads of terms for an option agreement with Network Rail for sub-leases of these two plots. We noted in our representations that negotiations had stalled for months due to the failure by Network Rail to respond to correspondence.

On the date that we submitted those written representations, Network Rail responded to the correspondence and there have been further discussions between the parties since then. Freightliner has today received correspondence which it is considering. Freightliner remains hopeful that the heads of terms can be agreed before the close of the Examination.

Plots 17/15 and 17/20

We wrote by email to the Applicant's solicitors Womble Bond Dickinson on 23 November 2020 noting the failure of Network Rail to progress the heads of terms as set out above but also noting that the Applicant would need to provide assurances that it would not exercise its CA powers under the Order. The following comprises the relevant text in the email:

"In addition to settling the heads of terms and then option agreements for plots 17/05 and 17/20, we will need agreement with the Promoter and NR in relation to the following matters in order to allow Freightliner to withdraw its RR.

- *That the Promoter will not exercise its temporary possession powers in relation to plots 17/05 and 17/20.*
- *That the Promoter will not exercise its temporary possession powers in relation to plots 17/10 and 17/15 provided that Freightliner provide an appropriate means of access to NR over its*

land plots 17/04 and 17/20 for the duration of the sub-leases, as set out in the heads of terms (as you will recall the proposed use of plot 17/15 would blight the land generally and prevent any commercial sub-letting from taking place, which would in turn substantially increase Freightliner's compensation claim).

We're open to suggestions as to how best to document this – whether in the option agreements or by a separate tri-partite agreement but clearly this need to be progressed quickly given the examination timetable.”

We have not received a response to that email. Although it should be relatively straightforward to resolve the issues relating to plot 17/15, in the absence of any engagement by the Applicant we do not think it likely that Freightliner's objection can be withdrawn before the close of the Examination and we will invite the Examining Authority to recommend that no CA powers are granted in relation to the relevant plots.

16 February 2020
Town Legal LLP for Freightliner Ltd