NORTHGROVE LAND LTD

7th June 2011

The Stations & Depots Team
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN.

Dear Sirs

Consultation on the Proposed Changes to the Station Access Conditions and to the Independent Stations Conditions

I am writing on behalf of Brookgate cb1 Ltd in response to the invitation to Ashwell Developments to submit representations to the above consultation. Brookgate acquired these assets in December 2009.

Background

I am Bryan Kirby of Northgrove Land, a Chartered Surveyor and specialist consultant on rail related property development matters retained by leading industry bodies and commercial property development companies. I have been working on the Cambridge cb1 scheme for over 7 years, actively pursuing a number of station related projects. I have over 30 years of professional experience directly relating to rail related property development both from within the industry at senior level and as a professional consultant.

Brookgate has been working closely in partnership with Network Rail (NR) to bring forward the redevelopment of the area around Cambridge Station. The scheme involves the marriage of the respective parties land-ownerships around the Station to promote a major mixed use redevelopment which will fund both significant multi modal transport related improvements and substantial improvements directly to the Station itself.

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We have also had detailed and advanced discussions with NR concerning schemes for other Stations and therefore we have had first hand experience of the Station Change process, and the different approaches that Users of the Station can take in the resolution of a proposed Station Change.

Naturally the focus of our response will be towards how the Station Change process could be improved to help facilitate major developer led proposals at Stations.

There is no doubt in our minds that the current Station Change process needs to be improved as it is complex, delays approvals to proposals, is used by some Users to exploit their commercial position and does not therefore encourage and acts as a deterrent to private sector investment at Stations. Whilst commenting on the suggested improvements to the Station Change process I must point out that Station Change is only one of a number of Rail Industry consents that a developer will require to implement a scheme. The programme for resolving all these consents can have a dramatic impact on the phasing and therefore project costs such as land acquisition holding costs and also legal contractual timeframes for key pre-lettings for example and therefore serious ramifications for the potential viability of any scheme. Improvements to the Station Change process in isolation may not therefore have a dramatic improvement in the rate of private sector investment in Railway Stations.

Developer led approach

Firstly, we would support the proposal that a developer should be allowed to submit a Station Change in its own right and this would be seen as a positive step enabling the developer to gain control of a process where the timetable for the submission and its ultimate approval is of major importance to the project. The developer will also be able to control the negotiations and the nature and timing of the outcome.

The principle of resolving financial objections by means of a Co-operation Agreement (CA) and not allowing these to be a ground for objection does have some merit, but we have reservations that the proposal without further refinement, will really lead to a quicker route for the delivery of investment at Stations. Our experience is that financial objections are either, based on the legitimate commercial concerns of the TOC's and the legitimate impact of the proposal on their business, or on an attempt to hold NR to ransom. In the first instance the Cooperation Agreement is likely to be helpful. Where, however, the TOC is merely seeking to use the process to extract a share of development profit or Network Rail land value, it is very unlikely that the objection will be openly made in financial terms and the TOC will object on other grounds as a means of continuing the negotiations on its demands. In these circumstances the objection will not fall to the CA to be resolved. The suggested

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changes will actually weaken the ability of NR and developers to overcome objections where TOC's use the process to endeavour to share value as it removes one of the best routes to overcome these objections.

This route is the ability for NR to offer Financial Undertakings (FU's) to users and this process has defined time frames within which the users have to lodge objections and drive the issues to dispute resolution or a Deemed Approval will be obtained. The threat of incurring these costs is a major deterrent to a TOC sustaining 'shared value' objections and we have experience of securing approvals within 6 weeks where FU's have been utilised. We therefore feel that the Industry needs to carefully reconsider this area before the ability to offer FU's is given up.

Developers and their funders need certainty and therefore the CA route will need to offer a developer a quick settlement route before it will allow the developer to make investment decisions. The ability of the developer to offer a fixed sum in lieu of any other compensation may be a help in this regard, but as this sum is a development cost which will impact on NR's development receipts it will require an NR approval to the negotiated sum. Some developers might consider this to be 'jumping from the frying pan into the fire' as NR's general policy is not to allow any TOC any inducement to secure the approval to a Station Change proposal.

Where a negotiated settlement is not possible then the only recourse for the developer is to take the matter to the access dispute process. I appreciate that disputes will now be undertaken via the new access dispute rules and sensibly this facilitates senior officer resolution, mediation, and impartial evaluation before instigating costly arbitrations. We suspect however that none of these processes will be seen by developers as being a quick and inexpensive resolution to a dispute.

Deemed Approval

Under the new proposals the onus to take matters to dispute falls entirely on the party making the proposal. In our experience it would be far better for the party making the objections having the responsibility to take the matter to dispute within tightly defined timescales or the proposer will receive a Deemed Approval. We therefore feel that this is a serious omission from your proposals and the Industry needs to give further consideration to facilitating the Deemed Approval Route where objections have been lodged under the shadow of industry concerns, but in reality is merely a shared value approach. This comment does link back to our earlier comments on the use of FU's.

In this regard the change to ensure that Material Proposals no longer need to be unanimously approved is very helpful, as it is our experience that some users simply

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do not respond to Station Changes. The fact that their silence will now be treated as a Deemed Approval is an important step forward. However, as mentioned above further thought is needed in respect of the imposition of tight deadlines on objectors to move matters through the various disputes stages to ensure that only soundly based objections are sustained through the dispute process.

Minor Exemptions

It is our experience that some TOC's may see every possible consent required under the terms of the Access Conditions as leverage to extracting commercial consideration and this could apply to such practical matters as scaffolding rights , crane over-sailing rights and access rights over the lease as well as many other small consents . The intention to introduce exempt, non discretionary and notifiable consents has some merits but in our view NR must include a list of exempt, non discretionary and notifiable activities which should cover as afar as possible the minor consents that are used by some TOCs as leverage. We also feel that in these areas TOC's should not be able to object or objections will be lodged as a matter of policy by those TOCs, who use these consents to exploit a commercial position. This would give the developers the certainty that it requires and the TOC's position would be protected as material proposals would still be taken through the Station Change process.
We would not consider the deletion of the G6 rights sensible, as they can be used by NR to avoid the TOC's potential leverage position for such minor matters, unless NR agrees a list of exempt, non discretionary and notifiable activities.

Compensation

The compensation terms of the Co-operation Agreement need further consideration. Clearly TOC's need to be compensated for any financial loss it receives as a result of the implementation of the proposal and it seems to be a fair and recognised market approach that this loss should be reduced by the level of any betterment that the TOC receives. We do not understand however the thinking behind the proposal that TOC's should be compensated for any diminution in value of the Station or any potential development value of the Station which is lost directly attributable to the proposal. The TOC's have a short term interest and do not have a position of being able to undertake property development.
We cannot see that developers will agree to sign a CA with such a Clause included.

Either TOCs should object or consent to a scheme. If the TOC approves a scheme then it should be compensated for direct losses but this cannot include the value of other schemes that it could in theory have implemented but had not done so. If other

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schemes are more valuable to the TOC then it should object to the proposal. Although I cannot understand the rationale behind this Clause, if there is any, why should it only bite against Specific and Strategic Proposers and not NR? NR will promote Proposals in its own right as a developer, so what is good for the goose should be good for the gander!

Wider Consultation

The Station Change process is in essence a contractual process arising out of the Station Access Conditions and we would therefore question the merit of allowing other Strategic bodies having a right of consultation on a Station Change. Local authorities, PTE's and other Strategic bodies are already consulted widely through the planning and other Regulatory processes.

If these bodies are to be consulted are they to be allowed a right to object and if so how are these objections to be resolved? I cannot imagine these bodies will want to be drawn into the time and cost of a dispute process. If wider consultation is seen as necessary then as mentioned at the beginning of this letter maybe it is time to consider how some of these consultations could be merged to cover all the necessary consents that are needed in order to undertake a redevelopment on a NR station site. This would be of much greater assistance to speeding up the process of enabling investment spend by third parties than improvements to the Station Change process in isolation.

I have attached an Addendum answering the specific questions you have raised in your consultation.

Yours faithfully

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Northgrove Land

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