

**THE TRANSPORT AND WORKS ACT 1992
PROPOSED FELIXSTOWE BRANCH LINE AND IPSWICH YARD IMPROVEMENT
ORDER**

ENGLISH WELSH & SCOTTISH RAILWAY LIMITED

**PROOF OF EVIDENCE
OF
TIMOTHY ROBINSON**

1. I am Timothy Robinson and I have been employed by English Welsh & Scottish Railway Limited ('EWS') as General Manager Commercial for 15 months. Prior to that I was Commercial Director for GB Rail Freight Limited
2. My evidence is in support of EWS' objections to the application of the Felixstowe Branch Line and Ipswich Yard Improvement Order ('the proposed Order') made on behalf of the Felixstowe Dock and Railway Company ('FDRC').

Scope of this evidence

3. In this proof of evidence I explain:-
 - i. EWS and its commercial objectives;
 - ii. A description of the Ipswich Yard and activities on site including those of EWS' sub-tenant, Freightliner;
 - iii. Details of the CPO proposed in respect of Ipswich Upper Yard and Felixstowe Branch Line;
 - iv. A description of the proposed works to Ipswich Upper Yard and Felixstowe Branch Line;
 - v. The effect of the proposed CPO on EWS leasehold interests at both Ipswich Upper & Lower Yards;
 - vi. The effect of the proposed CPO of parts of the Felixstowe Branch Line in relation to EWS' operations;

- vii. FDRC's failure to establish a requirement to purchase Ipswich Upper Yard compulsorily and details of EWS' offers to undertake the enhancements to Ipswich Upper Yard;
- viii. Details of future operations at Ipswich Upper Yard if the proposed Order is confirmed.

EWS

4. EWS is a dedicated rail freight operator in Britain and Mainland Europe running in the region of 5,500 rail freight services per week. Transporting materials such as coal, aggregates, steel and white goods.
5. In addition EWS operates in the maritime intermodal market i.e. the transfer of overseas containers by rail for onward transportation. This is a market sector in which EWS plans expansion illustrated by £3 million of investment in facilities during 2006.
6. EWS leases both Ipswich Upper Yard and Ipswich Lower Yard, which it occupies as part of its freight operations, from Railtrack Plc, now Network Rail, on two 125-year lease agreements dated 21 February 1996 and 10 April 2001. Part of the Upper Yard is sub-leased by EWS to Freightliner Limited ('Freightliner'). Freightliner is another UK rail freight operator.
7. EWS also operates a large number of other rail freight yards throughout the country on similar leasehold arrangements with Network Rail and also on a freehold basis.

A description of the site

Ipswich Yard

8. EWS occupies land at Ipswich Yard for the support of its rail freight operations in East Anglia. The site contains a large number of railway sidings for the marshalling, stabling, maintenance and storage of railway vehicles used on EWS' services.
9. Ipswich Yard comprises of two separate parts, the Upper Yard and the Lower Yard.

Lower Yard

10. The Lower Yard comprises a let sidings complex and other land and is shown edged blue on the plan attached at exhibit TR1. The Lower Yard is where rail to road transfers may take place. In addition the Lower Yard has facilities to undertake maintenance of railway vehicles.

Upper Yard

11. The Upper Yard lies to the north of Ipswich Station and to the east of the electrified Network Rail Reception Lines. The Upper Yard is shown edged red on the plan attached at exhibit TR2.
12. In addition, the plan at TR3 illustrates the connection between the Upper and Lower Yards.

The Upper Yard Sidings

13. From the nearest Network Rail main line the Upper Yard sidings comprise an electrified double-ended siding known as No 2 Up Road, seven double-ended non-electrified sidings known as Nos. 3 to 8 and 10 Up Roads, one single-ended road (no.9) and lastly 5 non-electrified sidings known as the Unnumbered Back Road and Nos. 1 to 4 Back Roads of which Nos. 2-4 are single-ended. The Back Roads are situated in the South East part of Ipswich Upper Yard near the start of the connection to Ipswich Lower Yard. .
14. Accordingly the lease area comprises 14 sidings, however whilst siding No 2 Up Road is deemed part of Ipswich Upper Yard for operational purposes it actually lies outside EWS' lease area.
15. In addition, sidings Nos. 3 -5 Up Roads are sub-let to Freightliner Limited ('Freightliner'). Further details of the Freightliner sub-lease are given below.
16. Full details of each siding are set out at Exhibit TR4 and identified on the plan at exhibit TR5.

Activities at the Upper Yard

17. The Felixstowe Branch Line can only be accessed from the south, therefore freight trains running to and from the Port of Felixstowe that have come from, or are going to, destinations in the north of England and Scotland must be reversed. This involves the locomotive being detached from the front of the train on arrival and running via an adjacent empty siding to be placed on the other end of the train.
18. This activity is undertaken in Ipswich Upper Yard and Network Rail's reception sidings and currently forms the Upper Yard's main use. Ipswich Upper Yard is also used for the short term recessing of trains whilst awaiting suitable train slots to become available on either the Main Line or Felixstowe Branch for their onward journey.
19. Another key activity in Ipswich Upper Yard is the making up of longer trains from various portions of shorter trains that have travelled from the Port of Felixstowe. This operation is reversed when longer trains arrive in Ipswich Upper Yard and require splitting into shorter portions before continuing their journey to Felixstowe.
20. Given that the Felixstowe Branch Line is not electrified. Accordingly, any freight trains arriving with electric locomotives at Ipswich need to be re-engined with diesel locomotives. This activity normally takes place on the 3 electrified Network Rail reception sidings located adjacent to Ipswich Upper Yard. In addition, the Network Rail reception sidings are used by Freightliner and other train operating companies for services en-route to the Port of Felixstowe.
21. No 6 Up Road is used by EWS for reversing trains.
22. The Back Roads are currently used for the exchange of Fuel Oil tank wagons brought by EWS services from Fawley (near Southampton), which Freightliner then transfers to its fuelling point west of Ipswich Station. The un-numbered Back Road serves as a reversing road for the adjacent No.1 Back Road.

Sublease to Freightliner Limited

23. As mentioned in paragraph 15 above, part of the Upper Yard is sublet to Freightliner a UK rail freight operator who uses the site to support its own rail freight operations in East Anglia.
24. The sublease areas are marked green on the plan at exhibit TR6.
25. Sidings Nos. 3 -5 Up Roads are sub-let to Freightliner. Sidings Nos. 2 to 5 Up Roads are used by Freightliner for reversing purposes and the short-term stabling of portions of trains waiting to be made up into longer trains.

CPO Ipswich Upper Yard

26. FDRC's application proposes the permanent acquisition of certain areas of land which fall within the EWS lease area which comprises the Upper Yard. This area is identified in the deposited plans and equates to 20,514 square metres.
27. The area of the Upper Yard encompassed by the CPO is identified on the deposited plans further copies of which can be found at exhibit TR7 ('the Upper Yard CPO area').
28. The relevant parcels of land which are sought to be compulsorily acquired are identified in the Book of Reference as:

Plot 5

Plot 6

Plot 8

Plot 9

CPO – Felixstowe Branch Line

29. In addition to the above land the Applicant has also applied to acquire permanently and on a temporary basis certain areas of land containing railway infrastructure which are outside EWS' lease area but which EWS utilises in its capacity as a freight operator ('the branch line CPO area').

30. Hutchison Ports UK Limited has allocated 25 train slots under the cranes at the Port of Felixstowe. The Branch Line is used to access these train slots. Nineteen of these are currently used by Freightliner, four by another freight company GB Railfreight Limited and the remaining 2 by EWS.

Description of the Works

Ipswich Yard

31. The proposals for Ipswich Yard are designed to improve capacity in the Yard and create sidings of sufficient length to handle longer container trains. The provision of three improved sidings is required to facilitate the reversal of 24 wagon trains, with a maximum length, including locomotives, of up to 525m. The proposed works are to be wholly within the existing railway boundary and replace existing sidings at the Yard.

Felixstowe Branch Line

32. FDRC propose to undertake works for the dualling of part of the existing Felixstowe Branch Line railway.
33. EWS supports the proposed upgrades of both the Ipswich Yard and the Felixstowe Branch Line. However, the compulsory purchase powers in the Order are not necessary to carry out this work.

The effect of the proposed compulsory purchase of EWS' Leasehold Interest

34. The leased area of Upper Yard extends to in the region of 23,009 square metres. The proposed compulsory purchase of Plots 5, 6, 8 and 9 would constitute the permanent the acquisition of 20,514 square metres of EWS' Ipswich Upper Yard in order to construct the new marshalling yard facility.
35. If the CPO is granted in relation to Ipswich Upper Yard EWS will be left with an area of 2,495 square metres of land within its demise. Clearly it is not possible

for EWS to undertake its operations in such a limited area and accordingly it would be required to cease its operations at Upper Yard.

36. The Lower Yard is where road/rail transfers are carried out. The Lower Yard also has facilities to enable EWS to undertake maintenance of railway vehicles. A further consequence of the works contemplated by the proposed Order will be to close permanently Lower Yard as its rail access will be severed.
37. The loss of its leasehold interest at Ipswich Yard would prevent EWS being able to continue to honour its contractual commitments to its tenant and would restrict customer development and growth of traffic. As stated at paragraph 2 above EWS currently operates in the intermodal market. At present EWS's operations at the Port of Felixstowe are restricted to two trains a day, however during the past 24 months EWS has made a number of approaches to the Port of Felixstowe for additional capacity at the Port which would be supported by operations at the Ipswich Upper Yard. To date these applications have been declined. Upper Yard is key to these development plans.
38. Given the limited capacity at the Port of Felixstowe, EWS welcomes the expansion plans. The intermodal business is based on economies of scale so that in order to be successful a critical mass of trains and an ability to secure and serve volume is required. Using EWS' operations at Southampton as an example EWS has been able to double the size of its operations in less than 12 months and has plans to increase this business by a further 40% in the next 3 months.
39. EWS wishes to replicate the success it has had at Southampton. Key to this is the retention of its facilities at Upper Yard. The compulsory purchase of its leasehold interest in the Upper Yard could prevent such expansion and potentially freeze EWS out of the Port of Felixstowe altogether. Given that EWS's plans referred to above are wholly aligned to those proposed by FDRC it is not accepted that there is a need for transfer of EWS's leasehold interest in the Ipswich Yard.
40. The effect of the CPO is therefore far more wide ranging than simply the purchase of the EWS Upper Yard area. The proposed Order, if granted, will prevent EWS from carrying out its day to day railway business at both Upper

and Lower Yard by removing it permanently from the Upper Yard and rendering unusable its leasehold interest in Lower Yard. Not only that but it could also have the effect of placing severe restrictions upon EWS' future business plans and, it is believed, will remove control to a third party.

The effect of the proposed compulsory purchase of the Felixstowe Branch Line on EWS Operations

41. The compulsory purchase of the railway infrastructure both on a permanent and temporary basis as set out in the proposed Order will have the effect of preventing EWS from operating its rail freight services along the Felixstowe Branch Line.
42. These restrictions are dealt with in some detail in the proof of evidence prepared by Nigel Oatway and therefore I would refer to paragraphs 28-32 of his proof of evidence which deal with this issue.

Objection 1

Failure to establish a requirement for Compulsory Purchase

43. As stated above EWS as a rail freight operator is not opposed to the principle of the modification and improvement of the Ipswich Yard and the dualling of part of the existing Felixstowe Branch Line railway. Nevertheless, the works contemplated by the proposed Order inevitably will have an impact upon EWS' use of its Ipswich Yard and the Felixstowe Branch Lane.
44. EWS is prepared to accept the fact that the proposed works will have an adverse affect on its operations in the short term.
45. Furthermore whilst EWS does not wish rail access to the Lower Yard to be severed, nevertheless if this is inevitable then EWS is prepared to accept this as a consequence of the proposed Order.
46. What EWS is not prepared to accept, however, is that it is necessary for FDRC to permanently deprive EWS of its leasehold interest in the Upper Yard by means of a CPO. Accordingly EWS has a number of serious concerns as to

the impact of the proposed Order as set out in this proof of evidence and the proof submitted by Mr Oatway.

47. EWS does not accept that FDRC have made out a case that the compulsory purchase of the Ipswich Upper Yard is necessary for the scheme to proceed. Nigel Oatway has set out EWS's submissions on the achievement of railway infrastructure improvements by agreement and the mechanism for directions to be given under ss16A-16I of the Railways Act 1993 (as amended) and I endorse these.

EWS proposals for undertaking the works at Ipswich Yard

48. EWS have approached FDRC with a view to undertaking the enhancements to the facility on FDRC's behalf. Details of the suggested Heads of Terms are attached at Exhibit TR8.

Objection 2

Rail Operations at Ipswich Yard if the proposed Order is confirmed

49. Following the pre-inquiry meeting, FDRC provided EWS with a further plan of Ipswich Yard. A copy of this plan can be found at Exhibit TR9.
50. The plan identifies the total EWS lease area as being 23,099 square metres. It also states the EWS leasehold interest outside the area of land subleased to Freightliner is presently 18,579 square metres. The key to the plan suggests that in future this area will be reduced by over half to 9,010 square meetings.
51. The only conclusion which can be drawn from this plan is that it is if the order is confirmed FDRC propose to transfer the leasehold land compulsorily purchased from EWS to Freightliner. Freightliner is a competitor of EWS.
52. This view is supported by a Service Level Agreement provided to me by Freightliner a copy of which can be found at exhibit TR 10. This document sets out Freightliner's future role at Ipswich Yard in the event that the proposed Order is confirmed. In particular I would refer to section 5 of the Agreement which states:

' Freightliner is responsible for management of the Yard and shall remain in control of all activities in the Yard..'

53. Accordingly if the compulsory purchase order in respect of Ipswich Yard is granted EWS will lose its facilities at Upper and Lower Yard, thereby jeopardizing its future plans for traffic growth and potentially locking it out of the Port of Felixstowe altogether. In addition it would appear that land, which FDRRC maintain cannot be returned to EWS under the scheme, will in fact be provided to EWS' competitor Freightliner, which will have the inevitable effect of compounding further the commercial disadvantage to EWS of the proposed Order. I believe this to be an improper use of the compulsory purchase powers of the Transport and Works Act 1992.
54. Furthermore this strategy would confirm EWS' view that it is not necessary for FDRRC to acquire EWS leasehold land at Upper Yard on any or any permanent basis.

Conclusion

55. EWS' objection to the proposed Order is that it considers that it is readily possible to provide the required increased siding capacity at Ipswich Yard without extinguishing EWS leasehold interest in the site by means of a compulsory purchase order. In the circumstances FDRRC have not demonstrated a compelling case in the public interest for the compulsory acquisition of EWS leasehold interests in Ipswich Yard.
56. There, there is no justification for FRDC to compulsorily acquire EWS's leasehold land permanently for works that will take a short time to be carried out. The operation of the re-modelled yard subject to EWS's leasehold can be controlled under the normal railway procedures found in the 1993 Act without prejudice to any interested party. Any other purpose for acquiring the land permanently is not within the scope of the powers in the Transport and Works Act 1992.