

RAPLEYS

Representations to the Regulation 19 Consultation of the
Bedford Local Plan 2040
On behalf of Taylor Wimpey UK Ltd

APPENDIX B
INFRASTRUCTURE DELIVERY REPORT
DRAFT ALLOCATION HOU19 : LITTLE BARFORD

24 July 2022

Our Ref: ABI/22-01361

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This report has been prepared within the quality system operated at Rapleys LLP according to British Standard ISO 9001:2015

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1 EXECUTIVE SUMMARY

1.1 This report demonstrates that:

- I. There is virtually no prospect of the new EWR being operational by 2030. This is based on two main pillars. Firstly, there is currently no confirmed funding for the Bedford to Cambridge section of the EWR and secondly, even if funding were to be confirmed, the timescales to complete the necessary steps from the current early-stage consultation all the way through to the line being operational is simply not achievable in the next 7.5 years.
- II. The Government's Infrastructure and Projects Authority Annual Report on Major Projects 2021-22 provides a Delivery Confidence Assessment (DCA) for EWR Connection Stage 2 & 3 as Red.
- III. The case studies provided by Stantec illustrate that delays for major rail infrastructure projects typically range between 4 and 10 years. If there were delays to the opening of the EWR by only 3 years, there would be a significant shortfall in the number of dwellings delivered during the plan period to 2040.
- IV. There is no evidence in the public domain of any engagement with Network Rail in relation to the new pedestrian and vehicular crossings over the ECML. The engagement will need to be two-fold, on a Property and Technical basis.
- V. From a Property perspective, there is no evidence:
 - a. that the costs associated with the 'shared value' (ransom) payment, that will need to be agreed with Network Rail to cross the ECML, has been accounted for in any viability study. It is not accounted for in the Council's own evidence base prepared by BNP Paribas in the Borough Wide Viability Study (April 2022).
 - b. that the significant cost of the on-site infrastructure necessary to cross the ECML and proposed EWR have been accounted for. If Route 1 of the proposed EWR is adopted, then there may be up to 7 new bridges spanning the ECML and proposed EWR.
 - c. regarding the timescales that will need to be agreed with Network Rail to deliver the necessary on-site infrastructure to cross the ECML and proposed EWR and how this can be delivered during the plan period.
- VI. From a Technical perspective, there is no evidence of:
 - a. Engagement with Network Rail to confirm they will agree to the number of crossings of the ECML that are necessary if Route 1 of the proposed EWR is adopted. If there are technical constraints on the number of crossings (anticipated to be 4 in less than 2km) this will have significant implications on the permeability across the new settlement. There are significant risks to the delivery of the proposed settlement of Little Barford if there are technical constraints imposed by Network Rail on rail crossings.

Therefore, on the basis that draft Policy HOU19 (Little Barford) states that the development is dependent on the delivery of transport improvements which will need to be secured before development can take place, and there is virtually no prospect of this by 2030, we do not believe the allocation of the proposed new settlement at Little Barford is sound. It will not be possible to deliver the necessary dwellings during the plan period if there is a delay beyond 2030 in the opening of the new EWR.

2 INTRODUCTION

- 2.1 This report has been produced on behalf of Taylor Wimpey UK Ltd who are promoting a new settlement at Denybrook Garden Community, Wyboston. The Local Plan 2040 has now reached Regulation 19 stage and includes a new settlement at Little Barford (draft Policy HOU19).
- 2.2 The allocation of Little Barford is reliant on the delivery of several infrastructure projects. The two main projects are the delivery of the new A428 Black Cat to Caxton Gibbet Improvement Scheme and the new East West Rail (EWR) route.
- 2.3 Draft Policy HOU19 (Little Barford) states that the East West Rail (EWR) route needs to be operational before development can take place:
- The development is dependent on the delivery of transport improvements which will need to be secured before development can take place in accordance with an agreed Infrastructure Delivery Plan*
- 2.4 This report focuses on the delivery timescales associated with the new EWR route and our assertion that there is virtually no prospect of the EWR being operational by 2030. It also considers the process of engagement with Network Rail in respect of pedestrian and vehicular bridges over the East Coast Main Line (ECML) both from a property and technical perspective, together with the implications of a potential new EWR station over the ECML.
- 2.5 This report should be read in connection with the **Viability & Deliverability Report** dated 24th July 2022.
- 2.6 In preparing this report, we have consulted with Stantec who have prepared a Technical Note (**Appendix 1**), which examines the Rail Delivery Process and timescales associated with delivering major rail infrastructure projects.

3 INFRASTRUCTURE DELIVERY TIMESCALES

3.1 The main concern we have regarding infrastructure delivery and draft Policy HOU19 is that it is predicated on the EWR line being operational by 2030. We have engaged Stantec to provide their view on the delivery timescales of the EWR, together with relevant case studies (**Appendix 1**) that demonstrates that the current 2030 timeline is entirely unrealistic. Stantec are leading consultants and engineers on infrastructure project in the UK and globally.

3.2 Their report concludes:

- I. EWR is yet to fix a final route option between Bedford and Cambridge.
- II. Once this has been determined there is a significant programme of works that would need to be completed to prepare the Development Consent Order (DCO).
- III. There is currently no funding secured for this section of the EWR and the government would not be able to make this decision until the SoS for Transport has endorsed the DCO. The earliest this is likely to happen is 2025.
- IV. Following the grant of the DCO and securing the necessary funding there are likely to be an extensive series of environmental obligations and requirements (effectively pre-commencement conditions) that could take several years to discharge prior to construction commencing.
- V. It is therefore highly unlikely that construction on this section of the EWR can even start much before 2028. It is impossible to complete all of the necessary construction works for the new line and in particular the new stations by 2030 if works commenced c.2028.
- VI. Even if works could commence around 2028, Stantec provide numerous examples that demonstrate that the delivery of rail schemes is risky, complex and typically liable to extensive overruns in terms of programme delivery as well as cost escalation, suggesting that the potential opening date of 2030 cited by EWR is grossly optimistic.
- VII. The case studies provided by Stantec illustrate that delays typically range between 4 and 10 years for major rail infrastructure projects. As demonstrated in the Viability & Delivery Report, a delay of only 3 years to the opening of the EWR to 2033 would see a shortfall in the delivery of dwellings at Little Barford during the plan period to 2040 of anywhere between 1,800 and 2,320. If the delay were pushed out to 2035 the shortfall could be up to 3,000 dwellings.

3.3 In addition, the Government's Infrastructure and Projects Authority Annual Report on Major Projects 2021-22 provides a Delivery Confidence Assessment (DCA) for EWR Connection Stage 2 & 3 as Red¹. A DCA is an assessment of the likelihood of a project delivering its objectives to time and cost. Ratings are categorised into three groups, which span a range from 'red' to 'green', with each providing an indication of likelihood of successful delivery and level of associated risks.

¹ Infrastructure and Projects Authority Annual Report on Major Projects 2021-22, page 54
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092181/IPA_AR2022.pdf

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- 3.4 A Red DCA is defined as: *Successful delivery of the project appears to be unachievable. There are major issues with project definition, schedule, budget, quality and/or benefits delivery, which at this stage do not appear to be manageable or resolvable. The project may need re-scoping and/or its overall viability reassessed.*
- 3.5 Given the clear uncertainty surrounding the delivery of the EWR, particularly the unrealistic delivery date of 2030, we do not believe the allocation of the proposed new settlement at Little Barford is sound.

A428 BLACK CAT TO CAXTON GIBBET IMPROVEMENT SCHEME

- 3.6 The Projects Authority Annual Report on Major Projects 2021-22 provides a DCA for the new A428 Black Cat to Caxton Gibbet dual carriageway of Amber in 2022².
- 3.7 An Amber DCA is defined as: *Successful delivery appears feasible but significant issues already exist, requiring management attention. These appear resolvable at this stage and, if addressed promptly, should not present a cost/ schedule overrun.* This follows two years of an Amber/Green assessment, which is defined as: *Successful delivery appears probable; however, constant attention will be needed to ensure risks do not materialise into major issues threatening delivery.*
- 3.8 This project is more advanced than stage 2 & 3 of the EWR proposals and the Secretary of State for Transport is due to determine the DCO on 18th August 2022. The route for the new dual carriageway will be a continuous section of new road from the Black Cat Junction to the Cambridge Road Junction.
- 3.9 The Little Barford allocation is directly affected by the route of the Black Cat/Caxton Gibbet roadworks which runs north-south between the 'main' allocation area eastern boundary and the 'contingency land'. The DCO does not include any accesses/junctions off this section of the A428 into either the 'main' allocation or the contingency land other than a 3.5m carriageway bridge over the A428 connecting the land parcels. Any additional junctions or accesses off the new A428 alignment or widening of that bridge that may be necessary to serve either the main part of the allocation and/or the contingency land will require (i) further land which may or may not be in the control of the promoter, and (ii) a separate consent regime once the roadworks are in place. All of this has the ability to severely impact on the overall yield achievable within the allocation and certainly on its delivery within the 2040 Plan.

² Infrastructure and Projects Authority Annual Report on Major Projects 2021-22, page 54

4 ENGAGEMENT WITH NETWORK RAIL

4.1 The existing railway track is operated by Network Rail and dissects the site from north to south. This is the ECML, the major arterial mainline route connecting London, the North and Scotland and is one of the most intensely utilised routes on the network. The route comprises 4 tracks - two slower lines and two fast lines in the centre.

4.2 Draft Policy HOU19 includes a number of bridges (minimum of 2) across the ECML, however little or no information is provided in this regard. We have significant experience negotiating with Network Rail on similar matters and are aware of the complexity and timescales involved with these cases. In relation to obtaining permission to construct an overpass/bridge over the railway line there are two elements to the process: Property and Technical.

PROPERTY

4.3 In terms of the legal/commercial aspect of the property agreements:

- A property easement(s) to cross the railway will need to be agreed to allow the bridge(s) to be built and legally documented.
- Easement Fee - This must be negotiated by the Promoter/Developer. This is usually a Shared Value ('ransom') situation that is negotiated between the parties. Network Rail will consider it based on what the Promoter/Developer can achieve with or without the bridges. On a scheme of this size, this will be complicated due to the need for the bridges to ensure accessibility/sustainability across the site. Network Rail will not fetter the delivery of housing; however, they are obliged as a public entity to get best value from granting rights over the railway. Their Shared Value Policy is attached at **Appendix 2**.
- The bridges once completed must usually be adopted by a local or statutory authority - therefore, local highways need to be involved early in negotiations. Network Rail does not favour private ownership of bridges due to maintenance issues.
- Maintenance Payment - Compensation for ongoing monitoring in respect of future maintenance will be sought from the Promoter/Developer to cover a considerable period of time. This will be documented in the Easement.
- Network Rail will expect to be reimbursed for all costs incurred in negotiating and documenting the above.

TECHNICAL

4.4 A Promoter/Developer would need to consider the points below as part of the process of negotiations with Network Rail. Initially the Promoter/Developer will be required to engage at an early stage with Network Rail's Asset Protection and Optimisation Team (ASPRO) who will oversee all aspects of the technical delivery of the proposed bridges to ensure minimal impact on the operation of the railway³.

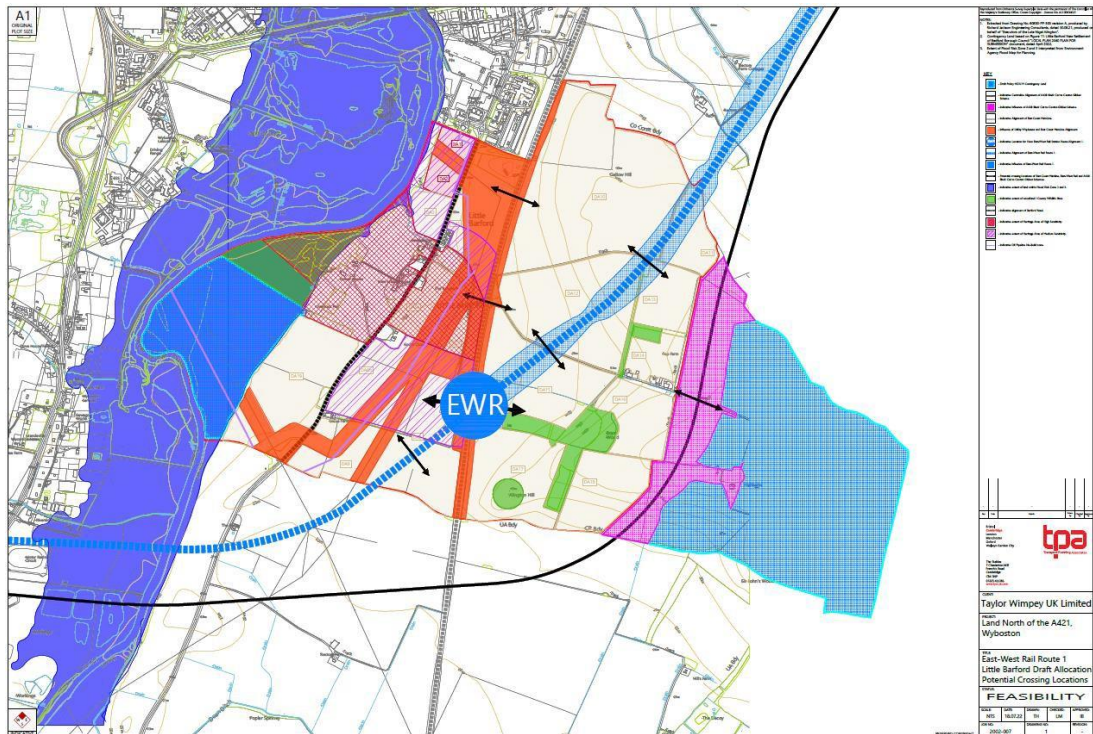
³ <https://www.networkrail.co.uk/running-the-railway/looking-after-the-railway/asset-protection-and-optimisation/>

-
- 4.5 In summary the following points are key areas that will be considered throughout the ASPRO process.
- Agree the principle of the bridge(s) including location(s). This will include as a minimum, technical and business clearance/approvals from all relevant operational departments, land clearance if any Network Rail land is required, and Office of Rail and Road consent if applicable.
 - Technical design - once the relevant clearances and consents are obtained the ASPRO Team will work with the Promoter/Developer in relation to progressing detailed design and construction methodology.
 - Once the above is completed, the output will be included within an 'Asset Protection Agreement' (APA or BAPA), which will detail exactly all aspects of how the bridges will be delivered whilst minimising the impact and integrity of the ECML.
 - Other key considerations for the bridges at Little Barford will include the number of bridges, the number of possessions of the line to construct the bridges (timescales and cost) and ongoing future inspection regime. In their report in Appendix 1, Stantec note that it is highly unlikely that Network Rail would allow more than one bridge in the relative close proximity required on the ECML to be delivered in a single possession window due to the risk of delaying the reopening of the line post possession. As a result, each bridge would therefore need to be delivered over an extended series of available possession windows, which could extend over several years and delay delivery.
 - At all stages, Network Rail would expect the Promoter/Developer to underwrite all the costs of the relevant engineers, surveyors, design teams, consultants etc. that are required for sign off on the various stages.
 - It should be stressed that Network Rail will not design, their role is as the approval body.
- 4.6 At this stage, looking at the publicly available information it is hard to ascertain if there has been any agreement with the Promoter/Developer and Network Rail in relation to the proposed bridges. We anticipate if there has it will be high level at this stage pending the outcome of the EWR options discussed in the next section.
- 4.7 The Stantec report in Appendix 1 uses the example of Bicester Eco-town to illustrate the process of obtaining the necessary technical approvals from Network Rail to secure the necessary possession of the trainline to install bridge decks. Even after funding had been secured for the project, the process of obtaining technical approvals took another three years and it will have taken 10 years since planning permission was granted to complete the necessary rail bridge and link road works.
- 4.8 The Stantec report also refers to the example of Slough Trading Estate Masterplan, where a detailed application for a new bridge was submitted in January 2009 following some 18 months of technical design work. Planning consent was granted in late 2009 but the bridge delivery took 6 years from planning consent through to opening, even though a significant amount of advanced design work had already been undertaken.
- 4.9 These examples illustrates that the process of delivering bridges following the granting of planning permission can take between 6 and 10 years which could delay the delivery of the proposed development at Little Barford even if technical approval and design work is relatively advanced.

5 EAST WEST RAIL

5.1 There are currently two potential options for the line that affect the site.

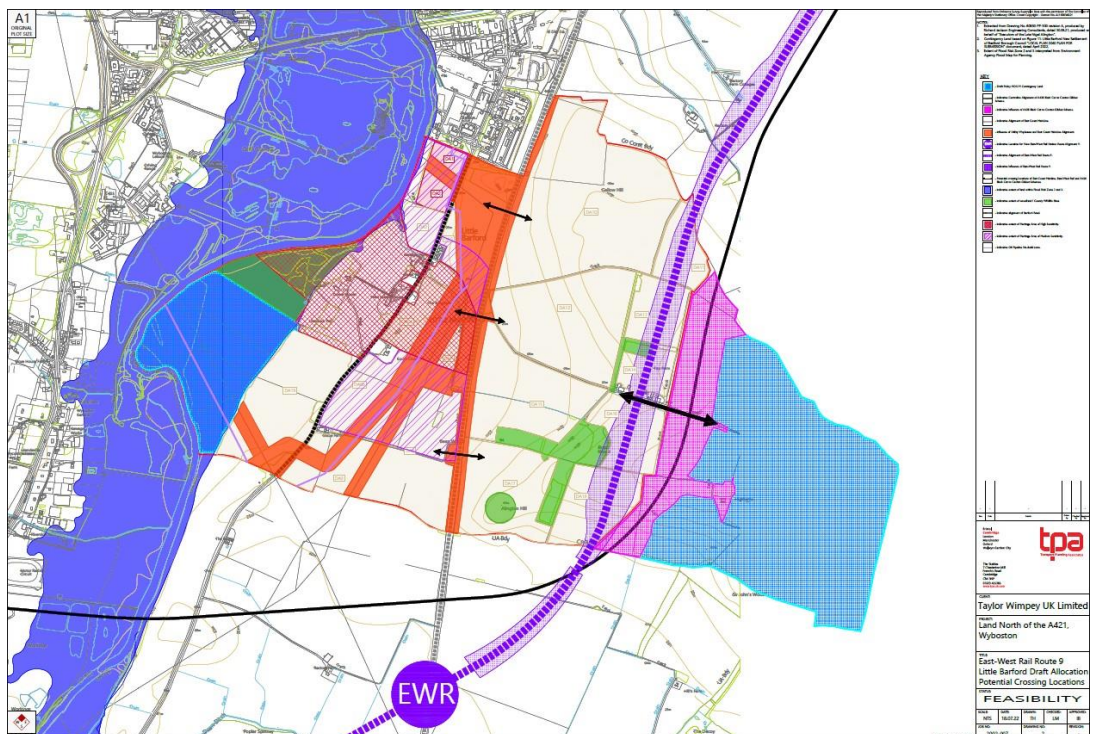
PROPOSED ROUTE 1



- 5.2 Route 1 is shown above which includes a station within the centre of the settlement and the new line dissecting the site from south west to north east. The new EWR line will cross the ECML at the point of the proposed new station. Until the EWR consultation process is finalised, and the route confirmed, it is not possible to confirm the development parcels nor number of units the development can deliver within the plan period. If Route 1 is preferred the site would be bisected by the ECML from north to south, the EWR from southwest to northeast and is bordered by the A428 bypass. This raises considerable issues in relation to the accessibility across the site as there would be multiple bridges of rail infrastructure and permeability across the site will be significantly reduced.
- 5.3 In addition, the new infrastructure will take up a large proportion of the developable area and could limit the number of homes that can be built across the site. The additional reserve land was intended to be used as land required for the EWR line not for additional housing. Similar access issues will occur with bridges from the main section of the site across to the reserve land requiring to bridge both the EWR line and the new A428 bypass.
- 5.4 Both the proposed EWR and the A428 bypass already require significant bridges of the ECML. It is proposed that there will be required a minimum of a further 2no. bridges needed to bridge the ECML within the site. Therefore, there will need to at least 4no. major bridges of the ECML within a short distance. From our experience of acting for Network Rail we anticipate there to be some considerable reservations regarding the need for a minimum of 4 new crossing of the ECML within such close proximity.

- 5.5 In addition to the 4 new bridges of the ECML, if Option 1 is the preferred route it will also be necessary to deliver new road bridges over the EWR in at least 3 locations to ensure accessibility across the settlement. Therefore, it is likely that if Option 1 is preferred there will be the need to provide at least 7 new crossings (bridges) over both the ECML and new EWR.
- 5.6 The provision of this many bridges (6 within the redline boundary of the new settlement) will come at significant expense. It needs to be demonstrated by the Promoter that these issues have been accounted for and costed and this could have a significant impact on viability and potential knock-on effect to the delivery of other key policy requirements, principally affordable housing. To date there is nothing in the public domain that demonstrates these issues have been considered.
- 5.7 In addition to the impact on viability of Option 1, we also have concerns regarding design and noise mitigation if two railway lines dissect the site. The new EWR is proposed to be routed through the south of the site on raised viaducts and then drop down into embankments. The ECML is a very busy and heavily used line that runs throughout the night with freight haulage. We have seen no technical reports considering noise and vibration impacts of these two lines running through the site and how this would impact on the available development parcels.
- 5.8 Finally, Option 1 includes a new EWR station over line ECML, clearly this will require major planning and design. Obviously, Network Rail and EWR are both linked as Government organisations, and it is reasonable to assume there will be cooperation but there will be significant implications of delivering a new station directly over ECML in terms of timescales and more importantly costs.

PROPOSED ROUTE 9



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- 5.9 The Route 9 option shown in the plan above includes a station to the south of the site with the track running up the east of the site. Whilst this option does not require land for the station being allocated within the site it does propose potential sustainability issues as the access to the station is currently only proposed as pedestrian and cycle routes from the development across the new bypass. This will lead to quite significant distances for residents especially from the north of the site. If a new road access is to be proposed from the south of the site, it would need to be across land that is outside of the ownership of the promoter and would need to cross the new A428. We have seen no suggestion of this in the plans for the A428 and we question how this could be delivered without ownership of large parcels of land that fall outside of the proposed allocation.

6 CONCLUSION

- 6.1 Draft Policy HOU19 (Little Barford) states that *'The development is dependent on the delivery of transport improvements which will need to be secured before development can take place in accordance with an agreed Infrastructure Delivery Plan'*.
- 6.2 Our report has demonstrated that there is virtually no prospect of the EWR being operational by 2030. Therefore, it will not be possible to deliver the necessary dwellings during the plan period if there is a delay beyond 2030 in the opening of the new EWR.
- 6.3 In addition, there is no connection with the new A421 Black Cat to Caxton Gibbet dual carriageway. Any future new junction connecting the new settlement at Little Barford will require (i) further land which may or may not be in the control of the promoter, and (ii) a separate consent regime once the roadworks are in place. All of this has the ability to severely impact on the overall yield achievable within the allocation and certainly on its delivery within the 2040 Plan.
- 6.4 There is no evidence of any engagement with Network Rail to overcome the complex issues of multiple crossings of the ECML. Evidence needs to be provided by the promoter that Network Rail will consent to the number of crossings needed and in the event of a potential 50% shared valued (ransom) scenario the delivery of the new settlement is still viable.
- 6.5 For these main reasons we do not believe the allocation of the proposed new settlement at Little Barford as outlined in draft Policy HOU19 is sound.

Appendix 1

STANTEC TECHNICAL NOTE

TECHNICAL NOTE

Job Name: Bedfordshire Rail Advice
Job No: 3322
Note No: 001
Date: July 2022
Prepared By: ██████████
Subject: Rail Delivery Process and timescale examples

1. Introduction

- 1.1. This technical note has been prepared to provide supporting evidence to the conclusions drawn in the Rapleys Reports 'Viability & deliverability of draft allocation hou19: Little Barford' and 'Infrastructure delivery report Little Barford – new settlement'.
- 1.2. The commentary and conclusions of the above reports demonstrate that:
 - i. The assumed East-West Rail (EWR) delivery timescale is overly optimistic, and
 - ii. A significant number of new road and rail crossings would need to be delivered over the existing East Coast Main Line (ECML) and new EWR line to support the new settlement, affecting both delivery timescales and viability.
- 1.3. These points are considered below with supporting examples.

2. East-West Rail delivery timescale & funding

- 2.1. EWR is yet to fix a final route option between Bedford and Cambridge. Once this has been agreed, there will be a substantial amount of additional work required to prepare the Development Consent Order (DCO) for submission. In addition to this extensive technical work, EWR will need certainty that funding can be secured for this very costly process. This is often the cause of extensive delay to scheme delivery.
- 2.2. Even if EWR is successful in securing the design and development funding to take the project through a DCO process, there is still the critical issue of identifying the source of funding to construct the scheme.
- 2.3. Government has given no commitment to funding the scheme and will not be in a position to make this decision until after the Secretary of State has endorsed the DCO decision, which would not be likely to happen until at least 2025. The DCO consent, should it be forthcoming, will likely include an extensive series of environmental obligations and requirements (effectively pre-commencement conditions) that could take several years to discharge prior to construction commencing.

DOCUMENT ISSUE RECORD

Technical Note No	Rev	Date	Prepared	Checked	Reviewed (Discipline Lead)	Approved (Project Director)
-/5501/TN001	2	27/07/22	SW	-	-	SW

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- 2.4. At this point, there will also be other major projects competing for Government funding at the same time as EWR, and National Government priorities could mean that funding is not available for the project. For example, the budget for TransPennine Rail (for which Government has already approved spending of £2bn) has increased from £2.9bn to between £9bn and £11.5bn, which is likely to mean other projects such as EWR will not be able to secure funding.
- 2.5. Even if it were, the examples below demonstrate that the delivery of rail schemes is risky, complex and typically liable to extensive overruns in terms of programme delivery as well as cost escalation, suggesting that the potential opening date of 2030 cited by EWR is grossly optimistic.

Western Rail Link to Heathrow

- 2.6. The project would see the construction of a new 6.5km rail chord from the Great Western Mainline (east of Langley station) into Heathrow Airport Terminal 5. The project was conceived in strategic plans in the early 2000's, and had been taken through various study and optioneering stages until Network Rail was formally instructed in 2012 by the Department for Transport (DfT) to progress the scheme, which is now being taken through a DCO process.
- 2.7. The scheme has been through a series of statutory consultation phases having established the proposed route, but has been put on hold due to difficulties with the business case and securing the necessary £900m funding from both Government and the private sector.
- 2.8. No indication has been given as to whether or when this funding issue can be unlocked, but it is not unreasonable to assume that the Bedford to Cambridge section of EWR will suffer the same challenges of securing Government funding against competing projects, noting that EWR is effectively two stages behind the Heathrow Rail Link in the process, since it hasn't established a fixed route.
- 2.9. The DCO for the Heathrow link is yet to be submitted for the above reasons, but is potentially to be submitted in winter 2022.
- 2.10. Even if this transpires (i.e. a business case and funding agreement is reached), the DCO programme dictates that a decision will not be made until around late 2024 with an extensive construction programme to follow. Even if construction were to be completed on programme, the scheme would have taken some 18 years to come to fruition.

Reading Green Park Station

- 2.11. The original planning permission was granted for a new railway station at Reading Green Park in January 2001. The scheme was fully supported by Network Rail and relevant operators. After several years of exploring avenues to seek to secure funding (from DfT, LEP, private sector etc), the business case was finally approved, and scheme funding eventually secured in 2016.
- 2.12. Following the extensive three year detailed design and Network Rail approvals process, construction commenced on the project in 2019 and is due to be completed at the end of 2022, with trains operating from 2023. Scheme costs have doubled from the initial £10m estimate to £20m.
- 2.13. This fairly simple rail scheme on a twin track line has effectively taken 20 years to progress from planning consent to operation, and costs have doubled.

High Speed 2

- 2.14. The current estimated cost of completing HS2 is between £72bn and £98bn at 2019 prices, compared with an original budget of £55.7bn in 2015 at 2015 prices.

TECHNICAL NOTE

- 2.15. The London and Birmingham leg was due to open at the end of 2026, but this is now expected to open around 2033. The second phase was due to open in 2032-33, but has been pushed back to 2035-2040.
- 2.16. A 2019 Freedom of Information request also revealed that property costs are forecast to reach £5bn, compared to the original £1.1bn estimate.

Crossrail (Elizabeth Line)

- 2.17. The decision to progress with delivery of the Elizabeth Line was made by Government in October 2007 with a scheme cost of £15.9bn. The opening was anticipated in December 2017. The scheme budget was later reduced by almost £1bn. Construction work commenced on the project in May 2009, but by October 2010 the projected opening date had slipped to December 2018.
- 2.18. In August 2018, it was announced that the opening would be delayed to Autumn 2019, and later that year it was announced that costs had increased to £17.6bn.
- 2.19. By November 2019, the opening date had slipped to 2021 with an increased cost to £18.25bn. This had increased to £18.9bn by July 2021.
- 2.20. The central section eventually opened in May 2022, with a target full Elizabeth Line operation by May 2023. In summary, the scheme completion date slipped by around five years and costs increased by £4bn.
- 2.21. The above examples demonstrate that even when there is a strong desire to deliver rail projects supported by Network Rail and Government, it is common for projects to find difficulty in securing the full funding needed for delivery, timescales are usually exceeded (substantially in many cases), and costs can spiral affecting viability. The cost increases inevitably mean that funds need to be reallocated from other planned improvements.

3. New Rail Crossings

- 3.1. The Rapleys Infrastructure Delivery Report sets out the design and approvals process that would need to be gone through to deliver the numerous new rail crossings that would be required to deliver the new settlement.
- 3.2. Network Rail would be highly unlikely to allow more than one bridge (or at most pair of bridges) in the relatively close proximity required on the ECML to be delivered in a single possession window. This is because it poses too much unnecessary potential risk to the timely reopening of the line post possession.
- 3.3. Each bridge would therefore likely need to be delivered over an extended series of available possession windows (typically 100 hours of line closure), which could extend over several years, depending on other required access and maintenance activity on the route.

Bicester Eco-town

- 3.4. This flagship new settlement to the northwest of Bicester in Oxfordshire is set to deliver c.6,000 new homes as part of the Government selected eco-town programme in 2009. Garden Town status was established in 2014 with the preparation of a masterplan followed by Local Plan adoption in 2015 and SPD in 2016.
- 3.5. The delivery of the settlement relies on the provision of two new rail crossings (underpasses) to facilitate a new road link and pedestrian/cycle connections, therefore has some similarities with proposed Little Barford allocation.

TECHNICAL NOTE



Figure 3.1: NW Bicester Site masterplan incorporating 2 rail crossings

- 3.6. As noted, the site was re-allocated in the current Local Plan (2011-2031) in 2015 and various planning applications prepared but only one small parcel of land has been developed (393 homes).
- 3.7. The delivery of the rail crossings and associated link road needed for access was conceived as being progressed by the developers of the scheme. Work had progressed through the design and masterplanning process, but it became apparent that the significant cost of the rail crossings could not be met by the developer, otherwise the development would have been totally unviable, or would need to be permitted without the necessary access infrastructure.
- 3.8. The rail crossings and main development were still effectively stalled several years after local plan adoption and the first application for development in 2014.
- 3.9. Work therefore needed to be progressed on a Housing Infrastructure Fund (HIF) grant application to Homes England to deliver the required rail crossings. This was led by Oxfordshire County Council (transport authority) due to their strategic interest in the delivery of this necessary transport infrastructure (link road and rail crossings). The funding bid was successful and some c.£40m public of funding has been made available to seek to ensure the housing delivery will not be further delayed.
- 3.10. Although the rail design solution sought to minimise any further delays to scheme delivery, there was still a requirement to obtain all necessary technical approvals from Network Rail and to secure the necessary 100-hour possession of the mainline to install the bridge decks.
- 3.11. Even after funding had been secured, this process effectively took another three years. The bridge deck was completed in August 2021 in readiness for the new link road to be built under the railway line. This is expected to be complete by March 2023.
- 3.12. Overall, it will have taken some 13 years since the eco-town status was established and some 8 years since first main application was submitted to complete the necessary rail bridge and link road works and only c 400 homes have been delivered to date. Had the HIF grant bid failed and Oxfordshire County not taken on the delivery of the rail crossings, the site would probably still be stalled and unable to deliver the full housing allocation, which will now extend well into the next plan period. Consultation on the next plan period to 2040 begun in July 2020.

TECHNICAL NOTE



Figure 3.2: NW Bicester Off line abutments and rail deck ready to be installed

Slough Trading Estate Masterplan – Leigh Road Central Core

- 3.13. SEGRO (owners of Slough Trading Estate) began developing proposals to regenerate the central core area of the estate, (already allocated for employment use in the Slough Borough Local) in early 2007.
- 3.14. A series of necessary extensive stakeholder consultation events followed leading up to the submission of a planning application in Jan 2009.
- 3.15. The central core of Slough Trading Estate was accessed by a single track historic listed bridge across the Great Western Mainline (GWML). This needed to be replaced with a new 2 lane bridge before development could commence.
- 3.16. A detailed application for the new bridge was also submitted in Jan 2009 following some 18months of technical design work and negotiation with Network Rail in parallel with the outline application for the development. Planning permission for the bridge and development was granted in late 2009.
- 3.17. An experienced Design and Build rail contractor was appointed to seek to fast-track the delivery process. Detailed design and technical approvals processes followed including securing the required possession to install the 52m span road bridge deck over the GWML.
- 3.18. The scheme progressed at pace and was successfully delivered and opened to traffic in Autumn 2015.

TECHNICAL NOTE



Figure 3.3: Leigh Road Bridge off line structure ready to be driven in

- 3.19. The above represents a fairly successful and streamlined delivery process for a new road crossing of a mainline railway. As noted, the above took almost six years from planning consent through to opening, even though a significant amount of advanced design work had already been undertaken.

Appendix 2

NETWORK RAIL SHARED VALUE POLICY

Shared Value Policy

When third parties require use of, or rights over Network Rail (NR) land, additional value in that adjacent land can be generated. NR may expect to receive a share of this additional value as consideration for its own disposal of land, grant of rights, or the use of its land. This is a valuable source of income for NR and is known as shared value. External parties may refer to it as 'ransom' but NR does not regard it as such and indeed it is a recognised part of the regulatory targets imposed on NR through the Office of Rail and Road (ORR) settlement process.

The ORR position on shared value is currently stated in the ORR publication – Investment Framework Consolidated Policy and Guidelines – published on its website and dated October 2010 (page 39, point 9.2).

Background

It is accepted within the property industry and well-established in case law at Upper Tribunal (Lands Chamber) that where land or rights in land are required to enable a development to proceed or otherwise create additional value in property, it is legitimate for the owner of that land to require a payment for the rights or land.

The appropriate level of payment was first established in the *Stokes v Cambridge Corporation* case of 1961. The principles were later confirmed in the *Kent County Council v Batchelor* case along with many others. In these cases, payments were determined in relation to a share of the additional value created by the grant of enabling rights.

A typical example would arise where access to a development site is needed by a developer across third party land, such as a bridge over the railway. The owner of the access land could charge an amount related to the uplift in value generated by the additional development that can be derived as a result of the grant of access rights.

These principles have been established at the Upper Tribunal in compulsory purchase order (CPO) cases. They are therefore appropriate principles to adopt in discussions with Local Authorities and development organisations where the rights required deliver increases in land value even where these interests are to be acquired by CPO or threat of CPO. In such cases, it will be necessary to establish how much of any value uplift could occur in the absence of compulsory powers. The basic principle is that market value should form the basis for assessing compensation.

Shared value payments can also arise from the need for service media to pass across NR land or the variation of restrictive covenants.

Guiding Principles

In dealing with third parties, and at a very early stage of discussions, NR should clearly set out the basis on which it is prepared to offer rights or other interests in land in shared value situations. This will avoid misunderstandings and may also identify any differences of opinion on the principles involved early in the process and thereby remove any unnecessary delays to projects.

As a basic principle, NR should not seek shared value payments where clearly none are due, but equally it should seek fair value where NR has a clear shared value position. NR should investigate situations where there is doubt but not seek to prolong such discussions beyond the point where it becomes clear that no shared value payment is due or that it is not possible to prove that a payment should be due.

Where there is dispute about whether a shared value situation exists or where there is doubt about whether NR is applying its policy correctly, (which in either case may have implications as regards related ORR policy) such matters should be referred initially to Head of Regulatory Compliance and Reporting for an internal assessment.

It is important that NR is seen to act reasonably and within established case law and valuation principles. In particular, NR must be seen to require no more than it is due. The usual starting point where NR is the only key holder should be 50% of the uplift in value. Where more than one keyholder is involved this amount could be split equally amongst the keyholding parties. The split should be determined on the circumstances of the case.

NR should co-operate in respect of the development of technical information and advice; design development and approvals of railway works and should not seek to withhold or delay railway approvals to secure or strengthen a shared value situation.

If an acceptable financial arrangement cannot be reached within the timescales required then the matter can be referred to an independent valuer to determine the appropriate level of payment to be required. This might be an expert jointly appointed or alternatively some form of mediation could be adopted, dependent on the issues involved.

In significant, complex or potentially contentious cases consideration should be given to seeking commercial valuation and negotiation advice at an early stage. In such cases it may also be sensible to consider early discussions with the relevant planning authority to ensure that they are aware of the issues.

Issues

Access Rights

This type of shared value situation usually occurs where access is required into a development site, often via a bridge over the railway or through other means requiring the use of or rights over NR land. In such cases, NR will seek a fair proportion of the uplift in value created by the rights it grants in line with the principles outlined above.

It must be recognised however, that some bridge or access rights are required for schemes that are not commercial. Examples might include a pure road improvement scheme promoted by a statutory body and not directly linked to any commercial development. In such cases, scale rates should be charged in the usual way. These charges relate to the number of tracks crossed, and the width of the bridge together with indexation. NR costs can and should also be recovered in these cases to the extent that this is possible.

There will also be cases where a scheme is a marginal commercial development such as a grant-aided scheme (whether council or developer promoted) where no current or likely future uplift in land value can be achieved. Scale rates may also be the appropriate basis of charging in these instances. In cases which are currently unviable but may become profit-making in the future, a clawback/overage type arrangement can be adopted.

There may also be cases where an apparently non-commercial scheme, can in fact be shown to release additional land value in other adjoining land. In these cases, the shared value principles should be applied in the same way as for a normal commercial development, if the link can be proved. This situation could occur for example; where land is the subject of CPO for a new road by a local authority, which will enable access to adjoining development land in third party ownership and facilitate valuable development on that land. In such cases, it is necessary to be able to make a reasonable link between the grant of the rights in question and the value created. The basic principle adopted is that NR is entitled to the market value of the rights irrespective of who acquires them, if it is reasonable to assume that someone would have been prepared to acquire the rights in the marketplace in the absence of CPO powers.

Where an access across NR land has been shown to be required, landowners and developers often seek to reduce the level of payment or avoid a payment altogether by arguing that it is possible to develop a proportion of the proposed scheme without the access rights from NR. Only the value genuinely added to the development by the grant of the rights should form the basis of shared value discussions.

In the above scenario where access works are accompanied by railway enhancement works, ORR has confirmed that in principle the offer of, or need for railway enhancement works should not prevent NR from seeking shared value payments. Where such works are carried out however NR should be prepared to reduce the shared value payment by the value to NR of the enhancement works and take any surplus as a capital payment. Care does need to be exercised in assessing the benefit of enhancement works to NR on an appropriate basis which will usually but not always be the pure cost of the works.

In large access rights cases there may occasionally be a large number of parties who control the access to the site. An alternative approach in this type of negotiation might be to become a partner in the scheme along with the developer and the other keyholders, as opposed to adopting a shared value position. Lands Tribunal decisions have indicated that if more than a few owners are involved the degree of control becomes significantly reduced, if not impossible to prove. Where a reasonably large number of land owners exists a partnership approach may have advantages. NR needs to ensure that it enters into such arrangements on the same or equally beneficial terms as the other parties and NR would benefit from an equal share of the whole value uplift (as opposed to a percentage of it). The appropriateness of this approach will vary dependent on the circumstances.

There are a limited number of cases where the original acquiring acts give landowners rights to bridge over the railway. In such cases no shared value opportunity exists, subject to a number of other criteria being met. This will only be the case for certain land acquired for the railway, normally before 1845, after which statutory powers of acquisition usually incorporated the provisions of the Railway Clauses Consolidation Act 1845 which lacks such bridging rights.

Where a third party already has access rights, but for example needs to widen or strengthen a bridge to implement a planning consent, this may also represent a grant of rights that enable development to proceed. Whether or not a shared value opportunity exists will depend on whether the original acquiring act gives express or implied rights to the adjoining owner to reconstruct the bridge in a different form, which is sufficient for the needs of the development. The principle of deducting the value to NR of any operational benefit from the shared value payment should be adopted in this situation where a railway enhancement is produced. Consideration should be given as to whether the value of the benefit to NR is the costs of the works or for example only a maintenance saving, or some other appropriate measure.

Recent examples of other shared value situations have included cases where NR has been asked to carry out works to its own infrastructure to facilitate the access to a development site or enable the implementation of a planning consent. Here, also the value of any operational or safety improvement to NR could be reflected in the financial arrangements, but the fact that use of NR land is required will constitute a shared value position. The test in these situations should be whether, if the developer used a contractor to carry out the works, rights would be required from NR that would constitute a shared value position. The fact that NR acts as the developer's contractor should not negate a shared value position.

Occasionally, access is required to facilitate a commercial freight development by a developer. NR should not seek payments based on any form of track access; however, if road access or other rights are required over NR land to enable the scheme to proceed then the normal shared value principles should apply.

New Stations

Planning consents for large development projects often require a new station to be provided to enable these schemes to proceed. ORR guidance states that NR should seek shared value payments from these opportunities, where the scheme cannot proceed without the provision of a station.

The same principles would apply to this scenario in terms of deducting the value of the new station facility. In addition, where a developer wishes to provide a higher specification station than NR would otherwise provide, NR should not be obliged to reduce the shared value payment to reflect this additional cost as it would not be a requirement of the railway.

Where the developer's S106 obligations give it the option to spend a fixed amount on either, station or other transport improvement works, a slightly different approach may be adopted. Whilst no shared value opportunity exists over the base scheme in such a situation, NR may argue that although the rights are not required to develop the scheme, these rights if granted would give the developer a windfall benefit of uplift in house/flat prices due to proximity to the station. NR commissioned research by property consultants Rapleys, which demonstrated that a new station would add in the region of 6.4% to house prices in the area of study. More recent research by CBRE has pointed to an average uplift of 5%. The percentage uplift will vary dependent on location, and whether the station accesses a commuter route. In this scenario, the share of the uplift in house prices would need to be researched and would need to exceed the station cost for a cash payment to be justified.

Restrictive Covenants

Network Rail also receives approaches from adjoining owners over whose land NR has the benefit of restrictive covenants. In some cases, the release of these covenants can constitute a shared value opportunity. In general, if the release or modification of rights is necessary to allow a scheme to proceed, then shared value principles should apply. Alternatively, if the rights merely enable increased density or value to be derived from a larger scheme, then only that additional value should be the subject of the shared value negotiation.

It should be noted that there are some standard NR conveyance clauses, which are solely for the protection of the operational railway, and which it would be inappropriate to use to seek to argue for shared value. For example, clauses preventing construction without NR approval of plans and method statements are generally for the protection of the railway and are not intended for commercial gain. These clauses should not be used to require shared value payments.

Other clauses such as use restrictions and no-build restrictions are however often imposed specifically to ensure that if future value increases accrue through change of use or development, NR can take a share of that value. In these cases, the shared value approach is therefore appropriate.

In assessing requests for the release of a restrictive covenant, consideration should be given to the options of modifying the covenant or issuing a specific consent under it, rather than releasing it altogether. This may allow a specific proposal to proceed, whilst ensuring that any future scheme or increased density would require further consent from NR and further payment could then be sought.

Easements

It is quite common for NR to get requests for service easements through its land for the benefit of adjoining developments. These can come from a number of sources. Most commonly requests arise from statutory service providers. These organisations have compulsory powers to requisition rights and the compensation payable for such rights is not a shared value payment but merely the diminution in the value of the land as a result of having the services running underneath it. This is usually a nominal sum.

Requests can also be of a type which might appear to be the usual statutory easement request, for example further development of a power station or wind farm, but are distinctly different. These are often commercial projects to which shared value principles should be applied. These schemes are often carried out with compulsory powers but the basis of valuation can be commercial value, in these circumstances. Care, therefore, needs to be taken to establish at an early stage the correct basis for assessment of compensation.

Occasionally, third parties approach NR for easements for services where the statutory provider does not wish to be involved. Here, a significant shared value opportunity may exist where the use of NR land is the only option. More commonly, however, services can be achieved via more than one route and often an alternative but costlier route will exist through other land. In these cases, the value to be shared could equate to the cost saving of taking the cheaper route through NR land.

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Shared Value Guidance

Q and A

Below are a series of common questions asked about shared value and general answers. These have been kept very broad to have the widest applicability. More detailed responses can be provided when a specific scheme is considered in more detail.

Q. What is shared value?

A. It arises where granting the use of land in some way creates value in a third parties land, and the owner of the land over which rights or use if required may seek a share of the uplift in value that its land creates in return for granting the required legal rights. These might be permanent, such access rights that enable development to happen, or could be temporary.

Q. What are the typical situations where shared value arises?

A. Commonly, a developer or land owner may need access over someone else's land as a condition of a planning consent to develop. Without the access the planning consent cannot be delivered and hence the rights need to be obtained to continue with the scheme proposed. Other circumstances can also give rise to a shared value situation, where the rights add value shared value will not be appropriate if the development value is not improved by the use of NR land.

Q. What should I do if I suspect there is a shared value element to my plan?

A. A step-by-step guide on how and who to engage with within NR, including contact points.

Q. Where did shared value principles originate from?

A. The basic principle is usually said to have arisen first in the case of Stokes Vs Cambridge Corporation 1961, which was a compulsory purchase case in the Lands Tribunal (which is now the Upper Tribunal of the Lands Chamber). Essentially this is caselaw determined by the highest court dealing on land valuation matters in the country. It is usual practice for property owners to request such a payment in these circumstances.

Q. How is shared value calculated?

A. It can be done in a variety of detailed valuation methods, but the essential approach is a marriage value type calculation. This involves the value of the existing land interests being compared to the value of the land with the benefit of the new rights. The difference between the two is shared amongst the parties to reflect that both are needed to create this additional value.

Q. What about the existing value of the land?

A. The current use value is the starting point for shared value so no part of that need be shared.

Q. What if there are a number of parties ransoming a scheme?

A. There is only one shared value or ransom amount. The principle that would apply here is that the increase in land value is created by all of the parties and therefore they all share in the amount. Often the amount is shared equally, but it is possible that if the circumstances dictate, one party may have a stronger position.

Q. What is the position if the scheme has high upfront or uncertain costs and the developer cannot afford to pay immediately?

A. To some extent it will depend on circumstances, but it is usually possible to consider flexible payment methods, provided that the time elapsed and the reduced uncertainty to payment is properly reflected in the payment at that time.

A flexible payment approach might involve one of the following options:

- A formula approach for fixing parameters
- Use of overage provisions to deal with unknown costs and values
- Staged or deferred/back-loaded payments

Timing of payments could be:

- Part up front and part later, possibly through an overage mechanism
- More frequent staged payments based on actual costs and values
- All payments further back in the programme but with protections to ensure that payments stay in line with actual scheme values and costs
- Other options may be acceptable subject to approval and sign-off by professional advisors

Q. How do I get more detail on a specific situation and what principles will apply?

A. An initial meeting or series of meetings very early in the project life should enable basic principles to be set out and hopefully agreed at a very early stage. It may well be that at an early stage of scheme design and costing that the planning position may not be sufficiently clear or the detailed design and costing of infrastructure sufficiently advanced. Hence, detailed negotiations would be more appropriate once more detailed information is available.

Q. Why should shared value land owners take value when they are not taking a risk in the same way as the developer?

A. The shared value amount would effectively exclude the developers profit at a reasonable percentage, as that is the developers reward for taking risk. It is only a share in the value of the land that is factored in, by including it in the deductions, when valuing the uplift in value.

Q. What if we are providing works or facilities for the benefit of the shared value land owner, should they not forego shared value in this case?

A. Only to the extent of the value of the benefit. If a developer builds a railway station for example the cost of that should be factored into any payment. If, however, the value of the share of the land value increases significantly or exceeds the operational benefit, it should be considered as part payment. Otherwise, low value operational benefits could be offered to remove high value shared value payments, which would be inequitable.

Q. Why does Network Rail require shared value payment from much needed residential schemes?

A. The financial rules that govern NR and other government bodies require that any transfer of an interest in land is done at an open market value, even where the two bodies are both within the public sector.

Q. When a safety benefit is offered to a public body should that not be a reason to drop shared value principles?

A. No, because safety should be a determinant in its own right and public bodies should not trade off safety against value. Safety should be properly built into scheme design first without consideration of the impact on a payment to a public body. Only when a safe scheme has been settled on should a valuation exercise be undertaken including the safety costs to determine whether a shared value payment should be made.

Q. What is to stop public bodies unreasonably withholding an agreement to seek to drive up the price?

A. The guidelines applied are clear that this is inappropriate conduct for a public body. A joint independent assessment should be offered to speed up the process, mitigate cost but also ensure a fair outcome that has been independently arrived at.

Q. What if the process fails and the public body is still being unreasonable?

A. All public bodies have procedures that allow complaints to be made and investigated and for issues to be escalated if no satisfactory resolution is reached.

Q. How do I best engage with public bodies to manage this issue?

A. In line with the principle of the National Planning Policy Framework, it is felt that early consultation with NR in line with the general town planning principles are generally the best approach to discuss and agree principles and agree a way forward and a programme as the circumstances dictate.

Q. Will shared value not reduce the local benefits through S106 payments?

A. It should remove any benefits that are reasonable and proper as these will be factored into the cost equation before the land value uplift has been calculated, thereby reducing the shared value payment. Clearly though, excessive S106 proposals at the expense of the shared value land owner is not reasonable. Many other public bodies rely on Property Funding to assist in the delivery of their services, and hence this also needs to be recognised when considering the impact on public benefit.

Enquiries

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Shared Value Guidance

Example Illustrative Case

A developer has an option over 200 acres of farmland owned by a farmer landowner, as a result of an indication from the Local Authority that the land has potential for allocation as a future housing site. The land is however separated from the adjacent urban area by an operational railway line. To access the site, a new road over the railway is required, and the acquisition of rights to bridge over the railway.

In this situation, the land is currently worth agricultural value, and with the allocation the value would uplift to residential site values. If the rights were acquired by Compulsory Purchase the test would be whether a reasonable developer would be likely to buy the rights for the road in the absence of compulsory purchase powers. The compensation to the railway would then be assessed as what that same developer would be prepared to pay for those rights. Essentially the evaluation test is; what is the open market value of the rights in question in the absence of compulsory powers?

The above is simplified to illustrate the basic principles. It would usually be true that the developer would need to incur significant expenditure to get a planning allocation and planning consent and then to build the infrastructure needed to deliver the residential land values. It is fair that these costs be deducted before any assessment of the uplift in value is fixed. The developer, of course, is only likely to proceed if it can make a sensible return on investment in line with market expectations, and that should also be factored in. Costs, such as consultants' reports, design, engineering, valuation, legal etc. also need to be factored in, along with interest on necessary funding needed. Planning consent will usually require S106 obligations and community infrastructure levy (CIL) requirements; these costs also need to be considered. The costs of the bridge over the railway and any Network Rail (NR) engineers' costs in approving and supervising it should also be included.

It is likely that a reasonable land owner will only release its land for development if it receives a sensible uplift on its current land value, and this value should also be factored in. Once all of the costs and the base existing use value (with a sensible release premium) are known, this can be compared to the likely end values of the development proposed, in this case, housing. The excess, should there be any, of values over costs represents a profit over and above the base returns that all parties need to justify proceeding with the project. It is this element of additional value that NR would look to share in. NR does accept that where genuine railway improvements are offered (such as a station enhancement) that it would agree that this is a contribution towards the payment NR should receive.

Once the quantum of land value uplift has been established it is then necessary to determine what shares the parties should receive. In this example, NR is the only other party from which rights are required, and NR would request 50% of this super-profit. The other 50% remains with the land owner and developer in whatever way they agree.

If, in this example, there had been a further land owner over whose land the same rights were needed to connect the existing highway, then it would be reasonable for the 50% figure to be shared between the two key holding land owners in a proportion to be agreed. In this scenario, the remaining 50% still sits with the landowner/developer side allocated between them, as they agree, and hence the existence of multiple key-holders should not impact negatively on the land owner or developer.

In this example, an early approach to NR is helpful to all parties. It gives the developer certainty that the access can be delivered, which reduces scheme and planning risk. The early agreement of a payment sum or payment calculation mechanism gives financial certainty to both the developer and the landowner. It also gives certainty to the local authority that the scheme is viable and can deliver the required benefits package.

Enquiries

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