

## **REQUEST FOR REVIEW OF DECISION TO REFUSE REQUEST FOR INFORMATION**

**EWR REF: CS-00067329**

### **COSTS IN £BN (2019 PRICES) FOR SECTIONS C, E AND F OF THE OVERALL BEDFORD-CAMBRIDGE PROPOSAL**

I refer to your email of 2<sup>nd</sup> June 2021 and hereby request a review of your decision to refuse to provide the information sought as above. In my opinion, the public interest considerations favouring disclosure substantially outweigh the public interest considerations against disclosure of this information, and my original request should be upheld.

You will be aware that there is significant public concern relating to the cost of the proposed railway through Route E between Bedford and Cambridge, which, in EWRCo's 2019 non statutory consultation was presented, by some margin, as the most expensive of the five options consulted on, but had inexplicably become the second cheapest in the 2020 non-statutory consultation.

At paragraph 4.6 of the 2019 Technical Report, you stated:

*"cost estimates have been developed to a sufficient level of confidence to indicate how costs may vary across route options"*

Setting aside any legitimate criticisms of the 2019 consultation exercise itself, publication of the 2019 estimates and the assurance given by EWRCo at that time that reliance could be placed on the relative order of costs were two factors which were highly instrumental in leading the public into believing that Route E was not a realistic option for the railway, and conditioned the level and nature of public response at that time accordingly. The public feel they have been misled. That is why there is so much public opposition to the choice of Route E (in Bedfordshire) and to the recent alignments consultation.

Nevertheless, despite the questionable provenance of the 2020 cost estimates, EWRCo was at least prepared to publish cost estimates in 2019 and 2020 for the whole of the Bedford-Cambridge section. It is inexplicable that EWRCo was unwilling to publish comparable information in the 2021 consultation. Given the public furore over the discrepancies in costs between 2019 and 2020, this failure to publish comparable information does not appear to amount to a decision taken in the public interest but one which appears to be solely concerned with cover-up, thereby attempting to avoid or minimise reputational damage for the organisation itself or personal embarrassment for senior management in the organisation.

Consequently, public trust in EWRCo and the project itself has been seriously damaged, which augurs badly for subsequent stages of the project. Given the track record of major railway infrastructure projects considerably exceeding estimates and budget (e.g. HS2, Crossrail), the failure to be open with the public on costs for this section of the project raises the inevitable suspicion that EWRCo is holding information which shows that the costs for the Bedford-Cambridge section now indeed exceed those published in 2020 and that, were a comparable exercise ("back-checking") into the five route options consulted on in 2019 undertaken now, Route E would again be shown to be the most expensive. Unless comparable information is published now, the wider public interest will be denied. It is virtually axiomatic that had the overall costs for the Bedford- Cambridge section been similar to or lower than the 2020 estimates they would undoubtedly have been published.

Even in that context, however, EWRCo were prepared in the 2021 Technical report to publish cost estimates for part of the route, relating to each of the nine Section D alignment options between Clapham Green and the Eversdens on which public comment was sought. That disclosure makes it even more inexplicable that similar data has not been published for the remaining sections between Bedford and Cambridge so the public can make properly informed comment.

You are refusing to disclose the information requested, under the exception in Regulation 12(4)(d) of the EIR, as you say the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data. You assert that the information relates to the ongoing formulation and development of the EWR project and the costs requested will be impacted by the results of the current consultation.

However, the fact that you may not have completed a particular piece of work, or documents remain unfinished, does not necessarily mean that all the information you hold is automatically covered by the exception. The data you hold cannot be considered incomplete simply by virtue of it being an estimate or just because it may be modified or amended in the future. If that were the case, then why was cost data for the whole of the Bedford-Cambridge section released in 2019 and again in 2020, but not in 2021?

Even if the exception applies in the way you see it, you are still obliged to go on and apply the public interest test. I deal with each of the points you make for and against disclosure.

### **Public interest considerations favouring disclosure**

1. **Public interest in transparency** - the public interest test is not just a subjective balance between disclosure on the one hand and withholding information on the other. There is a clear presumption in favour of disclosure, which tilts the balance between disclosure and withholding firmly in the direction of disclosure.
2. **Transparency when spending public money** – as referred to above, there is intense public interest in the cost estimates for the central section of East West Rail. Disclosure would enable proper, open testing of the cost assumptions for this project and the merits of alternatives, thereby assisting in ensuring the best use of public funds.
3. **Transparency regarding the business case** – EWRCo claimed in 2020 that Route E would deliver the best value for money of any of the 5 options consulted on in 2019. If that claim remains true, then EWRCo has a duty to disclose the cost estimates now on a comparable basis to 2019 and 2020.
4. **Transparency over decision-making** – If good decision making is to be encouraged, then the public interest favours disclosure. The absence of up to date and comparable information on costs for the Bedford-Cambridge section suggests that decision-making on the choice of route and the alignments will be compromised.
5. **Disclosure may enhance public participation** – the absence of up to date cost estimates has certainly fuelled public comment, but negatively.

## **Public interest considerations not favouring disclosure**

1. **Timing/ongoing public consultation** – the second non-statutory consultation closed on 9<sup>th</sup> June 2021, so there will be no material impact on the consultation if the information is released.
2. **Distracting public debate** – it is clear that the absence of detailed cost estimates for the whole of the Bedford-Cambridge section of the railway distracted public debate in the 2021 consultation and has undermined the engagement process. The decision-making process in relation to Route E was seriously flawed. The absence of up to date data will compound local grievance on this matter. This will negatively impact the decision-making process at later stages of the project.
3. **Safe Space** – whether this ground carries any significant weight depends on the timing of the request. As noted already, the 2021 consultation has now closed. In any case, by disclosing similar information in 2019 and 2020, EWRCo presumably did not require a “safe space” then, so why now - unless it has something to hide?
4. **Chilling Effect** – invoking this ground suggests that EWRCo is concerned its employees and contractors may be less candid in giving views and information on costs. It is difficult to understand how disclosure would affect candour or openness now or in the future. Your employees and contractors have a duty to provide information in the course of their employment, and professional standards to uphold. It is implausible for you to argue that the prospect of publication would deter an individual from acting to the best of their ability.
5. **Accuracy of Information** – This argument carries no weight. It should be possible for EWRCo to put the disclosure of the information sought in context, to provide caveats or disclaimers – such as the estimates are provisional pending the outcome of public consultation. Disclosure should not mislead if presented in this way.
6. **Content of the Information** – The extent and availability of up to date cost estimates for the Bedford-Cambridge section would clearly inform public debate and shed considerable light on the issue, pointing strongly in favour of disclosure. Just because such disclosure could result in an increase in enquiries to EWRCo, divert resources, and impact project delivery is not a public interest reason for non-disclosure at this stage. In fact a delay in disclosure to a later date in the process may well have an even greater impact on resources and the delivery of the project at an even more critical time in its evolution.

## **Conclusion**

Even if the exception under Regulation 12(4)(d) applies (which is disputable), the clear presumption in favour of disclosure applies in this case. The reasons for disclosure evidently outweigh the reasons for non-disclosure.

**My request for information of costs in £bn (2019 prices) for section C, E and F of the overall Bedford-Cambridge proposal should therefore be upheld.**

