

**THE TRANSPORT AND WORKS ACT 1992
PROPOSED THE TRANSPORT AND WORKS (INQUIRIES AND PROCEDURE)
RULES 2004
THE FELIXSTOWE BRANCH LINE AND IPSWICH YARD IMPROVEMENT ORDER**

ENGLISH WELSH & SCOTTISH RAILWAY LIMITED

**SUMMARY PROOF OF EVIDENCE
OF
NIGEL OATWAY**

1. I am Nigel Oatway and am employed by EWS as Access Manager and have held that post for 10 years. I have worked in the rail industry for over 26 years.

EWS

2. EWS leases Ipswich Yard from Railtrack Plc, now Network Rail, on two 125-year lease agreements, and also operates a large number of other rail freight yards throughout the country on similar leasehold arrangements.
3. EWS is not opposed to the principle of the enhancements proposed to be undertaken to the Felixstowe Branch Line and Ipswich Yard under the proposed Order, but believes that the powers of compulsory purchase are in many cases unnecessary, and has further concerns about charges and compensation.

Objections

Objection 1 - failure to establish requirement for CPO

4. The compulsory acquisition of Ipswich Yard is unnecessary for the following reasons:
5. First, the proposed improvements to Ipswich Yard are no different to those undertaken at EWS's yards around the country by agreement with Network Rail and other third parties.
6. For example, a similar project was undertaken in 2005/06 to develop the sidings at EWS's Kingsbury Yard to facilitate the new Birmingham International

Freight Centre and Birch Coppice Branch Line development, by agreement through normal industry processes (e.g. Network Change and ORR's Policy Framework for Investments) without the need for compulsory purchase.

S16A of the 1993 Act (as amended)

7. It is not necessary for FDRC to hold compulsory powers in reserve should agreement not be reached, since the Railways Act 1993 (as amended by the Transport Act 2000) ('the Act') now provides powers for such an eventuality.
8. Sections 16A to 16I of the Act have, since October 2005, allowed for ORR to direct a facility owner (in the case of Ipswich Yard, EWS) to make enhancements to its facility on the application and cost of a relevant third party. The Department for Transport considers that the power is intended for use when it is clearly in the interests of the railway generally for the improvement to be made, but the individual railway operator managing the railway asset concerned may have no commercial incentive to make the improvement itself unless directed to do so. An ORR code of practice for dealing with such applications was published in November 2006.
9. This new power removes the ability for any individual railway operator to block schemes unreasonably and would therefore allow such schemes to proceed without the use of compulsory purchase powers.
10. It is unlikely that the Secretary of State would refuse to give his consent for sections 16A to 16I of the Act to be used if it was in the furtherance and achievement of a scheme he had already approved by granting the proposed Order.

No need for permanent acquisition

11. Even if compulsory powers are retained under the terms of the proposed Order, it is unnecessary for the land to be acquired permanently.
12. The Environmental Statement states at paragraph 1.6.19 that the construction period is assumed to be 11 months. This is insufficient justification for acquiring the land in perpetuity and at most it should be subject to rights of temporary occupation only, to be exercised in reserve, should EWS fail to allow FDRC suitable temporary occupation of the site.

13. Compulsory powers should not be used as a means to effect changes in ownership of leases to third parties following the works, and such powers are also unnecessary. Ipswich Yard is an open access facility and therefore EWS has obligations to ensure that all users of the facility are treated on a fair and non-discriminatory basis. Potential users have a right under section 17 of the Act to apply to ORR for directions if they feel they have been unfairly treated in any way.
14. The plan at exhibit NJO 2 provided to EWS by FDRC following the pre-inquiry meeting suggests that FDRC do not require the whole of Ipswich Yard for the works and so it is not necessary to acquire the entire area set out on the deposited plans. The plan also suggests that the compulsory powers in the order are being used to alter lease areas between different rail freight operators.

Objection 2 - CPO – Felixstowe Branch Line

15. A similar argument applies to the proposed compulsory acquisition of the land occupied by the Felixstowe Branch Line.
16. The compulsory purchase of various parts of the line, both on a permanent and temporary basis as set out in the proposed Order, would have the effect of preventing EWS from operating its existing and future rail freight services along the line under its long-term track access agreement with Network Rail.
17. The acquisition of any land containing railway infrastructure would effectively close the Felixstowe Branch Line and Ipswich Yard unless FDRC either obtains the necessary operating licence and safety authorisation required to operate a railway network, or alternatively obtains these permissions by sub-contracting the obligations to a competent third party.
18. The section 16A of the Act powers referred to in paragraphs 7 to 10 above, reinforced by Network Rail's obligations under Conditions 7 and 26 of its Network licence may also be used, if necessary, to allow FDRC to apply for directions from ORR to effect the necessary modification to Network Rail's Felixstowe Branch Line, rendering compulsory purchase powers unnecessary.

Objection 3 - Article 35 – power to charge fares

19. EWS is concerned that Article 35 of the proposed Order allows FDRG to demand, take and recover or waive such charges for carrying passengers or goods on the Felixstowe Branch Line or in Ipswich Yard as it sees fit.
20. Felixstowe Branch Line and Ipswich Yard are governed by the rules and criteria on levying access charges that are laid down in the Act and in EU Directive 2001/14/EC which has been transposed into UK law by means of the Railways Infrastructure (Access and Management) Regulations 2005.
21. The proposed compulsory purchase will not exempt these railway assets from this legislation. Charges for use of these railway assets will continue to be subject to the approval of ORR within the charging principles laid down in its Periodic Charging Reviews and the Railways Infrastructure (Access and Management) Regulations 2005 and therefore, cannot be as FDRG 'thinks fit'.

Objection 4 - Compensation

22. EWS is concerned that the works required to undertake the detailed developments under the proposed Order will not be progressed through the normal railway industry procedures thereby denying operators, such as EWS, the opportunity to make representations and seek proper compensation.
23. Train operators, including EWS, have a contractual right to compensation for disruption and so on suffered as a consequence of certain projects (known as Network Changes) undertaken on the network. These rights are set out in Part G of the Network Code, which is incorporated by reference in EWS's track access agreements with Network Rail.
24. EWS is concerned that the works on the Felixstowe Branch Line and Ipswich Yard comprised in the proposed Order will not give rise to entitlement to compensation for disruption pursuant to the provisions of Part G of the Network Code.
25. It is common for similar schemes to provide for such compensation and the list at Exhibit at NJO 4 gives some of these. One scheme in particular is similar in many respects to the proposed Order. The (London Gateway Logistics and Commercial Centre) TWA Order 2002, which the Secretary of State is minded to confirm, concerns the development of the port of Shell Haven in Essex and

its associated Branch Line. This Order contains a provision for the protection of railway interests.

Conclusion

26. In conclusion, I summarise my evidence and what action I request the Inspector recommends in his report.
27. First, plots 5, 6, 8 and 9 should be removed from the scope of the compulsory acquisition powers in Article 19 of the Order as the works can be undertaken by agreement with EWS, failing which the powers of sections 16A to 16I of the Act can be used
28. Secondly, if argument against compulsory powers is not accepted, plots 5, 6, 8 and 9) should be subject only to temporary occupation under Article 24.
29. Thirdly, compulsory powers should not be used in respect of the Felixstowe Branch Line (plots 13, 15, 19, 23, 24, 25, 46, 51, 61, 64, 81, 83, 89, 93, 94, 118, 120, 122 and 124) as again the works should be carried out by agreement or using section 16A to 16I of the Act.
30. Fourthly, the correct compensation regime should be used by inserting provisions similar to those exhibited at NJO4.
31. Fifthly, Article 35 of the proposed Order should be amended to reflect the current UK and EU legislation in respect of access charges.