

**THE FELIXSTOWE BRANCH LINE AND  
IPSWICH YARD IMPROVEMENT ORDER INQUIRY**

**Main Proof of Evidence**

**Land and Property**

**February 2007**

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**Port of Felixstowe**



infrastructure and regeneration

This proof of evidence relates to the implications of the following application:

Application reference: TWA 05/APP/04

An application under section 1 of the Transport and Works Act 1992 for works to improve Ipswich Yard through the provision of new sidings and other associated works between London Road Bridge and Ipswich railway station and to construct a second railway line in alignment with and to the southern side of the existing Felixstowe Branch Line from a point west of Mile Post 78.5 on the Branch Line to a point east of the railway platforms at Trimley station, to include works to level crossings along the Branch Line, made on 13 December 2005 and including the revisions and amendments submitted to the Secretary of State for Transport on 5 May 2006.

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# 1 INTRODUCTION

1.1 My name is Richard Dean Caten. My academic and professional qualifications are:

1.1.1 MRICS – Member of the Royal Institution of Chartered Surveyors

1.1.2 BSc (Hons) in Land Management

1.2 I was elected a Member of the Royal Institution of Chartered Surveyors in 2000.

1.3 Throughout my professional career, I have been involved in residential and commercial property land acquisition and management in both the private and public sectors. I have also been responsible for land and property acquisition and property related matters concerned with the promotion and development of a number of transport infrastructure schemes.

1.4 I am a Director of Ardent Management Limited (“AML”), a company that was established in 1992 to provide specialised property services concerning the promotion and development of transport infrastructure Schemes and urban regeneration schemes throughout the United Kingdom.

1.5 Since 1999 I have dealt with land and property matters concerned with the promotion of Transport and Works Act Orders and in relation to the ongoing procurement of the Schemes such as;

- 1.5.1 The Docklands Light Railway (DLR) London City Airport Extension;
  - 1.5.2 The DLR Woolwich Arsenal Extension;
  - 1.5.3 The Cambridgeshire County Council Cambridgeshire Guided Busway.
- 1.6 AML has been retained to deal with all land and property matters concerned with the promotion of the Scheme. I am the AML Director responsible for leading the AML team.
- 1.7 My responsibilities include:
- 1.7.1 Assessment of property impact;
  - 1.7.2 Consultation with affected owners and interested parties;
  - 1.7.3 Promotion of the Scheme relative to property matters; and
  - 1.7.4 Production of budget estimates of prospective compensation liabilities to form the basis of an estimated land cost for the purposes of the Estimate of Cost (CD4).
- 1.8 My role includes the management and undertaking of all property matters concerned with the ongoing promotion and procurement of the Scheme.

1.9 There are several aspects to this responsibility, as listed below.

1.9.1 Determination of land and interests temporarily or permanently required for, or affected by, the construction and operation of the Scheme in collaboration with the Scheme team where:

1.9.1.1 FDRC has sought to minimise the extent of its land take, whilst ensuring that it is sufficient for the purposes of the construction and operation of the Scheme, including all necessary working areas, worksites and for necessary mitigation.

1.9.1.2 The criteria adopted for the extent of land to be temporarily occupied for the purposes of construction and permanently acquired, are addressed further in Section 3 of this Proof of Evidence.

1.9.2 Identification of affected landowners and interests – land referencing, where:

1.9.2.1 AML has been commissioned to carry out the task of; identifying the nature of the interests of all landowners and occupiers of property (and interests), required for/or affected by the Scheme and the areas of land to which those interests

extend. The process that has been undertaken and the requisite notices that have been issued are addressed in Section 4 of this Proof of Evidence.

1.9.2.2 The extent of land, within which the Scheme and all related works can be aligned and either possession taken temporarily (for the purposes of construction) or acquired permanently, is that within the Limits of Deviation and the Limits of Land to be Acquired or Used (“the Limits of Deviation”). These different types of Limits of Deviation and their relevance are addressed further in Section 3 of this Proof of Evidence.

1.9.2.3 All land parcels that are within the Limits of Deviation have been designated with their own unique Deposited Plan reference (e.g. “DP1”). Each land parcel can be found on the Deposited Plans and Sections (CD4) and in the Book of Reference (CD4). Each is cross referenced between those two documents.

1.9.3 Discussions with affected parties:

1.9.3.1 In collaboration with the Scheme team, AML is appointed to manage and deal with consultation and to address land matters concerning parties potentially affected, including

those that have lodged formal objections to the Secretary of State against the draft Order (CD4).

1.9.3.2 The status of such consultation is addressed in Section 10 of this Proof of Evidence.

## 2 OUTLINE OF PROOF

2.1 My Proof of Evidence deals with property impact under the following headings:

2.1.1 The identification of the Scheme property requirements and effects–Section 3;

2.1.2 The identification of affected property owners, occupiers and interests-Section 4;

2.1.3 General and site specific property considerations consequent on the Scheme–Section 5;

2.1.4 Liaison with owners and occupiers of affected property and interests–Section 6;

2.1.5 Liaison with owners and occupiers during construction - section 7;

2.1.6 Compensation - Section 8;

2.1.7 Estimated cost of property acquisition – Section 9;

2.1.8 Negotiations with objectors – Section 10;

2.1.9 Issues raised in the Statement of Matters – Section 11;

2.1.10 Conclusions – Section 12.

### **3 FELIXSTOWE BRANCH LINE AND IPSWICH YARD IMPROVEMENT SCHEME REQUIREMENTS**

3.1 The Scheme has been described in the Statement of Case and the Proof of Evidence of Mr Richard Spoons (App/21).

3.2 In respect of the guidance set out in Circular 06/2004 (CD85) a compelling case for the acquisition of land is set out in the Proof of Evidence of Mr Andrew Harston (App/1) and Mr Richard Spoons (App/21) together with those of the other witnesses.

#### **Categories of Land to be Acquired or Used**

3.3 There are two distinct categories of land to be acquired or used, as described in the draft Order (CD4) and shown on the Works and Land Plans (CD4). These are namely, the Limits of Deviation, and the Limits of Land to be Acquired or Used (collectively known as “the Limits of Deviation”). The two categories are summarised as follows:

#### **Limits of Deviation**

3.4 This category of land contains land required both temporarily and permanently for the construction and maintenance of the Scheduled Works.

## **Limits of Land to be Acquired or Used**

3.5 This category relates to land that will need to be occupied temporarily, for the purposes of construction of the Scheme and land, over which permanent ancillary rights and interests will be acquired in accordance with Schedule 2 of the Order (CD4). These requirements are shown in Appendix 1.

3.6 There are no special categories of land to be acquired as part of the Scheme. The Scheme avoids any requirement for the acquisition of any listed buildings, open space (as defined by Section 19 of the Acquisition of Land Act 1981), land within the Green Belt and any other special category of land listed in Rule 12 (7) (c) of the Transport and Works (Application and Objection Procedure England and Wales) Rules 2000 (“the Rules”) (CD28). I can therefore confirm on behalf of FDRC that no open space is proposed to be acquired as part of the draft Order (CD4).

## **Site Specific Requirements and Criteria**

3.7 To enable construction and use of the Scheme, it has been necessary to incorporate powers into the draft Order (CD4) that enable FDRC to occupy, use and acquire land owned or occupied by certain bodies with a statutory function. At Section 10 of this Proof of Evidence I describe the current status of discussion with English Welsh and Scottish Railway Limited and Freightliner Limited. The interface of the proposed Scheme and other

bodies with statutory functions is described further in the Proofs of Evidence of Mr Andrew Harston (App/1) and Mr Richard Spoor (App/21).

### **Extent of Limits of Deviation and of Land to be Acquired or Used**

3.8 As noted above, FDRC will minimise the extent of land and rights acquired permanently outside of the railway corridor, so as to take merely land and interests necessary for the implementation of the Scheme.

3.9 FDRC's intention is to limit the extent of its acquisition of land to: -

3.9.1 The land occupied by the permanent structures associated with the Scheme, including the works and equipment.

3.9.2 The land that will not be reinstated and will be modified permanently, which will include land required for railway, structures and equipment.

3.9.3 Rights and easements for services and access to FDRC's permanent structures, infrastructure and equipment.

3.10 The transfer of all land and rights will be undertaken either by agreement, or where the parties are unable to agree, or where it is impractical to do so, by exercising the powers of compulsory acquisition contained within the draft Order (CD4).

3.11 For a Scheme of this size and nature, the fact that there are no properties that are required to be demolished is a positive attribute of the Scheme. Structures that require modification are described in Mr Richard Spoor's Proof of Evidence (App/21).

### **Extent of Land to be Used Temporarily**

3.12 As noted above, beyond that land required permanently and to be used both for the purposes of construction and the permanent structures concerned with the Scheme, FDRRC requires land temporarily. FDRRC will minimise the extent of land temporarily occupied for the purposes of construction of the Scheme.

3.13 Land is required temporarily for construction work sites for the development of the Works. There are six major work sites required for the Works. The land parcels required for these work sites are described in the Proof of Evidence of Mr Richard Spoor (App/21).

## **4 IDENTIFICATION OF AFFECTED PROPERTY OWNERS, OCCUPIERS AND INTERESTS**

4.1 Through the development and selection of the proposed Works, consultation and enquiries, FDRC has an extensive understanding of the land and interests affected by this Scheme. It has therefore been possible to identify in detail those owners, occupiers and interests whose property is affected.

4.2 In part, this has been achieved by undertaking a land referencing exercise. This was carried out in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 (CD28), the information gathered on all land and property interests has been compiled into the Book of Reference (CD4), which corresponds with the land parcels shown on the Works and Land Plans (CD4).

4.3 In support of the application (CD4), certain formal notices have been required to be served, and placed on site, in accordance with the Transport and Works (Applications and Objections Procedures) (England and Wales) Rules 2000 (CD28), which govern the application (CD4) being:

4.3.1 Rule 14(7) notices have been displayed in the form of Form 4 in Schedule 3 to the Rules (CD28) upon the right of way or street at, or as close as is reasonably practicable to, each point of

extinguishment, diversion, stopping up or restriction potentially affected by the exercise of the provisions of the draft Order (CD4).

4.3.2 Rule 15 notices have been served in the form of Form 6 in Schedule 3 of the Rules (CD28) upon all those named in the Book of Reference (CD4).

4.4 Throughout all stages of the promotion of the Scheme, FDRC has sought to consult with all affected landowners occupiers and interest holders. It has done so by various means, including telephone contact, correspondence and meetings. FDRC has approached all affected landowners, occupiers and interested parties and has responded to those who have shown an interest in being consulted. This includes all those landowners and occupiers that have lodged formal objections against the application (CD4) to the Secretary of State.

4.5 In Section 10 of this Proof of Evidence, I identify the approach that FDRC has taken with landowners and occupiers within the Book of Reference (CD4) that have objected to the Scheme (excluding Statutory Undertakers).

4.6 Given the number of discrete land parcels required for the Scheme and the number of discrete land owners affected by this Scheme, I am satisfied that powers of compulsion are necessary for FDRC to deliver the Scheme.

## **5 GENERAL REQUIREMENTS AND CRITERIA AND SITE-SPECIFIC PROPERTY CONSIDERATIONS CONSEQUENT ON THE SCHEME**

- 5.1 A basic principle underlying the planning of the Scheme has been to reduce, as far as is possible, the impact of the Scheme on private property. It is however inevitable, that there will be some impact on property in delivering this capacity enhancement Scheme.
- 5.2 FDRC has sought to minimise the construction impacts on affected landowners and properties. Temporary possession of land or interests in land will only be taken if they are necessary for the construction of the Scheme. The construction methodology is described further in the Proof of Evidence of Mr Richard Spoor (App/21).
- 5.3 FDRC has sought to minimise the permanent land requirements outside of its existing land ownership. Land or interests in land will only be permanently acquired outside of existing railway land, if they are necessary for the permanent structures and works associated with the Scheme and their protection and maintenance. FDRC's acquisition will be limited to rights and interests in land, airspace or subsoil, where it is not necessary to acquire a freehold interest in the whole of a property, for the purposes of the safe, efficient and economic operation of the Scheme or the protection and maintenance of the structures.

5.4 Certain construction activities in certain instances temporarily affect, in other instances the operation of the enhanced Branch Line will permanently affect rights of way. These affects are described further in the Proofs of Evidence of Mr Andrew Cann (App/121) and Mr Richard Spoons (App/21).

## **6 LIAISON WITH OWNERS AND OCCUPIERS OF AFFECTED PROPERTY AND INTERESTS PRE-CONSTRUCTION**

6.1 As at the date of this Proof of Evidence, there have been a total of 59 formal objections made to the Secretary of State concerning the Scheme, in respect of the Application and the draft Order (CD4). Of these, eight are landowners or occupiers within the Book of Reference (CD4) that wholly or partly relate to matters concerning property impact.

6.2 FDRC has had contact with all objectors who are listed within the Book of Reference (CD4). In many instances, meetings have been held where I, or one of my colleagues, have met with the Objector or their representative to find out whether there is a basis to overcome the objections. Progress with a number of objectors has been achieved by either explaining the detail of the Scheme, or working with the Objector to minimise the effect of the Scheme on their land and property.

6.3 In the case of five out of the eight statutory land objectors, agreements are being negotiated that satisfy those concerns raised by Objectors. This is described further in Section 10 of this Proof of Evidence.

6.4 In the case of Objectors 4 and 5, the original objection relating to the proposed footbridge at Westerfield Level Crossing has changed status. The status of the objection no longer relates to the impact on land and

property due to the proposed footbridge, as it has been removed from the Scheme. The Objectors have been notified, however the objections have not been withdrawn.

## **7 LIAISON WITH OWNERS AND OCCUPIERS DURING CONSTRUCTION**

- 7.1 FDRC as required by the Code of Construction Practice (pursuant to the draft Planning Conditions), will during the course of construction of the Scheme carry out regular liaison with owners and occupiers along the route.
- 7.2 This will be done by the contractors appointed to design and construct the Scheme, but under the supervision of FDRC.
- 7.3 It is anticipated that liaison on this basis will enable relationships to be established between the affected landowners and occupiers and the contractors, that will prove responsive and harmonious. Interfaces will be strictly managed and controlled in accordance with undertakings given and agreements reached.
- 7.4 In my experience, through involvement with other similar Schemes, the above approach will enable FDRC's staff and representatives to deal quickly and efficiently with matters raised by affected parties.
- 7.5 FDRC is seeking to agree the terms of the CoCP with the Local Authorities, and the Inquiry will be updated when an agreement has been reached. This is described further in the Proof of Evidence of Mr Ian Gilder (App/41).

- 7.6 The CoCP will regulate construction-working practices, in relation to environmental considerations and construction impact.
- 7.7 A requirement of the CoCP is that a “Liaison Officer” is appointed, whose role it will be to liase between FDRC, its Contractors and third parties, regarding any issues and concerns that arise with construction. This basic remit of the Liaison Officer, will be to seek a prompt response to any concerns raised and to ensure that they are satisfactorily addressed.
- 7.8 The Contractors will be required to comply with the Code of Construction Practice towards mitigating environmental and construction impacts.
- 7.9 In certain cases FDRC has, or is in the course of, entering into specific agreements with those third parties affected to regulate the interface between the Scheme and the third party’s land and property. Where agreements have been reached with affected parties or undertakings given, the arrangements will be passed on by FDRC to the contractor appointed to design and construct the Scheme.
- 7.10 It is not anticipated that damage to property, which is not required for the construction of the Scheme, will occur as a result of the construction.
- 7.11 However, where it is considered that there is a prospect of damage occurring to property in close proximity to the works, owners and occupiers

will be approached to agree a schedule of defects, prior to the commencement of construction in the area. Where damage does occur, action will be taken to make good.

7.12 Where land is occupied temporarily for the purposes of construction, as summarised in Section 3 of this Proof of Evidence, FDRC intends to reinstate the land to the reasonable satisfaction of the owners before vacating and handing it back.

## **8 COMPENSATION**

- 8.1 Consultation with affected landowners and occupiers to date has reflected the recommendations contained in Circular 06/2004 (CD85). In the process of acquiring land for the Scheme, the guidance of Circular 06/2004 (CD85) will be taken into account as will the relevant provisions that are contained within the planning and compulsory purchase legislation.
- 8.2 I understand that compensation is not a matter for the public inquiry. However, compensation will be assessed based on the market value of land and property, together with any disturbance losses and claimant's associated professional fees. Any disputes that arise in relation to compensation will be referred to the Lands Tribunal.
- 8.3 Compensation for land occupied temporarily under Article 24 of the draft Order (CD4) will be assessed in accordance with that Article.
- 8.4 Where land is permanently acquired compensation for affected parties will be assessed in accordance with the compensation code.

## 9 NEGOTIATIONS WITH OBJECTORS

9.1 Set out in Table 1 below are all of the statutory objectors that have raised property related issues within their objections. The objections FDRC's basic response and an overview of the current status is detailed further below.

Table 1 - Statutory Property Objectors

<b>Obj No.</b>	<b>Objector</b>
1	Jill Southgate
4	Barbara Ann Race
5	Muriel Lawrence
16	D & A Parkes
23	Nigel Geoffrey Smith
26	Mr & Mrs DA Gillingham
29	Anthony Webb
30	Christine Mann
35	English Welsh & Scottish Railways Limited
36	Scotts Company (UK) Limited
37	Freightliner Limited
39	Paul Vyse
43	David B King
46	Tony Flower & Alison Malcolm

9.2 Objections, 1 Jill Southgate, 16 D & A Parkes, 26 Mr & Mrs DA Gillingham, 30 Christine Mann, 43 David B King, 46 Tony Flower & Alison Malcolm

9.2.1 Date of Objections – 16 December 2005, 22 January 2006, 29 January 2006, 29 January 2006, 31 January 2006, 1 February 2006

9.2.2 Grounds of Objection

9.2.2.1 *Devaluation of property as a consequence of the Scheme.*

9.2.3 Response to the Grounds of Objection

9.2.3.1 Matters relating to physical affects of the Scheme and mitigation are described in the Proofs of Evidence of Mr Richard Spoons (App/21), Mr Bernard Postlethwaite (App/81), Mr John Drabble (App/101) and Mr Ian Guildler (App/41). Compensation will be assessed in accordance with the compensation code and is described further in Section 8 to my Proof of Evidence. Essentially, this is not a matter for the public inquiry.

9.3 Objections 4 Barbara Ann Race & 5 Muriel Lawrence

9.3.1 Date of Objections – 8 January 2006 & 31 December 2005

9.3.2 Grounds of Objection

9.3.3 *The use of land for the proposed bridge at Westerfield Level Crossing and its associated impacts on property and property values.*

9.3.4 Response to Grounds of Objection

9.3.4.1 As described in Section 6 of this Proof of Evidence, the proposed bridge works and consequent land requirements have now been removed from the draft Order (CD4). The Objectors have been notified, however the objections have not been withdrawn.

9.4 Objection 23 – Nigel Geoffrey Smith

9.4.1 Date of Objection – 27 January 2006

9.4.2 Grounds of Objection

9.4.2.1 *On the basis of the information currently available, the land which is stated to be acquired is excessive.*

9.4.2.2 *The period for which the land is to be occupied is indeterminate except that it is related to the completion of the works.*

9.4.2.3 *The works will interrupt the efficient operation of Mr Smith's farming business, for which no provision has been disclosed.*

### 9.4.3 Response to Grounds of Objection

9.4.3.1 The requirements for the land included within the draft Order (CD4) and shown on the Works and Land Plans (CD4) are described in the Proof of Evidence of Mr Richard Spors (App/21). Based on this evidence I am satisfied that there is a compelling case for the inclusion of this land within the draft Order (CD4). The requirements for the land have been explained to the Objector and I understand that this is no longer a point of objection being pursued by Mr Smith.

9.4.3.2 The period of occupation relates to the proposed Works. The temporary powers are necessary for the delivery of the Scheme. I understand that this is no longer a point of objection being pursued by Mr Smith.

9.4.3.3 The operational aspects of the railway, the barriers and their effects are described in the Proof of Evidence of Mr Richard Spors (App/21).

### 9.4.4 Status and comments

9.4.4.1 Through meetings and correspondence, Mr Smith is satisfied in relation to his points of objection relating to land requirements. Mr Smith's concerns remain regarding the effects of barrier down time and any consequent delay on

vehicles servicing his farming business and these are described in the Proof of Evidence of Mr Richard Spoons (App/21).

## 9.5 Objection 29 – Anthony Webb

### 9.5.1 Date of Objection – 27 January 2006

### 9.5.2 Grounds of Objection

9.5.2.1 *The level of noise and vibration from rolling stock movement, of which there is a greater preponderance through the night, would be exacerbated, denigrating the lives of those subjected to it. Compensation in monetary terms is a derisory way of dealing with it.*

9.5.2.2 *There appears to be no legislative control over axle weight or frequency of rolling stock movements and at what time of day or night.*

9.5.2.3 *Felixstowe port is owned by a foreign private company, which has expanded physically into the estuary of the River Orwell and Harbour. It would now appear that they want to do the same landwards.*

9.5.2.4 *Suffolk, and particularly the peninsula on which Felixstowe is situated has no natural undulation in the terrain, therefore vibration, noise and visual incursion become all pervading.*

### 9.5.3 Response to Grounds of Objection

9.5.3.1 Mr Webb is the landowner of the land to the north east of plot number 42. Mr Webb was served with a Rule 15 notice under the Rules (CD4) in relation to plot number 42 and is listed in the Book of Reference (CD4) as having an interest in plot 42. Mr Webb is recorded as having an interest, as at the time of application the legal boundary of Mr Webb's land was not entirely clear. Further investigation of the Land Registry and of Network Rail's landownership documents, has confirmed that Mr Webb does not have an interest in plot 42 and is therefore not a Statutory Objector.

9.5.3.2 In relation to the points of objection; issues relating to the Ports operation and the need for the Scheme are described further in the Proof of Evidence of Mr Andrew Harston (App/1), noise and vibration issues are described further in the Proof of Evidence of Mr John Drabble (App/101) and Mr Bernard Postlethwaite (App/81).

### 9.5.4 Status and Comments

9.5.4.1 Discussion and correspondence has been on going with Mr Webb. However, Mr Webb has confirmed that he does not

wish to discuss his objection further with FDRC, but instead wants to make his points to the Inspector at the inquiry. As MR Webb's land is not included within the draft Order (CD4), I believe that his objection does not therefore relate to land and property issues.

## 9.6 Objection 35 – English Welsh & Scottish Railway

### 9.6.1 Date of Objection – 2 February 2006

### 9.6.2 Grounds of Objection

9.6.2.1 *The Compulsory Purchase Powers contemplated by the proposed Order, if exercised will prevent EWS from operating its rail freight services along the Felixstowe Branch Line and prevent it carrying out its day to day railway business on its site at Ipswich Yard. The acquisition of any land containing railway infrastructure will effectively close the Felixstowe Branch Line and Ipswich Yard unless the applicants either obtain the necessary operating license and safety case required to operate a railway network or procure these services from a competent third party. Whilst the proposed Order allows for the transfer of the works to Network Rail to presumably become or remain, as the case may be, part of the national railway network, this is by no means certain.*

9.6.2.2 *EWS is not convinced that the case has been made that the compulsory purchase of Ipswich Yard is essential for the scheme to proceed and therefore questions the need for compulsory purchase powers in this respect. Furthermore, EWS believes that the compulsory purchase powers of land containing railway track and associated facilities contemplated by the proposed Order, in particular Ipswich Yard, are not necessary in any case. In respect of Ipswich Yard, EWS is perfectly willing to enter discussions with FDRC with a view to carrying out enhancements to its facility on FDRC's behalf and cost. However, even if in the unlikely event of these discussions being unsuccessful, EWS considers that FDRC would be able to rely upon existing legislation contained in section 16A of the Railways Act 1993 (as amended by the Transport Act 2000). These powers allow for the Office of Rail Regulation to direct a facility owner, in the case of EWS, to make enhancements to its facility on the application and cost of a relevant third party. Therefore, negotiation backed existing legislation would avoid the need for the compulsory purchase powers of Ipswich Yard, which would be so damaging to EWS's business. EWS also considers that these powers may also be used, if necessary, to allow FDRC to apply for directions from the ORR to effect modifications to Network Rail's Felixstowe Branch Line thereby also bringing into question*

*the need for compulsory purchase powers in respect of Network Rail's operational land.*

9.6.2.3 *Ipswich Yard is effectively made up of two parts, the Upper Yard, which is required for development in connection with the proposed works and the Lower Yard, which is not. EWS is concerned that the proposed works in the Upper Yard will effectively close permanently the Lower Yard, as its rail access will be severed. The Lower Yard, which is where any road/rail transfers are carried out and where EWS undertakes maintenance of railway vehicles, would therefore become unusable as a rail freight facility. EWS is also concerned that the loss of Ipswich Yard would prevent EWS being able to continue to honour its contractual commitments to its tenants and access beneficiaries.*

9.6.2.4 *The works required to implement the developments under the proposed Order will require temporary or permanent changes or additions to be made to structures on the formation of the Felixstowe Branch Line and within Ipswich Yard. As sufficient detail as to the actual modifications is not yet available, EWS is concerned that these changes will impose unacceptable restrictions on the operation of EWS's current and future rail operations. Such restrictions could affect, for example, the speed of EWS's trains therefore affecting journey time.*

- 9.6.2.5 *The works required to implement the developments under the proposed Order will cause temporary or prolonged interruption to the continuous availability of the Felixstowe Branch Line and Ipswich Yard thereby disrupting EWS's rail operations through the imposition of restrictions of use.*
- 9.6.2.6 *EWS is concerned that Article 35 of the proposed Order allows the railway undertaker to demand, take and recover or waive such charges for carrying passengers or goods on the railway comprised in the authorised works as it thinks fit. EWS submits that the charging of access to railway facilities is governed by principles enshrined in both EU and UK law and therefore is not open to the railway undertaker to change as it thinks fit without complying with these principles.*
- 9.6.2.7 *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 denying operators, such as EWS, the opportunity to make representations and seek compensation for any adverse effects.*
- 9.6.2.8 *EWS is concerned that it will not be fully compensated for the effects of any disruption caused to its services, its business or loss of land in the circumstances outlined in paragraphs 1 to 7 above. The loss of Ipswich Yard (Upper) and the closure of Ipswich Yard (Lower) will result in a significant*

*impact on EWS's business. The business and activities affected would have to be lost or relocated. In addition, any disruption to EWS's rail freight services along the Felixstowe Branch Line depending upon the scale of such disruption will result in significant costs and losses*

### 9.6.3 Response to Grounds of Objection

9.6.3.1 Within the EWS controlled area of the Upper Yard, which is shown outlined red, less the areas subleased to Freightliner outlined green, on the Upper Yard Lease Plan (CD/81), there was a derailment in 2004. The derailment caused damage to the sidings, which has not been repaired, this is shown and described further in the Proof of Evidence of Mr Richard Spoons (App/21).

9.6.3.2 As this damage has not been repaired, I would conclude that the Upper Yard area cannot currently have a value to EWS' business greater than the cost of repairing the broken rail. I would also conclude that this Upper Yard area can not have a short to medium term anticipated future value to EWS' business greater than the cost of repair, as we are not aware of any plans to repair this damage.

9.6.3.3 The purpose of the Scheme is described in the Proof of Evidence of Mr Andrew Harston (App/1), and is to increase the capacity of the Felixstowe Branch Line and Ipswich Yard

for the movement of more freight by rail. This is not intended, nor is it likely in FDRC's opinion, to have a negative affect on EWS' business activities. However, if a loss is suffered by EWS as a consequence of the Works, then compensation will be payable in accordance with the established compensation code, as discussed in Section 8 of the Proof of Evidence.

9.6.3.4 FDRC worked together with EWS, Freightliner and Network Rail in the development of the Scheme's outline design, prior to submission of the draft Order (CD4). The purpose of this was to ensure that the proposed design, for the improvement of the Felixstowe Branch Line and the Ipswich Yard, was optimal in terms of its benefits as a rail freight scheme together with minimising any impacts on adjacent properties. Through this process the design agreed in principal resulted in no buildings being required to be demolished. The consensus of all parties at that time was that in order for the proposed Scheme to be optimal, the Lower Yard, which is owned by Network Rail and leased to EWS, should be severed. This was agreeable to EWS and Network Rail at the time as the Lower Yard was and remains under utilised. From various site visits throughout 2005, 2006 and 2007 the Lower Yard appears to only be occasionally used for the maintenance of rolling stock and the site is likely to have a

higher commercial value to EWS as a development site than as a railway yard. The proposed operation of the Ipswich Upper Yard is described further in the Proof of Evidence of Mr Richard Spoons (App/21).

9.6.3.5 Since the Application (CD4) a number of meetings have been held with Network Rail, EWS and Freightliner to resolve the technical interface issues and the leasing and operating arrangements.

9.6.3.6 The existing land ownership and leasing arrangement is as shown on the Upper Yard plan (CD81) and can be described as; a Network Rail freehold, EWS headlease and Freightliner sublease of part.

9.6.3.7 Operational arrangements for the upgraded yard are described in the Proof of Evidence of Mr Richard Spoons (App/21).

9.6.3.8 EWS has asserted that in the event that EWS and/or Freightliner do not agree to the proposed Works that FDRC can deliver the proposed Scheme under section 16A of the Railways Act 1993, rather than using compulsory purchase powers. I am told that this is not possible. FDRC does not qualify under this legislation as an authority that can exercise these powers. Notwithstanding this, I am told that it is uncertain that these powers could be enforced against EWS

and Freightliner in respect of the Upper Yard to ensure delivery of the Scheme.

9.6.3.9 The land included within the draft Order (CD4) and the associated compulsory purchase powers are therefore necessary for the purposes of delivering the land for this enhancement scheme. The specific requirements of each part of the land are described further in the Proof of Evidence of Mr Richard Spoons (App/21).

9.6.3.10 Despite EWS' assertions that the Lower Yard has significant operational benefits to its business, it has to date, not been able to provide any evidence to support this position. Based on the evidence presented in this Proof of Evidence, the Proof of Evidence of Mr Andrew Harston (App/1) and those of the other witnesses, I believe that the benefit of this Scheme outweighs any possible negative effects on EWS' business. However, should EWS suffer negative impacts related to this Scheme then the established compensation code will apply.

9.6.3.11 The construction methodology is described further in the Proof of Evidence of Mr Richard Spoons (App/21).

9.6.3.12 I am informed that Article 35 of the draft Order (CD4) is necessary to ensure consistency between the existing network, for which Network Rail can charge and the new

Brach Line. FDRC does not intend to levy charges separately.

#### 9.6.4 Status and Comments

9.6.4.1 Ongoing correspondence and meetings have taken place with EWS since 2005. Unfortunately an agreement has not been reached. I understand that the issues that currently can not be resolved are matters of compensation, the final lease arrangement at the Upper Yard and EWS' right to control the operation of the Upper Yard, rather than being a user of the yard. I do not believe that these outstanding issues of compensation, property leasing and control are matters for the inquiry. However, issues relating to the yards operation are described further in the Proof of Evidence of Mr Richard Spoons (App/21).

#### 9.7 Objection 36 – The Scotts Company (UK) Limited

9.7.1 Date of Objection – 02 February 2006

9.7.2 Grounds of Objection

9.7.2.1 *The Objector would prefer that the proposed rail improvements take place without the use of their land, with the exception of the temporary use of their existing access by rail line construction traffic. The Objector therefore has*

*concerns that the current proposals will have an adverse effect on their operations for the following reasons:*

- 9.7.2.2 *It is not clear from the information provided if the construction worksite E2 and road linking this to the construction access avoids the Objectors land and is located on the adjacent land in the ownership of the Mayhews. To do so would keep Scotts site secure with the current boundary fence, this incorporates rabbit proof fencing. If this is not the case appropriate measures will be required to ensure that the site remains as secure as possible.*
- 9.7.2.3 *Haul road A will require removal of the existing rabbit proof boundary fence along the length of the Objector's site adjacent to the rail line. Removal of this fence will leave the Objector's site exposed to an area which has rabbits and rabbit warrens. This is a significant risk and concern to the Objector.*
- 9.7.2.4 *The Objector would wish to come to an agreement with the applicant for the use of their access and a commitment that the road will be kept clear and in a good state of repair while it is in use and damage made good as soon as practicable after the event and at the end of the period of occupation.*

9.7.2.5 *Mature trees are sited between the Objector's site and the Branch Line. It is not clear if the proposals would involve felling these trees. The Objector requests that the applicant make every effort to retain existing trees and, in the event that trees need to be removed, replacement trees are provided.*

### 9.7.3 Response to Grounds of Objection

9.7.3.1 Representatives of FDRC met with the agents acting for the Objector prior to the Application (CD4), this was to allow FDRC to modify the Scheme to minimise any adverse impacts relating to the temporary use of the Objector's land during the Works. As a consequence of this meeting modifications to the proposed temporary area and access regime were made towards mitigating concerns.

9.7.3.2 Since then I have been in contact with the agents acting for the Objector and a draft agreement is currently being negotiated. The draft agreement gives the necessary comfort regarding the maintenance of access over DP plots 53 and 54, the use of temporary rabbit fencing, the reinstatement of fencing and the replacement of trees in DP plot 52.

#### 9.7.4 Status and Comments

9.7.4.1 A draft agreement is currently being negotiated that satisfies the concerns raised by the Objector in their letter of objection.

#### 9.8 Objection 37 – Freightliner Limited

9.8.1 Date of Objection – 2 February 2006

9.8.2 Grounds of Objection

9.8.2.1 *Freightliner is a statutory undertaker and a major freight train operator operating trains and owning railway assets across the country. It specialises in an integrated national rail service for deep sea containers rail. The provision of the service requires long term planning and maintaining permanent operational bases across the network. This was recognised at privatisation in the provision of depots and other assets for which Freightliner bid and was then awarded. In the context of Ipswich there was no scope for the provision of a depot, but the sidings and supporting infrastructure at Ipswich Top Yard were allocated for that purpose on a 125 year under lease at a peppercorn rent. That facility forms an essential element in maintaining our client's freight rail services across the country. That it should continue to do so is in accordance with national and*

*local transport policies and in the public interest. As such, Ipswich Top Yard forms a key part of Freightliner's long term strategy for its business.*

9.8.2.2 *The proposed compulsory acquisition would deprive our client of its sidings with fundamental detriment to its long and short term operations and planning. There is no compelling or any public interest to justify that expropriation, which would in the circumstances be contrary to Freightliner's rights under article 1 of the First Protocol to the Human Rights Treaty and the Human Rights Act 1998.*

9.8.2.3 *There is no need for Freightliner's interest in Ipswich Top Yard to be acquired compulsorily or at all. Freightliner would be willing to allow the works to proceed in conjunction with other railway interests. Access would continue to be available to railway users in accordance with the arrangements established under the 1993 Act for such improvements to be required and procedures available under the network code for delivery of associated improvements in connection with the wider network. Moreover there is a specific power in Freightliner's underlease for relocation for railway works, agreed at the time of privatisation, which would ensure security for Freightliner's interests and continued operations.*

9.8.2.4 *In so far as the applicant seeks to secure alterations to the railway infrastructure to enhance its capacity, alterations to that infrastructure can be secured through temporary possession under the proposed Order (insofar as contrary to Freightliner's primary case that no powers are needed at all) – there is no justification for the permanent expropriation proposed. The case asserted for the applicant, a dock operator, to take control over statutory rail undertaker's assets remote from their dock, is so that they can assert some commercial control and dominance. This is fundamentally contrary to the public interest and would amount to an abuse of the relevant powers.*

9.8.2.5 *The applicant has failed adequately or in substance to seek to reach agreement with Freightliner or others for the improvements to be carried out, notwithstanding that it would have been aware that Freightliner would not oppose the works in themselves.*

9.8.2.6 *The existing compensation code is ill-suited to deal with the damage that would be caused to Freightliner's interests and the expropriation of their interest in the land. As a result Freightliner would be likely to be deprived of its interests without any adequate or proper compensation (in contrast to the provisions in their underlease and the 1993 Act).*

9.8.2.7 *The applicant has drafted no protective provisions for Freightliner's present or future operations.*

9.8.3 Response to Grounds of Objection:

9.8.3.1 The purpose of the Scheme is described in the Proof of Evidence of Mr Andrew Harston (App/1), and is to increase the capacity of the Felixstowe Branch Line and Ipswich Yard for the movement of more freight by rail. This is not intended, nor is it likely in FDRC's opinion to have a negative affect on Freightliner's business activities. However, if a loss is suffered by Freightliner as a consequence of the Works then compensation will be payable in accordance with the established compensation code as discussed in Section 8 of the Proof of Evidence.

9.8.3.2 FDRC worked together with Freightliner, EWS and Network Rail in the development of the Scheme's outline design, prior to submission of the draft Order (CD4). The purpose of this was to ensure that the proposed design, for the improvement of the Felixstowe Branch Line and the Ipswich Yard, was optimal in terms of its benefits as a rail freight scheme together with minimising any impacts on adjacent properties. Through this process the design agreed in principal resulted in no buildings being required to be demolished. The consensus of all parties at that time was that in order for the proposed Scheme to be optimal, the

Lower Yard, which is owned by Network Rail and leased to EWS, should be severed. This was agreeable to EWS and Network Rail at the time as the Lower Yard was and remains under utilised. From various site visits throughout 2005, 2006 and 2007 the Lower Yard appears to only be occasionally used for the maintenance of rolling stock and the site is likely to have a higher commercial value to EWS as a development site than as a railway yard. The proposed operation of the Ipswich Upper Yard is described further in the Proof of Evidence of Mr Richard Spoons (App/21).

9.8.3.3 Since the Application (CD4) a number of meetings have been held with Network Rail, EWS and Freightliner towards resolving the technical interface issues, the lease issues and operating arrangements behind the solution that was principally agreed.

9.8.3.4 The existing land ownership and leasing arrangement as shown on the Upper Yard plan (CD81) can be described as; a Network Rail freehold, EWS headlease and Freightliner sublease of part.

9.8.3.5 Operational arrangements for the upgraded yard are described in the Proof of Evidence of Mr Richard Spoons (App/21).

9.8.3.6 Freightliner has asserted that in the event that EWS and/or Freightliner do not agree to the proposed Works that FDRC can deliver the proposed Scheme under the Railways Act 1993 (presumably section 16A), rather than using compulsory purchase powers. I am told that this is not possible. FDRC does not qualify under this legislation as an authority that can exercise these powers. Notwithstanding this, I am told that it is uncertain that these powers could be enforced against EWS and Freightliner in respect of the Upper Yard to ensure delivery of the Scheme.

9.8.3.7 The land included within the draft Order (CD4) and the associated compulsory purchase powers are therefore necessary for the purposes of delivering the land for this enhancement Scheme. The specific requirements of each part of the land are described further in the Proof of Evidence of Mr Richard Spors (App/21).

9.8.3.8 The construction methodology is described further in the Proof of Evidence of Mr Richard Spors (App/21).

#### 9.8.4 Status and Comments

9.8.4.1 Ongoing correspondence and meetings have taken place with Freightliner since 2005. Unfortunately an agreement has not been reached. I understand that the issues that

can not be agreed are matters of compensation, the final lease arrangement at the Upper Yard and Freightliner's right to control the operation of the Upper Yard, as opposed to being a user of the yard. I do not believe that these outstanding issues of compensation, property leasing and control are matters for the inquiry. However, issues relating to the yards operation are described further in the Proof of Evidence of Mr Richard Spoons (App/21).

## 9.9 Objection 39 – Paul Vyse

9.9.1 Date of Objection – 30 January 2006

9.9.2 Grounds of Objection

9.9.2.1 *The land required for use is within the countryside and more importantly within an area classified as “outstanding beauty”.*

9.9.2.2 *DP117/118 compulsory purchase/use will effectively block off public access (footpath and bridleway) as well as vehicular movements. It will also remove the only official access to land currently used to farm and harvest Christmas trees (used mainly during the November and December harvest season).*

- 9.9.2.3 *Access to the “construction compound” is by way of an unmade road/bridleway named Gaymer’s Lane this being narrow with undulations is totally unsuitable for construction traffic.*
- 9.9.2.4 *The proposed construction compound “hammer head” proposed (100 x 30 metres) will effectively cut through the main track lane used for servicing and harvesting the tree plantation.*
- 9.9.2.5 *Perimeter trees were planted along the boundary with the railway line some fifteen years ago for protection of the plantation and security. These trees have now become established and no level of compensation can replace time if these were to be damaged or cut down, the Objector request some assurance of their protection and to be given the chance to negotiate the position of the access track (200 x 10 metres) that will serve the construction compound in order to safeguard the trees during construction until handed back into the Objector's ownership.*
- 9.9.2.6 *The soil within this area is deemed to be of high quality peat land, any vehicle will become bogged down in wet weather. The Objector needs assurances that it will be returned/reinstated to a condition before the area was occupied.*

9.9.2.7 *The plantation of pine trees has some 20,000 trees under production, some 1500 are within the area being proposed, 320 were planted only 21 months ago, others have been allowed to mature to cater for large establishments (hotels/school), these have taken up to 12 years to grow. The proposed land use will effectively wipe out these trees together with the time and patience it has taken to cultivate them. Again compensation cannot recover the loss of time to recover this state.*

9.9.2.8 *The proposal is aimed at “stepping up” movements in order to support the future infrastructure of the port. Its current route runs into the heart of communities and currently operates six days and nights a week. Dualing will only serve to disrupt those communities to an intolerable level, consideration should be addressed for a more acceptable, or alternative, supply route to serve the port.*

### 9.9.3 Response to Grounds of Objection

9.9.3.1 Environmental matters are described further in the Proof of Evidence of Mr Steven Purnell (App/61).

9.9.3.2 Rights of way during construction and post construction are described in the Proofs of Evidence of Mr Richard Spoor (App/21) and Mr Andrew Cann (App/121).

9.9.3.3 Through correspondence and discussions with the Objector, I believe a satisfactory resolution can be agreed relating to the trees. It has been discussed that if trees are to be removed for the purposes of the Works, then a temporary fence will be installed to protect the other trees from the weather. On completion of the Works a permanent fence will either be installed, or if the Objector prefers, fast growing trees planted.

9.9.3.4 Noise and vibration matters are described further in the Proof of Evidence of Mr Bernard Poselthwaite (App/81).

#### 9.9.4 Status and Comments

9.9.4.1 Through discussions with the Objector a draft agreement is being discussed that satisfies the land and property concerns raised in the Objector's letter of objection.

## **10 ISSUES RAISED IN THE STATEMENT OF MATTERS**

10.1 The Secretary of State issued the Statement of Matters relating to the draft Felixstowe Branch Line and Ipswich Yard Improvement Order application on the 28 September 2006. The Secretary of State requires the issues identified in the Statement of Matters to be addressed at the Public Inquiry.

10.2 A number of the points raised concern land and property provisions.

10.3 Set out in Table 2 below are the points raised in respect of land and property issues and my response:

TABLE 2 - ISSUES THE DEPARTMENT HAS RAISED IN THE STATEMENT OF MATTERS RELATED TO LAND AND PROPERTY AND MY RESPONSE

<b>Draft Order Provision (where relevant)</b>	<b>Point Raised in Statement of Matters</b>	<b>Response and Comments</b>
N/A	5. The likely impact of the scheme on local residents and the environment, including (e). the impacts of the proposed construction adjacent to sheltered housing at Reeve Lodge, Trimeley St Martin.	An agreement is under negotiation with Mr Dawson and Trinity College (the landlord) that provides for movement of the worksite at Reeve Lodge to a new location closer to the railway as shown on the plan in Appendix 3. The original area will now only be required for access, which is described further in the Proof of Evidence of Mr Richard Spoons (App/21).
Articles 44 & 45 and Schedules 10 & 11	7. The likely impacts of the scheme on train operating companies and other businesses, including (a). the effect of the FDRC's proposals on the	(a). It is anticipated that the Scheme will have a positive effect on the businesses of EWS and Freightliner.  The purpose of the Scheme is

Draft Order	Point Raised in Statement of Matters	Response and Comments
Provision (where relevant)	<p>operations of EWS and Freightliner at the Ipswich Marshalling Yard and the closure of rail access to Lower Yard;</p> <p>(b). the effects of the scheme on statutory undertakers and their ability to carry on their undertakings effectively, safely and in compliance with any statutory and contractual obligation.</p>	<p>to increase the capacity of the Felixstowe Branch Line and Ipswich Yard, for the purposes of moving freight from the Port of Felixstowe onto the railway network. The purpose of the Scheme is described in the Proof of Evidence of Mr Andrew Harston (App/1). As a consequence there will be increased freight opportunities for all railway freight operators.</p> <p>The Scheme's construction is described further in the Proof of Evidence of Mr Richard Spoors (App/21). Based on this evidence the construction activity is not anticipated to have a significant negative effect on the way in which EWS</p>

Draft Order	Point Raised in	Response and Comments
Provision (where relevant)	Statement of Matters	
		<p>and Freightliner operate their businesses. However, the compensation code will apply should a loss be suffered. In terms of the permanent situation at the Upper Yard this is again discussed in this Proof of Evidence and the Proof of Evidence of Mr Richard Spoors (App/21) and it is not anticipated that either EWS or Freightliner will suffer a significant negative effect in relation to the Scheme.</p>
		<p>As discussed in this Proof of Evidence, EWS has a leasehold interest in the Ipswich Lower Yard. This yard appears to be under utilised and appears to have very limited benefit to</p>

Draft Order	Point Raised in Statement of Matters	Response and Comments
Provision (where relevant)		<p>EWS' railway freight business.</p> <p>(b). In certain instances, where agreements have been entered into, in response to objections from Statutory Undertakers, the provisions of the agreements protect the interests of the statutory undertakers concerned. It is not anticipated that the Scheme will effect statutory undertakers and their ability to carry on their undertakings effectively, safely and in compliance with any statutory and contractual obligation.</p>
Part III	11. Whether there is a compelling case in the	It is considered that all of the evidence of the FDRC

<b>Draft Order Provision (where relevant)</b>	<b>Point Raised in Statement of Matters</b>	<b>Response and Comments</b>
	<p>public interest for conferring on FDRC powers compulsorily to acquire and use land for the purposes of the scheme, having particular regard to the guidance on compulsory purchase in paragraphs 16 to 23 of ODPM Circular 06/2004, and whether all of the land to be acquired under the Order is required for the scheme.</p>	<p>witnesses and the totality of the FDRC case for the Scheme, demonstrates that there is a compelling case for the Scheme. It is further considered that compulsory acquisition and use of all of the land and property permanently and temporarily required for the Scheme, is in the public interest. In addition, it is my opinion, the necessary land can not be assembled on this basis without the exercise of compulsory purchase powers.</p>

Draft Order	Point Raised in Statement of Matters	Response and Comments
Schedule 1	13. The purpose and effect of any substantive changes to the TWA Order proposed by FDRC since application was made and whether anyone likely to be affected by such changes has been notified.	In response to Network Rail's safety concerns Work No 2, which was a proposed footbridge at Westerfield Level Crossing was included within the draft Order (CD4). However, in response to objections relating to this proposed bridge, FDRC has worked with Network Rail to further develop and to ensure that the level crossing can meet all of the Network Rail safety standards, which has enabled the removal of the proposed Work No 2 from the draft Order (CD4). The relevant objectors have been notified at a meeting and subsequently by letter see Appendix 2.

## 11 CONCLUSIONS

11.1 It is FDRC's purpose to mitigate the effects of the construction of the Scheme and to reduce as far as is possible the impact on private property.

11.2 I am satisfied, that from a land and property perspective, that FDRC has;

11.2.1 Worked to minimise the extent of land, property and rights both temporarily and permanently required;

11.2.2 Limited the land and property requirements to what is reasonable for a Scheme of this complexity and extent;

11.2.3 Sought to minimise demolition of property resulting in no properties to be demolished for this Scheme and minimised property blight; and

11.2.4 Demonstrated the need for compulsory purchase powers.

11.3 FDRC has corresponded and/or met with those land and property objectors with an interest as listed in the Book of Reference (CD4). Where there are reasonable opportunities to minimise the impact of the Scheme and it is reasonably possible to address legitimate concerns, FDRC has sought to give undertakings, or entered into agreements, that regulate the interface so

as to minimise the Scheme's impacts. In many instances, this process is ongoing.

11.4 Where there are inevitable land and property impacts, FDRC will compensate in accordance with the statutory Compensation Code and the draft Order (CD4).