

The Network Rail

The Network Rail (Cambridgeshire Level Crossing Reduction) Order

Proof of Evidence - Property

Jonathan Smith MRICS FAAV

Document Reference	NR29/1
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1. INTRODUCTION

- 1.1. My full name is Jonathan Smith. I am a partner at Bruton Knowles, a firm of chartered surveyors with the head office at Olympus House, Quedgeley, Gloucester GL2 4NF. The firm operates from 12 offices throughout England and Wales and I am based in the Gloucester office.
- 1.2. I am a member of The Royal Institution of Chartered Surveyors (RICS) having qualified in 1996 and a Fellow of the Central Association of Agricultural Valuers. I attended the Rural Estate Management course at the Royal Agricultural University.
- 1.3. I have worked for Bruton Knowles since 1998 and in the last 12 years I have worked predominantly within the field of compulsory purchase and compensation. I have acted for a number of acquiring authority clients and claimants affected by projects including Compulsory Purchase Orders, Development Consent Orders and Transport & Works Act Orders (TWAOs).
- 1.4. In 2015 Bruton Knowles tendered for inclusion on the Network Rail Property Services framework and was successful. The areas of work covered by the tender included compulsory purchase and Bruton Knowles was awarded a commission to undertake property support services in respect of the Anglia Level Crossing Reduction Programme. The award was made under the auspices of the framework contract in November 2016.
- 1.5. The Anglia Level Crossing Reduction programme requires three separate TWAOs to be made, one of the TWAOs is the Network Rail (Cambridgeshire Level Crossing Reduction) Order (the Order).
- 1.6. My role is to assist the Bruton Knowles team in delivering the work awarded under the contract, in particular giving support on the valuation aspect of rural property assets. The work involves sending notices and positioning and checking site notices. In addition Bruton Knowles are providing support to Network Rail's in house property and consents team including supporting objection management and negotiating with affected landowners and interest holders.
- 1.7. I am aware of the details of the Scheme from the study of the application documents including Scheme drawings. I have familiarised myself with the crossings affected including attending site visits where appropriate. I have also attended meetings and conference calls with the other members of the Scheme project team.
- 1.8. Where I have not undertaken discussions personally with landowners I have been kept fully informed by Network Rail staff, consultants and contractors. Where Bruton Knowles have engaged in direct discussions colleagues have reported details of the meetings to me. Where appropriate Network Rail staff have provided me with notes of meetings and correspondence where relevant.

- 1.9 I have studied publicly available information on properties that I have not been able to inspect and I have considered the objections and representations that have been submitted.

2. SCOPE OF EVIDENCE

- 2.1 My Proof of Evidence will address the property impacts of the Scheme and will cover the matters set out below:
- 2.2 A description of the purpose of the draft Order (NR02) and consideration of the rights and powers that are sought by Network Rail in the Order to facilitate the Scheme and the approach to acquiring the rights focussing on those rights and powers that affect private land are considered.
- 2.3 A review of the scope for those private landowners affected by the Scheme to claim compensation as a result of the scheme.
- 2.4 A description of engagement with landowners during the period prior to and after the publication of the Order.
- 2.5 Response to objections by landowners on a crossing by crossing basis.

3. **POWERS SOUGHT by NETWORK RAIL**

Purpose of the Order

- 3.1 The purpose of the Order is to enable Network Rail to close or downgrade certain level crossings in Cambridgeshire and where necessary to extinguish existing public and/or private rights over crossings and to create alternative public or private rights of way in substitution. The Order authorises Network Rail to carry out works associated with the closure or downgrade of level crossings and creation of alternative rights of way, including the construction of footbridges to carry new PRowS over drains or watercourses (the Scheme). The Order gives Network Rail the necessary powers to implement the Scheme.
- 3.2 In particular, article 5 of the Order allows Network Rail to construct and maintain works:
- 3.2.1 for the creation of the new rights of way set out in column 4, Part 1 of Schedule 2 to the Order;
- 3.2.2 associated with the removal of the crossings and extinguishment of existing rights set out in Schedule 2;
- 3.2.3 to provide private rights of access set out in Schedule 3, and
- 3.2.4 relating to the redesignation of certain highways set out in Schedule 4.
- 3.3 Network Rail is under an obligation under section 5(6) of the Transport and Works Act which requires Network Rail not to extinguish any public right of way (PRow) unless the Secretary of State is satisfied that an alternative PRow has been provided or that the provision of an alternative right of way is not required.
- 3.4 Therefore, Network Rail, acting in accordance with both the DCLG Guidance on the Compulsory Purchase process and the Crichel Down Rules (DCLG Guidance) and Guide to TWA Procedures, identified a number of key rights and powers that are to be sought in the Order. In particular the Order enables Network Rail to compulsorily acquire land, permanent rights in land and to temporarily occupy land in connection with the construction of the works to be authorised by the Order. The rights and powers predominantly affect private landowners.

- 3.5 Network Rail is willing to seek to acquire the temporary occupation or rights (including for access) in land by agreement but in order to provide suitable and convenient PRowS (bearing in mind its obligation under section 5(6) of the Transport and Works Act), and which connect coherently to the existing PRow network, Network Rail has sought to compulsorily acquire the necessary land or rights in land. Network Rail has however limited the extent of the acquisition to only what is reasonably needed in order to construct the Scheme. It has therefore taken powers only to temporarily occupy land so as to create the new PRowS and has not sought to acquire outright strips of private land which it does not need and which would be wholly disproportionate given the nature of the Scheme. Network Rail therefore considers that there is a compelling case in the public interest to acquire the necessary use and rights in land related to the closure and downgrade of level crossings as set out in the Order.
- 3.6 These powers would guarantee that, should the Order be made, all the land required for the Scheme can be acquired in a realistic timescale and that no individual landowner can hold up the Scheme through a refusal to sell or licence its interest. It would also ensure that no adverse interests prevent the Scheme being delivered. In practice, it would be impossible to assemble all the necessary land interests in a reasonable timescale without the use of such compulsory powers.
- 3.7 The rights and powers in the Order

3.7.1 Closure of level crossings subject to opening of new rights of way

3.7.1.1 Article 14 of the Order provides for closure of the level crossings and extinguishment of PRowS as set out in Part 1 of Schedule 2. Part 1 of Schedule 2 to the Order sets out the status and extent of the new highway in column 4 by reference to the Order plans. The alternative routes are either along existing public highway or are created across private land.

3.7.1.2 It is important to note that article 14 imposes a restriction on Network Rail so that it cannot close any of the crossings contained in Part 1 of Schedule 2 until the new PRowS have been completed to the reasonable satisfaction of the highway authority. Article 14 also makes provision for anyone who suffers loss in relation to the extinguishment of a private right over a crossing specified in Part 1 of Schedule 2 to claim compensation. The rights of statutory undertakers are not affected by the closure of the crossing.

3.7.2 Closure of level crossings without substitution

3.7.2.1 Article 15 of the Order provides for closure of the level crossings in Part 2 of Schedule 2 in cases where no substitution is required. Part 2 of Schedule 2 deals with those locations where no new alternative right of way is being provided. In the case the crossing identified in Part 2 of Schedule 2 to the Order (C28 Black Horse Drove) Network Rail considers that a suitable and convenient route already exists (as indicated on the design freeze plans in the Design Guide (NR12) and has not therefore provided a new right of way in substitution. Article 14 makes provision for anyone who suffers loss in relation to the extinguishment of a private right over a crossing specified in Part 2 of Schedule 2 to claim compensation. The rights of statutory undertakers are not affected by the closure of the crossing.

3.7.3 Redesignation of Highways

3.7.3.1 Article 13 provides for the redesignation of highways set out in Schedule 4 from the current designation in column 3 to the designation in column 4.

3.7.4 Creation and maintenance of new highway

3.7.4.1 Article 16 sets out the position relating to creation and maintenance of the new PRowS set out in Part 1 of Schedule 2 to the Order. The new PRowS (highways) are to be completed to the reasonable satisfaction of the highway authority and obtain formal status when they are formally completed. They will then be maintained by Network Rail for the first twelve months, after which the Highway Authority will be responsible. Article 16 also applies the compensation provisions under section 28 of the Highways Act to the new PRowS, to allow those who wish to bring a claim to contact Network Rail.

3.7.5. Permanent acquisition of land

3.7.5.1. Article 19 and Schedule 5 to the Order provide that the land identified in columns 1 and 2 of that schedule may be acquired for the purposes specified in column 3. This land may also be used by Network Rail for purposes ancillary to its railway undertaking.

3.7.6 Permanent acquisition of rights of access over land

3.7.6.1 The Order authorises Network Rail to acquire new rights of access over the land detailed in Schedule 6 to the Order. The purposes for which such rights may be acquired are for access, for access for the creation of a PRow, access for the removal of a level crossing and associated infrastructure, access for construction of the authorised work or access for maintenance.

3.7.6.2 Although the acquisition in the Order is for a permanent right of access over land, except in those cases of access for maintenance and access to the railway, the rights required are, in effect, temporary, to be exercised only in relation to the works to close the level crossing, any extinguishment of existing PRoWs and in relation to works to create the alternative public or private rights of way.

3.7.7 Temporary Rights for construction purposes over land

3.7.7.1 The Order also authorises Network Rail to enter upon and take temporary possession of land specified in Schedule 7 to the Order for use as a worksite during construction, to create the new PRoWs on the land including construction of any associated footbridges, creating any temporary accesses for removal of the level crossing, creation of the new PRoW or construction of authorised works. The powers are time limited and the land must be returned to the landowner within twelve months of the completion of the works for which the land was taken.

3.7.8 Temporary Rights of Entry for Maintenance Purposes

3.7.9.1 The Order also provides powers in article 24 for the temporary use of any land within the Order limits if it is reasonably required for the purpose of maintaining the authorised works and to construct any temporary works associated with that maintenance. These powers cover a twelve month maintenance period commencing upon the date that the work is opened for use. Network Rail will be responsible for the new PRoWs and related footbridges for the first twelve months after construction, after which the local highway authority takes responsibility.

3.7.9 Powers to Extinguish Private Rights

3.7.9.1 The Order further provides for the extinguishments of private rights of way over accommodation crossings, listed at article 28(2).

3.7.9.2 These crossings are included separately in article 28 because either there are no PRoWs over them or because the PRoWs which also exist are not being extinguished. In each case, therefore, they do not appear in Schedule 2.

3.7.10 Acquisition of Permanent Private Rights of Access

3.7.10.1 As set out above, the Order provides for the extinguishment of private rights over crossings C35 Ballast Pit, C33 Jack O'Tell, C02 Nairns and C34 Fysons. The Order provides the power in article 22 to permanently acquire new private vehicular rights of access for the benefit of certain land (shown cross hatched on the Order plans) affected by the extinguishment of private rights over the crossing.

3.7.11 Grant of rights over level crossings

3.7.11.1 Article 29 clarifies that in relation to crossings where public vehicular rights of way are to be extinguished, vehicular rights of access will be retained for certain users permitted by Network Rail.

3.7.12 Additional Rights of Entry

3.7.12 In addition to the primary rights outlined above the Order provides powers to Network Rail to lop trees overhanging the works as set out in article 33 of the Order and to enter on private land for survey and investigation purposes as set out in article 17 of the Order.

- 3.8 The Order also provides for certain works to alter or interfere with the highway. This includes powers to permanently stop up streets (article 9), powers to temporarily stop up streets (Article 10) alter the layout of streets (article 7) or to carry out other works in the street (article 8) associated with the provision of alternative routes or the extinguishment of existing rights, including to provide new or extended footways or pedestrian refuges (traffic islands). The streets specifically identified as affected by these powers are set out in Schedules 8, 9, 10 and 11. The Order also incorporates certain provisions of the New Road and Street Works Act 1991 where works are required in the street or streets closed temporarily.
- 3.9 Hence if approved the Order will grant powers to close certain level crossings, create new rights of way, construct works, downgrade the status of other crossings and related highways, take land on a temporary basis, impose rights on land, extinguish private access rights, grant private rights over certain crossings, undertake works affecting the highway and allow entry for survey and tree lopping purposes. The rights set out in the Order are all required to facilitate delivery of the Scheme.

4. COMPENSATION PROVISIONS

- 4.1 Where Network Rail impact upon private land and rights the Order provides for compensation to be paid to the landowners. The Order incorporates elements of the legislation which makes up the Compensation Code and provides for appropriate variations to that legislation as it applies to the present Order: in particular the Compulsory Purchase Act 1965, the Land Compensation Act 1973 and the Land Acquisition Act 1981, these being key cornerstones of the UK compensation legislation. Along with case law and other legislation these help form the compensation code which provides for proper compensation to be paid to those having land taken from them to facilitate schemes undertaken in the public interest in the UK.
- 4.2 The compensation provisions in the Order vary depending upon the rights being acquired or extinguished which I detail below by reference to each right.
- 4.3 As set out in section 3 of my proof above, the powers sought in the Order will enable Network Rail to compulsorily acquire land, take temporary possession of land or acquire new rights in land for access for construction of the works and to take permanent rights of access for third parties as a consequence of the closure or downgrade of a crossing upon service of appropriate notices.
- 4.4 As also set out in section 3 of my proof, although the powers would enable Network Rail to take possession without the landowner's consent if necessary, Network Rail is willing to reach agreement in advance of using compulsory purchase powers in accordance with the DCLG Guidance.
- 4.5 The Order invokes Part 1 of the Compulsory Purchase Act 1965 which, through its application, has the effect of requiring Network Rail to pay compensation to qualifying parties under the Compensation Code for acquisition of new rights in land for access for construction of the works, or for rights of access for third parties. Compensation for temporary possession of land is addressed in article 23(5) or article 24(6)).
- 4.6 All property owners who have rights imposed on their land under the Order, as set out in Schedules 3 and 6, will be entitled to claim compensation in accordance with the Code, which provides a consistent approach to the assessment of fair compensation (as may legally be varied from time to time).

- 4.7 In addition to compensation being paid for the value of land taken, compensation will also be payable in respect to any loss in a landowner's retained property caused by it being severed from the land acquired, or by the Scheme itself.
- 4.8 Compensation is also payable in respect to disturbance losses that result from the construction of the Scheme. The total compensation to be paid is usually agreed between the parties. In the event that agreement cannot be reached then fair compensation can be independently determined by both parties making a joint reference via the Alternative Dispute Resolution (ADR) process, or by one or both parties making a reference to the Upper Tribunal (Lands Chamber).
- 4.9 The compensation payable in relation to the acquisition of particular interests in land is therefore as follows:

4.9.1 Permanent acquisition of land.

4.9.1.1 As explained in section 3 above, overall powers within Article 19 and Schedule 5 to the Order provide that the land identified in columns 1 and 2 of that schedule may be acquired for the purposes specified in column 3.

4.9.2 Permanent acquisition of rights over land.

4.9.2.1 As explained in section 3, the Order provides Network Rail with the power to permanently acquire new rights for third parties, over the land specified in Schedule 3 and also to acquire rights for access over the land set out in Schedule 6. Network Rail acknowledges that it is appropriate to provide for compensation to those who have a land interest that is affected by the new rights. This would be effectively on the same basis as if the land had been acquired permanently, that is on the basis of the value of the interest acquired and loss due to injurious affection.

4.9.2.2 Schedule 14 of the Order provides, in paragraph 2(3) for section 7 of the Compulsory Purchase Act 1965 (which sets out the compensation payable for severance of land) to be applied in a modified form in the case of acquisition of such new rights. Paragraph 2(3) sets out that the measure of compensation to be applied is not only the extent to which the value of the land has been depreciated by the acquisition of the new rights, but also to any damage sustained by the owner due to the taking of the right or injurious affection arising from the exercise of the powers in the Order.

4.9.2.3 A number of other heads of claim are also recoverable including reasonable surveyor's fees and interest.

4.9.3 Temporary Rights for construction purposes over land and Temporary Rights of Entry for Maintenance Purposes

4.9.3.1 In relation to land to be occupied temporarily under the powers in article 23, as set out in Schedule 7 to the Order, and under article 24 for maintenance of works, Network Rail must pay compensation for any loss or damage arising from the exercise of the powers in the Order. This provision is different to that where permanent rights are taken or where land is acquired because in exercising temporary powers Network Rail is not required to take a legal interest in the land. In the event that the parties cannot agree the amount of any compensation to be paid the dispute will be referred to the Lands Chamber of the Upper Tribunal.

In all cases where land is required to be used by Network Rail on a temporary basis such land will be returned to the landowner within the time limits set out in articles 23 and 24 of the Order. Before giving up temporary possession of such land Network Rail must restore the land to the reasonable satisfaction of the owners of that land in accordance with the provisions contained in either article 23(4) or article 24(5) of the Order as appropriate.

4.9.4 Powers to Suspend or Extinguish Private Rights

4.9.4.1 Where private rights are suspended or extinguished by the Order (under articles 10, 14, 15, 27, or 28) provides for those landowners affected to claim compensation. There is also in the Order provision to take disputed compensation to the Upper Chamber for determination. A claim will be based on a diminution in the value of the land without the right in place.

4.9.5 Additional Rights of Entry

4.9.5.1 In both the circumstances where overhanging trees are lopped or land is accessed for survey work the Order provides for Network Rail to pay compensation for loss or damage arising from the exercise of the powers.

4.9.6 New Public Rights of Way over Land

4.9.6.1 As set out above the Order provides for new PRowS to be created over land. Compensation for any loss or damage resulting from the works to create those new rights of way is set out above, however Article 16(3) makes express provision for compensation to be paid for depreciation in the value of the interest in land or for damage suffered by being disturbed in the enjoyment of the land by applying the provisions of section 28 of the Highways Act 1980 (which provides for compensation for landowners affected by a public path creation order) apply to the present Order.

4.9.6.2 The provisions are restricted to claiming for loss incurred on the land across which the path crosses rather than general loss to the interest which is affected by the land as the landowner retains the land subject to the imposition of the new PRow.

- 4.10 The Order also makes provision for dealing with the quantum of compensation to be paid, in that the parties are able to refer the dispute to Upper Tribunal (Lands Chamber) for determination.
- 4.11 Hence, although the Order provides Network Rail with powers to interfere with private land interests such interference is subject to the payment of compensation and the interference is kept to only that which is required to secure the purposes of the Order.

5. COMMUNICATION & ENGAGEMENT

- 5.1 As part of the development of the Scheme, Network Rail and its Agents undertook a series of consultation events to gauge opinion regarding the Scheme. Detail of the consultation that was undertaken is set out in the consultation report (NR05) and addressed more specifically in the evidence of Elaine Algaard and Andrew Kenning. This demonstrates that considerable efforts were taken to consult with interested parties prior to confirming the Scheme proposals.
- 5.2 Two significant rounds of consultation were held in 2016 which is dealt with in the other Proofs of Evidence, I will therefore only deal with the relevant consultation on a crossing by crossing basis later on in this report.
- 5.3 Landowners and other holders of property interests were contacted by Network Rail's consultants and Network Rail themselves. Bruton Knowles were instructed at the end of November 2016 and undertook ad hoc communications with grantors with more formal communication being undertaken from early 2017 and I set out understanding of the consultation process as confirmed to me by Network Rail and their advisors.
- 5.4 The approach adopted for consulting with landowners and other affected parties is described below.
- 5.5 Details for affected landowners were obtained from the Land Registry; this enabled the team to undertake initial desktop investigations and discussions with landowners. This also enabled the identification of other affected parties (including tenants, occupiers, and parties with private rights of way).
- 5.6 A phase of consultation was undertaken by Bruton Knowles from December 2016 onwards with landowners/affected parties including those subject to the acquisition of temporary access rights. This comprised progression of discussions with parties previously engaged and the engagement of new parties where identified through earlier consultation. This was undertaken through written correspondence, telephone discussions and site meetings.
- 5.7 All landowners/affected parties identified through the referencing process were written to, given an opportunity to discuss the proposals, advised of how their interest could be affected and where to view the current design.
- 5.8 The team made on average three separate attempts to contact individual land parties to ensure that they had sufficient opportunity to be consulted.
- 5.9 Network Rail has confirmed to me that all identified parties in the Book of Reference have been consulted prior to submission of the Order.

- 5.10 As noted above, the Scheme is unusual in that the compulsory powers in the Order are only related to rights rather than outright acquisition of land.
- 5.11 The requirements are, therefore, by their nature less open for review and negotiation than is the case in most compulsory acquisition schemes where the land is mainly used by the acquiring authority for its purposes hence there is the prospect of adjusting the works as and where the scheme allows by adjusting the works. In this case there is a notional party to any consultation, that being the public user of the path, hence the scope to enter into detailed discussion and enter private arrangement with landowners is very much limited by the requirement to deliver an alternative public right with Network Rail very much having regard to its obligations to the notional third party.
- 5.12 Network Rail is seeking compulsory acquisition powers in the Order (NR02) to enable Network Rail to secure in a timely, efficient and economical manner, the land interests and rights which Network Rail have identified, following consultation, as being required for the delivery of the level crossing reduction scheme. Not only would it would be impracticable to rely on securing all of the rights and land needed by agreement the securing of such would compromise Network Rail's obligation to the third party rights users.

6. HUMAN RIGHTS

- 6.1 Article 1 of the First Protocol to the European Convention on Human Rights states that “Every natural or legal person is entitled to peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”.
- 6.2 Article 1 is a qualified right in that no one shall be deprived of his possessions “except in the public interest and subject to the conditions provided for by law”.
- 6.3 The compulsory acquisition of land for the railway purposes specified in the Order is authorised by, and subject to, the Transport and Works Act 1992 (the 1992 Act). By enacting the 1992 Act the Government has determined that, subject to procedural safeguards, it can be in the public interest for individuals to be deprived of their land for railway purposes. The procedural safeguards are provided by the 1992 Act, The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and the Transport and Works (Inquiries Procedure) Rules 2004 which enable objections to be raised to compulsory acquisition and considered by an independent inspector. In addition, where land is authorised to be compulsorily purchased by the making of an order under the 1992 Act, compensation will be payable under the compensation code, as applied by that order (discussed in Section 4 above). Where disputes as to the amount of compensation arise, these may be referred for independent consideration by the Lands Chamber of the Upper Tribunal.
- 6.4 The Order is being pursued in the public interest, as is required by Article 1 of the First Protocol where compulsory acquisition of property is concerned. The public benefits associated with the Order are set out in the Proofs of Evidence of Mark Brunnen and Elaine Algaard. For these reasons, the railway purposes for which the Order powers are being sought are sufficient to justify interfering with the human rights of the landowners proposed to be affected. The Order, including the requirement to pay compensation, strikes a fair and proportionate balance between the private interests of the landowners and the public interest in securing the benefits of the Scheme to the national railway network. Therefore, the interference with Convention rights is justified.

7. LANDOWNERS AFFECTED BY THE USE OF COMPULSORY RIGHTS

- 7.1 There are a significant number of interest holders included in the Book of Reference (**NR09**). Of these, whilst a number of landowners objected to and made representations regarding the Scheme, the majority of interest holders have not sought to object to or make representations in relation to the Order.
- 7.2 Network Rail and their contractors and consultants have had discussions with a number of property interest holders prior to the Order being made and their views were considered in the development of the Order as set out in Section 5 above and detailed more particularly in the Proofs of Evidence of Andrew Kenning and Susan Tilbrook.
- 7.3 Network Rail will continue, where possible, to engage with affected landowners, to ascertain if their concerns can be overcome and will continue to engage with them during the detailed design stage, if the Order is confirmed, particularly with a view to ensuring that concerns about security of property are addressed, for example, by consideration of appropriate fencing or gate treatments which could be applied.
- 7.4 A number of objections to the Scheme have been received, many of the objectors do not have a legal interest in land affected by the Scheme and therefore I do not consider those objections. I summarise and comment upon objections lodged by landowners and on a crossing by crossing basis.
- 7.5 I set out in section 8 responses to objections by reference to correspondence from Network Rail within the scope of my evidence. In so far as the responses refer to alternative routes or safety issues, these matters are addressed in the proofs of evidence of Susan Tilbrook and Andrew Kenning.

8. OBJECTORS

I can confirm that no property objections have been received in relation to the following crossings; C12, C17, C21, C29, C32. Therefore I will not be covering these crossings in my evidence below.

Only meetings attended by Bruton Knowles are referenced in this evidence.

8.1 Crossing C04 No 20

Objector - Roger and Jill Braham – Freeholders of Plot 4 Parish of Meldreth

Network Rail Objector Reference – OBJ/02

These freeholders own land which will be used for the provision of diverted access routes. Their main areas of objection are:

8.1.1 A summary of the key points of objection is set out below

8.1.1.1 The entrance to the site is a heavy traffic area and is not the best place for a pedestrian footpath to start

8.1.1.2 The proximity of the footpath to the commercial units on the site puts the public at risk due to vehicle activity in this area

8.1.1.3 There is already a concrete track on the site which has been used by the public for decades which has the advantage of pedestrian visibility

8.1.2 Response to Objection

8.1.2.1 A letter of response dated 16 October 2017 has been sent by Network Rail covering these issues which do not relate to property concerns therefore I will not be dealing with these further and these objections will be dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

8.2 C04 No 20

Objector - Michael J Gilhooly – Tenant of Plot 4 – Parish of Meldreth

Network Rail Objector Reference – OBJ/13.

This tenant occupies land adjoining the proposed diversionary routes. A summary of the main areas of objection is set out below:

8.2.1 A summary of the key points of objection is set out below

8.2.1.1 Loss of security to industrial estate

8.2.1.2 A new footpath route in front of commercial garage could endanger pedestrians by reason of reversing HGVs.

8.2.1.3 The level crossing is safer than the proposed diversion route.

8.2.2 Response to Objection

8.2.2.1 Bruton Knowles met with Mr Gilhooly on the 20 September 2017 at Unit 1, Whitecroft Rd to discuss his objection.

8.2.2.1 A letter of response dated 16 October 2017 has been sent by Network Rail covering these issues which do not relate to property concerns therefore I will not be dealing with these further and these objections will be dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

8.3 C04 No 20

Objectors - A P Burlton, A P Burlton (Turkeys) Ltd, Anthony Burlton Will Trust – Between them freeholders of Valley Farm Plots 2, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 21, 23, 26 and 27 Meldreth

Represented by Guto Edwards of Savills

Network Rail Objector References – OBJ/48, OBJ49 and OBJ50

8.3.1 A summary of the main areas of objection is set out below:

8.3.1.1 There has been a lack of consultation and explanation of the use of land by Network Rail and its agents

8.3.1.2 The proposed route of the footpath is in close proximity to Mr Burlton's operational business, which comprises a poultry rearing building – therefore bio security is a concern as well as the security of the site which is currently accessed by locking gates

8.3.1.3 Concerns regarding safety of pedestrians over the large number of vehicles that use the site

8.3.1.4 The proposed footpath traverses an area identified for the proposed expansion of Mr Burlton's business

8.3.1.5 No Heads of Terms have been sent out

8.3.1.6 The objector has suggested alternative routes to the diversion from the level crossing

8.3.2 Response to Objection

8.3.2.1 Bruton Knowles had a telephone call with Mr Edwards on the 13 September 2017 and on the 20 September 2017 met him at Valley Farm to discuss his client's objections in more detail

8.3.2.2 I have reviewed the objection letters and Statements of Case and items 8.3.1.1 to 8.3.1.3 and 8.3.1.6 are dealt with in Network Rail's letters dated 19 October 2017 (in relation to OBJ48 and OBJ50) and the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

Points 8.3.1.4 and 8.3.1.5 are property related and I set out the substantive response set out in the letter which deals with the property aspects of the objection;

"Paragraph 7 of your client's Statement of Case states that no Heads of Terms have been sent out. This is true. It would be premature, and inappropriate, for Network Rail to send out Heads of Terms before the principles of arrangements to be entered into between your client and Network Rail have been established. We hope very much that it will be possible to agree such arrangements in the near future.

Before confirming the compulsory powers in the Order, the Secretary of State will wish to be satisfied that there is a compelling case in the public interest. Network Rail is confident that that is the case. Network Rail wishes, and expects to, participate in meaningful negotiations with all landowners to acquire land and interests in land by private treaty alongside the formal statutory processes. We do not agree that a compelling case cannot be made simply because no detailed negotiations have taken place so far. We note that an initial on site meeting took place on February 2017 and another is to be held on 20 September.

We appreciate that the proximity of the proposed footpath to your client's business is of significant concern to them. With regard to the business units used by the coach company and car mechanics, the new path would be at some distance from the units and located in the field edge to the south of the existing access track. Network Rail accepts that the proposed route will be closer to your client's poultry unit. Network Rail wishes to discuss with your client how any potential impacts of its proposals may be reduced and/or mitigated. We would like to understand in particular the proposed expansion of the business into the area identified for the diversion"

At this time I understand discussions are still ongoing with Mr Burlton's agent.

8.4 C14 Eastrea Cross Drove

Objector – Mr M White Freeholder of Plots 32, 33, and 35 Parish of Whittlesey

Network Rail Objector Reference – OBJ/23

8.4.1 A summary of the main areas of objection is set out below:

8.4.1.1 A drainage channel runs adjacent to the railway and objector's farm land - byelaws state that no development permitted within 9m of drainage channel

8.4.1.2 The diversion of the new footpath would sever land between Mr White's land and the drainage channel leaving an area unworkable for modern agricultural practices

8.4.1.3 Mr White objects to the need for a new footpath as there is already a footpath in place and usage of the level crossing is low.

8.4.2 Response to Objection

8.4.2.1 I have reviewed the objection letter and Statement of Case and items 8.4.1.3 is dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

8.4.2.2 Bruton Knowles considers that points 8.4.1.1 and 8.4.1.2 have been dealt with in a letter from Network Rail dated 23 October 2017, the substantive response is set out below:

"You refer to a statutory requirement that no construction is permitted within 9m of a drainage channel. The nature of the work Network Rail is proposing to carry out in this location, to provide an un-surfaced footpath (a grass strip) two metres wide, is minimal and is not restricted under the bylaw.

Network Rail's proposal locates the footpath within the field boundary strip to reduce any impact on agricultural practices. You say that the proposal will sever the land between the footpath and the drainage channel and in your Statement of Case you ask that the footpath is located on the land that lies between the railway line and the drainage channel instead of the field side of the drain.

Network Rail is seeking temporary acquisition over your land to create a new public right of way (PROW). Network Rail will maintain the new public right of way for a period of 12 months after completion of construction. Following this, the new PROW will be adopted and maintained by Cambridgeshire County Council and the land will remain in your ownership. You propose that the area of land between the drainage channel and footpath is purchased by Network Rail. Network Rail would be unable to justify the purchase of this land when all that is required is the right to create a public right of way. Network Rail's responsibilities as a public body would preclude this."

8.5 C14 Eastrea Cross Drove

Objector – Mr R J Dale Freeholder of Plots 31, 41 and 42 Parish of Whittlesey

Network Rail Objector Reference – OBJ/55

8.5.1 A summary of the main areas of objection is set out below:

8.5.1.1 Mr Dale objects to the need for a new footpath as there is already a footpath in place and usage of the level crossing is low.

8.5.2 Response to Objection

8.5.2.1 I have reviewed the objection letter and Statement of Case and objections in relation to property matters in item 8.5.1.1 have been dealt with in the letter from Network Rail dated 23 October 2017; the substantive response is set out below.

General objections in relation to the re-routing and use of the level crossing are dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

“You question the need for the new footpath as there is already a footpath which runs up Cross Drove to Lake Drove and on to Wype Road, and usage of the existing level crossing is low. You are correct that the use of the existing route is low; however the footpath network is the responsibility of the highway authority, which is not prepared to allow the route to be simply extinguished. Diversion of users to the existing byway to the north (which you refer to as a footpath) would represent an extinguishment of the PROW, and would result in increased diversion lengths for users and increased walking on roads and highway verges. Network Rail is under an obligation under the Transport & Works Act 1992 to provide a suitable alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the footpath network.

You say that if a new footpath is required then it should be located on the land that lies between the railway line and the drainage channel, instead of the field side of the drain. Locating the footpath in this area of the embankment was considered as an early design option but dismissed for various reasons, including uncertainty regarding access and the presence of structures at the eastern end; maintenance of the ditches and spreading of arisings on this narrow strip. The field margin option offers a suitable and convenient route and was publicly consulted upon during the Round 1 and Round 2 public consultation events in 2016.”

8.6 C15 Brickyard Drove

Objector - Phil Gray Clerk to the Trustees of the Whittlesey Charity Freeholders of Plots 8, 9, 10, 11 and 12 Parish of Whittlesey

Network Rail Objector Reference – OBJ/06.

8.6.1 A summary of the main areas of objection is set out below:

8.6.1.1 Objection to creation of proposed new footpath as this will never be used

8.6.1.2 Objects to cross field footpath across farm as this will impact on farming activities of their tenant farmer

8.6.1.3 Preference for footpath route proposed during initial consultation.

8.6.1.4 Wishes Network Rail to consider the original proposed route for the footpath

8.6.2 Response to Objection

8.6.2.1 I have reviewed the objections raised by Mr Gray. Points 8.6.1.1, 8.6.1.3 and 8.6.1.4 do not relate to property concerns therefore these objections will be dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

8.6.2.2 Point 8.6.1.2 is in relation to property and has been dealt with in a letter from Network Rail dated 18 October 2017, the substantive response is set out below:

"We note your concerns over any potential inconvenience to your tenant farmer and impact on valuable agricultural land. However there are many public footpaths that cross farmland throughout the UK and the presence of a public footpath across farmland does not impinge upon agricultural production. A cross-field path should not prevent the field from being cultivated in the way it is done today. There are many examples around the country where public rights of way pass across farm land and the land is cultivated in the way best for the farmer. As the proposed path is unsurfaced, farming operations would be carried out in the usual way with minimal disruption to the workings of the farm."

8.7 C15 Brickyard Drove

Objector – Shirley Pollard of agents Maxey Grounds on behalf of Mr JD Fountain and Mr D Fountain Leaseholders of Plots 8, 9, 10, 11 and 12 Parish of Whittlesey

Network Rail Objector Reference – OBJ/34

8.7.1 A summary of the main areas of objection is set out below:

8.7.1.1 No necessity for a footpath proven by site surveys

8.7.1.2 Lack of engagement from Network Rail following the raising of issues with the Order

8.7.1.3 The revised proposal was not part of the initial consultation and is more disruptive than the original proposal

8.7.1.4 The proposed footpath would require pedestrians to walk across agricultural land giving more opportunity for trespass and damage and contamination of crops together with the health and safety risk of pedestrians coming into contact with heavy agricultural machinery and agricultural chemicals

8.7.1.5 The proposed pathway leads directly onto the main road with a risk of pedestrians coming into contact with oncoming vehicles at that point as there is no footpath along the road

8.7.1.6 Concerns about the cost and maintenance of the footbridge

8.7.2 Response to Objection

8.7.2.1 Only Point 8.7.1.4 is in relation to property, therefore Bruton Knowles will not be dealing with the other concerns raised and these will be dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

8.7.2.2 I have reviewed the objection letter from Ms Pollard and set out the substantive response set out in the letter from Network Rail dated 18 October 2017 in relation to point 8.7.1.4 which deals with the property aspects of the objection;

“We understand your clients are concerned about potential disruption to their farming business. However a cross field path should not prevent the field from being cultivated in the way it is done today. There are many examples around the country where public rights of way pass across farm land and the land is cultivated in the way best for the farmer. Once cultivated the path is marked out. As it is unsurfaced, farming operations are carried out in the usual way. In this situation there should be minimal disruption to the workings of the farm.

There are many public footpaths that cross farmland throughout the UK and the presence of a public footpath across farmland does not impinge upon agricultural production or create a danger to the public (e.g. crop spraying). Whilst we understand that from time to time there is a need for machinery to work in agricultural fields, we see no reason why this should endanger members of the public as long as sensible health and safety good practice is followed

As we have said above, in terms of pedestrian safety, our proposal does not change the current situation as both the current footpath over the level crossing and the proposed route exit to Wype Road. Network Rail’s proposals at this location also include a new footpath alongside Wype Road to the north of the railway.”

8.8 C15 Brickyard Drove

Objector – Shirley Pollard of agents Maxey Grounds on behalf of Mr Jonathan Brown and Mr Robert Brown trading as EC Brown and Sons of Wypemere Farm Whittlesey Freehold owners Plots 10, 12, 13, 14, 15, 16 Parish of Whittlesey

Network Rail Objector Reference – OBJ/35

8.8.1 A summary of the main areas of objection is set out below:

8.8.1.1 There is no requirement for a new footpath as it is unlikely to be used

8.8.1.2 Siting a footpath diagonally across a field would disrupt efficient farming operations and there would be a greater possibility of damage and contamination of crops

8.8.1.3 The presence of the footpath would endanger members of the public due to the presence of farming machinery and crop spraying

8.8.1.4 Concerns about the cost and maintenance of the footbridge.

8.8.2 Response to Objection

8.8.2.1 Only Points 8.8.1.2 and 8.8.1.3 are in relation to property, therefore Bruton Knowles will not be dealing with the concerns raised in points 8.8.1.1 and 8.8.1.4 and these objections will be dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

8.8.2.2 I have reviewed the objection letter from Ms Pollard and considers points 8.8.1.2 and 8.8.1.3 have been dealt with in a letter from Network Rail dated 18 October 2017, the substantive response is set out below:

“We understand your clients are concerned over any potential disruption to their business, however a cross field path should not prevent the field from being cultivated in the way it is done today. There are many examples around the country where the field is cultivated in the way best to the farmer. Once cultivated the path is marked out. As it does not have a surface, other than the field itself, harvesting is carried out as if the path were not there. In this situation there should be minimal disruption to the workings of the farm. Similarly we do not believe that there should be any significant health, safety and environmental implications for their business. As your clients highlight it is reasonable to assume that the proposed path will not be used frequently based on current usage over the level crossing.

There are many public footpaths that cross farmland throughout the UK and it has long been established that the presence of a public footpath across farmland does not have any impact on agricultural production or danger to the public (e.g. crop spraying). Whilst we understand that from time to time there is a need for machinery to work in agricultural fields, we see no reason why this should endanger members of the public.

However, if your clients feel that there are specific ways that this proposal will affect the workings of their farm, please provide us with further details so we can better understand their concerns. Our agent, Bruton Knowles, will be in touch directly to discuss this."

8.9 C04, C08, C11, C20, C25, C33, C34, C35 plus holding objections for C03, C07,C21, C22, C27, C29

Objector - Graham Hughes of Cambridgeshire County Council owners of various plots of land throughout the scheme

Network Rail Objector Reference – OBJ/12.

8.9.1 A summary of the main areas of objection is set out below:

8.9.1.1 General objection - seeking officer funding for time to review and agree proposals.

8.9.1.2 Closures result in diminution in connectivity and amenity, reduced access to green space for healthy living. Seek review of detailed DIAs.

8.9.1.3 Holding objections to 6 sites awaiting information or review of recent changes

8.9.1.4 C03, C21, C22 - flood data to be reviewed

8.9.2 Response to Objection

8.9.2.1 As none of the above objection points relate to property Bruton Knowles will not be dealing with them and they will be dealt with in the proofs of evidence including Andrew Kenning, Susan Tilbrook and others.

8.10 C11 Furlong Drove

Objector - B L Taylor freeholder of Plot 9 Parish of Downham

Network Rail Objector Reference – OBJ/16

8.10.1 A summary of the main areas of objection is set out below:

8.10.1.1 Objects to the proposal of a provision for a new footpath across his land

8.10.1.2 Proposal for new 2m wide footpath across field restricts its use for farming as this strip is required for irrigation.

8.10.1.3 Objects to compulsory purchase of land – has offered to sell the whole field to Network Rail rather than farm it with a footpath on it.

8.10.2 Response to Objection

8.10.2.1 Bruton Knowles met with Mr Taylor on the 10 September 2017 to discuss his objection in more detail

8.10.2.2 I have reviewed the objection letter from Mr Taylor and consider the issues raised have been dealt with in a letter from Network Rail dated 20 October 2017, the substantive response is set out below:

"We note your concern that the proposed right of way will run along a watercourse that you currently use for abstraction of water to irrigate crops. Network Rail considers that any potential risks arising from the introduction of the new bridleway are capable of being managed and there is no reason why the existence of the bridleway should obstruct your ability to abstract water for purposes of irrigation of adjacent land. We would be happy to work with you to investigate ways of reducing or mitigating any risk.

The proposed Order will grant powers for Network Rail to temporarily acquire plot 9 in the Parish of Downham to create a new public right of way (PROW). We note that you are concerned about the exercise of compulsory powers and especially "confiscation of land without compensation". However, we understand that our agent, Bruton Knowles, in your meeting on 19 September 2017 has already drawn your attention to the fact that in so far as Network Rail's proposals may affect the value of your property, you may be entitled to compensation in line with the compensation code. The UK Government has issued guidance on compulsory purchase, which is available from Government publications on the following link (<https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-1-procedure>). We hope this information has gone some way to allay this particular concern.

The off road bridleway provision, including its location within your field rather than adjacent to it, resulted from consultation with the public and local highway authority and their concerns about the angle of the bend that on road provision would have involved, which the local authority considered gave rise to sighting limitations. This was discussed with Cambridgeshire County Council at workshops on the 2nd and 25th August 2016 as a footpath and in a meeting in October 2016 when the Council requested the provision of a bridleway.

Network Rail will maintain the new public right of way for a period of 12 months after completion of construction. Following this, the new public right of way will be adopted and maintained by Cambridgeshire County Council. The land will remain in your ownership and you will be responsible for keeping the path free of obstructions.

In your objection letter you state that you have offered to sell the whole field to Network Rail rather than farm with a public right of way on it. No formal offer has been received, but in any case Network Rail would be unable to justify the purchase of your entire field when all that is required is the right to create a public right of way. Network Rail's responsibilities as a public body would preclude this.

It is true that once the bridleway has been created, it will not be possible to work to those edges of the field where the route is located. It is not uncommon for public rights of way to pass along field boundaries or across fields that are in agriculture production. Whilst we understand that from time to time there is a need for machinery to work in agricultural fields, we see no reason why this should not be managed in a way that does not endanger members of the public.

We also understand (your meeting with Bruton Knowles 19 September 2017) that you have concerns about security once the bridleway has been created, in particular that there has been a recent spate of trespass for purposes of hare coursing. We appreciate that hare coursing is a problem in this area, albeit that creation of a new PRow would not automatically increase the risk or likelihood of hare coursing on your land. The Order would require the new bridleway to be completed to the reasonable satisfaction of the highway authority. Upon the Order being made we would expect to discuss the detailed arrangements with you and the highway authority, and we would be willing to discuss appropriate measures to address your concerns (for example, width restricted bridleway gates) that are acceptable to the highway authority."

8.11 C11 Furlong Drove

Objector - Zac Martin freeholder of Plots 10 and 10a Parish of Downham

Network Rail Objector Reference – OBJ/19

8.11.1 A summary of the main areas of objection is set out below:

8.11.1.1 Objects to CPO of part of his land for a new PRow.

8.11.1.2 No consultation until after public consultation in January 2017.

8.11.1.3 Wants the diversionary route to continue along the highway and not onto his land

8.11.1.4 Large farm machinery is used on his land and this could pose a risk to the public due to the presence of the new footpath

8.11.2 *Response to Objection*

8.11.2.1 I have reviewed the objections raised by Mr Martin Points 8.11.1.2 and 8.11.1.4 are not property related and will be dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

Network Rail has sent out a detailed letter which addresses the objections and Bruton Knowles believes the property concerns (points 8.11.1.1 and 8.11.1.3) are addressed in a similar manner to Mr Taylor (OBJ16) above.

8.12 C20 Leonards

Guto Edwards of Savills representing the Trustees of Alison Susan Gray 2008 Discretionary Settlement freehold owners of Parish of Soham, Plots 10, 11 and 11A

Network Rail Objector Reference – OBJ/18

8.12.1 A summary of the main areas of objection is set out below:

8.12.1.1 Insufficient detail provided on plan and notice.

8.12.1.2 No information provided on extent and detail of works.

8.12.1.3 No direct consultation before notice served.

8.12.2 Response to Objection

8.12.2.1 I have reviewed the objection letters and the points raised by Mr Edwards are not property related and will be dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

8.13 C13 Middle Drove

Objector - Tony Alterton Freeholder of plot nos. 7, 8, 9, 10, Parish of March

Network Rail Objector Reference – OBJ/20

8.13.1 A summary of the main areas of objection is set out below:

8.13.1.1 The level crossing is required to access fields on either side – closure would result in inconvenience and affect efficiency of business.

8.13.1.2 Concerns over Compulsory purchase of land providing access to large field.

8.13.1.3 Issues with the consultation process.

8.13.2 Response to Objection

8.13.2.1 Point 8.13.1.3 is not property related and will be dealt with in the proof of evidence submitted by Susan Tilbrook.

8.13.2.2 I have reviewed the objection letter from Mr Alterton and consider the property aspects of the issues raised within points 8.13.1.1 and 8.13.1.2 above have been dealt with in a letter from Network Rail dated 16 October 2017, the substantive response is set out below:

“Network Rail is seeking to acquire permanently plots 9 and 10 on the Order Plans for the purposes of a turning head on the south of the railway. The turning head is required to provide room for unauthorized vehicles, who will not be allowed to cross the railway, to turn back without encroaching on private land. This provision, together with a similar turning head on the northern side of the railway, came about as the result of discussions with the local highway authority, Cambridgeshire County Council. The turning point will not obstruct any field access, and it may assist with field access, by creating a formal turn radius

The proposals at this crossing will maintain a bridleway for the public across the railway and include bridleway gates at either side of the railway. To cater for equestrian users, mounting blocks will be provided, again on either side of the railway. The exact location of the mounting blocks has yet to be determined and is not shown on the Order Plan. There is no reason why the positioning of the mounting blocks should obstruct access to your land. The position of the mounting blocks is something that we would like to discuss with you and the local highway authority as the detailed design for this crossing is worked up.

The Order would also confer powers on Network Rail to use plots 7 and 8 temporarily for a worksite during construction.

The map reference 4 accompanying your Statement of Case shows the line of the existing drain along the edge of your field and you make the point on your map that a 9m byelaw applies, presumably you mean this to refer to a restriction on development within the vicinity of the drain. Article 4 of the proposed Order disapplies section 23 (prohibition on obstacles in watercourses) of the Land Drainage Act 1991, and also the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of that Act which require consent or approval for the carrying out of the works. However, the Order substitutes provisions for the protection of drainage authorities and the Environment Agency which include arrangements for approval of plans by the drainage authority before the works authorised by the Order can commence.

In other words, although the Order disapplies the requirement for in-principle consent to works near an internal drainage board drain (because the Secretary of State would have authorised the principle of those works), Network Rail must nevertheless secure the approval of the local drainage board to its detailed plans. That approval may be subject to the reasonable requirements of the drainage board.

You raise a number of points over the manner in which the consultation process has been conducted.

Prior to the deposit of its application Network Rail consulted thoroughly on its proposal before settling on a preferred route in the light of consultation feedback. This is an entirely usual and acceptable approach, and Network Rail considers that its application is fully compliant with the relevant statutory requirements.

The Statement of Consultation submitted with the application for the Order sets out the public and stakeholder consultation undertaken by Network Rail in advance of the formal application. Network Rail used various methods of notification including site notices, consultation flyers, public consultation events, publicity in the local press and information presented on Network Rail's website), all of which was intended to bring Network Rail's proposals to the attention of as many people as possible who might be affected by them. We note that at least one element of the publicity for the consultation did come to your attention, and are grateful that you did participate in the pre-application consultation process. "

8.14 C13 Middle Drove

Objector - Tony Alterton Freeholder of Plot nos. 7, 8, 9, 10, Parish of March and Miss J Avison (Trustees for Alterton & Avison landowners)

Network Rail Objector Reference – OBJ/21

8.14.1 A summary of the main areas of objection is set out below:

8.14.1.1 Crossing is required to access fields on either side - closure would result in inconvenience and affect efficiency of business.

8.14.1.2 CPO of land providing access to large field

8.14.1.3 Land is to be used as a horse mounting area which is considered not to be needed

8.14.2 Response to Objection

8.14.2.1 Bruton Knowles has considered the objections raised by Mr Tony Alterton and Miss J Avison. Network Rail has set out a detailed response to Tony Alterton and Miss J Avison by letter of 16 October 2017 which covers the points answered in a similar way in their response to the letter to OBJ20 above. In addition to this they responded to the objection regarding the horse mounting area as follows:

'The proposals at this crossing have been developed to meet the requirements of the local highway authority and will maintain a bridleway for the public across the railway and include bridleway gates at either side of the railway. To cater for equestrian users, mounting blocks will be provided, again on either side of the railway. The exact location of the mounting blocks has yet to be determined and is not shown on the Order Plan. There is no reason why the positioning of the mounting blocks should obstruct access to your land. The position of the mounting blocks is something that we would like to discuss with you and the local highway authority as the detailed design for this crossing is worked up.'

8.15 C07 – No 37

Objector - Robin Clarke of Strutt and Parker on behalf of Brigadier William Hurell and Mr Henry Hurell Freeholders of Plots 3, 3A, 5, 7, 10, 12, 18, 22, 23

Network Rail Objector Reference – OBJ/25

I have reviewed the objections from Mr Clarke and note that his client William Hurell has no objection in principle to the acquisition of Plots 3 and 3a, as it was noted that there is already an unofficial footpath in place along the route of the proposed new PRow which is currently used by pedestrians.

8.15.1 A summary of the main areas of objection is set out below:

8.15.1.1 Notices served relating to land east and west of London Road incorrectly addressed. Considers Notices served are invalid.

8.15.1.2 Proposed footpath disrupts farming

8.15.1.3 Concerns over the proposed maintenance and increased use of the altered footpath – use of steps will impose severe access restrictions which other proposals easily address

8.15.1.4 Use of public highway to cross the bridge demonstrates Network Rail's acceptance of utilising the public highway by pedestrians

8.15.2 Response to Objection

8.15.2.1 Point 8.15.1.1 of the objection relates to the issue of notices. I have checked our records and notices were served in accordance with the Book of Reference.

8.15.2.2 Only Points 8.15.1.1 and 8.15.1.2 are in relation to property matters, therefore Bruton Knowles will not be dealing with the concerns raised in points 8.15.1.3 and 8.15.1.4 and these objections will be dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

8.15.2.3 Bruton Knowles met with Mr Clarke on the 20 September 2017 at Unit 1, Whitecroft Rd to discuss his objection.

8.15.2.4 Bruton Knowles considers the issue raised in point 8.15.1.2 of the objection has been dealt with in a letter from Network Rail dated 24 October 2017, the substantive response is set out below:

"Before confirming the compulsory powers in the Order, the Secretary of State will wish to be satisfied that there is a compelling case in the public interest. Network Rail is confident that that is the case. Network Rail wishes, and expects to, participate in meaningful negotiations with all landowners to acquire land and interests in land by private treaty alongside the formal statutory processes. We do not agree that a compelling case cannot be made simply because no detailed negotiations have taken place so far.

Although the TWA Order seeks compulsory powers, Network Rail wishes, and expects to, participate in meaningful negotiations with all landowners to acquire land and interests in land by private treaty alongside the formal statutory processes.

You have advised that we have not attempted to acquire your clients land without the need for the Order, however as per the rules of the TWAO process, we would not seek acquisition of land until the Order has been granted"

8.16 C01 Chittering, C24 Cross Keys, C27 Willow Row/Willow Road

Objector - Andrew Newton Engineer for Ely Drainage Boards representing a number of drainage boards in the area of the scheme who have various interests in land affected by the proposed scheme.

Network Rail Objector Reference – OBJ/29

8.16.1 A summary of the main areas of objection is set out below:

8.16.1.1 Closure of C01 and C27 will prevent or increase costs of access to assets.

8.16.1.2 At C01-Chittering the crossing is required to access the Main Drain network for maintenance (this may actually refer to C33 as CO1 is footpath only).

8.16.1.3 At C24 part of the proposed footpath is adjacent to a Main Drain this will restrict the board's maintenance operations as well as any future channel widening schemes

8.16.1.4 C27-Willow Row access is required to maintain a water level controller (supplying crop irrigation) and access will be prevented by closure.

8.16.1.5 Access rights to remain at C22-Wells Bridge, C26-Poplar Drove, C28-Black Horse Drove

8.16.2 Response to Objection

8.16.1.1 I have reviewed the objection letter and considers the issues raised have been dealt with in a letter from Network Rail dated 29 September 2017, the substantive response is set out below:

"C01 Chittering level crossing (access for maintenance on Main Drain network)

Network Rail would like to understand why the closure of this crossing would result in additional expenditure to the Board. Please would you clarify what movement of plant is being undertaken at this crossing, as it is currently a footpath level crossing with no vehicle access rights.

C24 Cross Keys level crossing (access to Redmoor Main Drain)

Network Rail's proposals at this crossing meet the requirements of the local highway authority. We note that you are concerned that the footpath diversion could restrict annual maintenance operations and any future channel widening schemes. We would

welcome the opportunity to discuss your concerns with you in more detail with a view to see how, in practice, they would be allayed.

C27 Willow Row level crossing- (access to water level controller)

The existing Byway 30 will remain on each side of the railway crossing, meaning that you will continue to have vehicular access. If you still have any concerns, please let us have a plan showing the exact location of the water level controller and any other static equipment at the site, and your access requirements.

C22 Wells Engine, C26 Poplar Drove and C28 Black Horse Drove

We can confirm that under the Order proposals, any existing private rights you have will be retained (i.e. at C22 Wells Engine).

In so far as you currently rely on public access, Network Rail would wish to understand the need for continuing (private) rights. For example at C26 Poplar Drove, public highway will continue to exist on both sides of the railway and is only restricted to 1.525m over the railway.

Network Rail is willing to grant new private rights should you need to access your apparatus, as we understand may be the case, at C28 Black Horse Drove."

8.17 C09 Second Drove, C16 Prickwillow 1, C26 Poplar Drove

Objector - Anthony Bebbington of the Environment Agency Freeholders of Plots 43, 44, 45, 48, 49, 50, 51, 52, 55, 56 Parish of Ely

Network Rail Objector Reference – OBJ/31

8.17.1 A summary of the main areas of objection is set out below:

8.17.1.1 A holding objection pending further detail on how proposals affect its landholdings and statutory duties.

8.17.1.2 General objection to protective provisions in relation to environmental permits and flood defence.

8.17.1.3 Need more information on plans for 4 names sites where EA is a landowner.

8.17.2 Response to *Objection*

8.17.2.1 I have considered the objections made by Anthony Bebbington and believe these are not directly related to property matters and therefore these objections will be dealt with in the proofs of evidence submitted by Andrew Kenning and Susan Tilbrook.

8.18 C24 Cross Keys, C26 Poplar Drove, C27 Willow Row/Willow Road

Objector – Chris Purllant of Brown and Co agent on behalf of Mr Anthony Leonard Lee trading as A L Lee Farming Company Freeholder of Plots Nos 3, 6, 6A, 7, 8, 9, 10, 12, 13, 39 Parish of Ely and Plot Nos 1, 2, 3, 5, 7, 8, 9, 13, 13A,13B,14 Parish of Littleport

Network Rail Objector Reference – OBJ/32

8.18.1 A summary of the main areas of objection is set out below:

8.18.1.1 The consultation process has been limited

8.18.1.2 C24 closure will divert pedestrians onto arable land, considered detrimental to environmental benefits created over recent years on these field margins.

8.18.1.3 C26 & C27 closure and creation of bridle path adjacent to railway considered unsafe for equestrian activity

8.18.2 Response to Objection

8.18.2.1 Bruton Knowles has considered the objections made by Chris Purllant, Points 8.18.1.1 and 8.18.1.3 are not concerned with property related matters, and these objections will be dealt with in the proof of evidence submitted Susan Tilbrook.

8.18.2.2 I have reviewed the objection letter from Mr Purllant and consider the issues raised in point 8.18.1.2 have been dealt with in a letter from Network Rail dated 16 October 2017, the substantive response is set out below:

“C24 Cross Keys, Ely Parish. Plot Numbers 6, 7, 8, 9, 10, 12, 13 & 39.

The principal purpose of the proposal is to take users to an existing grade separated crossing point.

We note your client’s concern that the route of the diverted footpath on his land is within an area that has been entered into environmental stewardship and that the existing diverse habitat could be lost as part of the proposals.

The Secretary of State has confirmed that the project is unlikely to have significant adverse effects on the environment – please see Network Rail’s application document NR11 – and we do not believe that the proposed footpath would be incompatible with the existing stewardship scheme.

The Order requires Network Rail to complete the proposed new footpath to the reasonable satisfaction of the highway authority. Network Rail will be happy to liaise with you and the local highway authority as to the detail of the new provision.

As mentioned above, the Order would require Network Rail to complete the proposed new footpath to the reasonable satisfaction of the highways authority. Thereafter, Network Rail will be responsible for the maintenance of the diversionary path for a period of 12 months after which it becomes the responsibility, in common with the public right of way network generally, of the local highway authority. Article 22 and Schedule 6 of the draft Order would confer powers on Network Rail to acquire rights over land parcels 9 and 10 for the purposes of access for construction and maintenance of the authorised works, namely the path and footbridge over the existing drain. It would also confer rights of access over parcel 12 for construction and maintenance of the authorised works and removal of the existing level crossing. The rights to be acquired will therefore be of temporary duration and Network Rail does not consider them to be excessive.”

8.19 C01 Chittering, C33 Jack O'Tell, C34 Fysons, C35 Ballast Pit

Objector - Simon Clewlow on behalf of Mr John Sinclair Martin, Mr Joseph James Martin, Mr Brian Harold Sanders, Mr Alan Kenneth Shipp, Aquila Investments Limited, RLW Estates Limited and Brian Sanders (trading as H Sanders and Sons) Freeholders of, plots 5, 9, 11, 13, 15, 16, 17, 25, 26, 27, 28,30, 31, 32 Parish of Waterbeach

Network Rail Objector Reference – OBJ/33

I have reviewed the objection letter from Mr Clewlow and note that there is no in principle objection to the closure of C01 Chittering, C33 Jack O'Tell, C34 Fysons,

8.19.1 A summary of the main areas of objection is set out below:

8.19.1.1 The main concern is in relation to crossing C35 on the basis of the security impact of diversion.

8.19.1.2 Simon Clewlow has suggested an alternative proposal for Network Rail to purchase a fishing lake to the west of the crossing to assist with the proposal for the new Waterbeach Development

8.19.2 Response to Objection

8.19.2.1 Bruton Knowles met with Simon Clewlow on the 19 September 2017 to discuss his objection in more detail. With regards C35 Ballast Pit, Bruton Knowles considers the issues raised have been dealt with in a letter from Network Rail dated 12 October 2017, the substantive response is set out below:

“You are concerned about agricultural security and the potential for the diversionary routes to provide access for fly-tipping or crop damage. You have stated that the crossings at C01 Chittering, C33 Jack O Tell and C34 Fysons are of less of a concern to your clients as the changes only affect footpaths.

Your clients’ Statement of Case and objection letter both highlight concerns regarding C35 Ballast Pit level crossing, therefore we respond to the points you have raised.

We note your clients are concerned regarding the proposed private vehicular route to serve the fishing lakes on the western side of the railway. Network Rail can provide a secured gate in the vicinity of the proposed junction between the proposed track and Bannold Drove. The use of the gate would be restricted to private keyholders only and reduce the risk for trespass. Regarding your points on fly tipping and crop damage, we can advise that we have not been provided with historical evidence of fly tipping or crop on this site and due to the remote location we consider the risk of fly tipping and crop damage to be low. With the installation of a security gate as proposed above, we believe the risk of fly tipping and crop damage will be negligible.

If you are willing to withdraw your objection, we would like to enter into further discussions with you over the location and provisions for access to the proposed gate.

Regarding the comments raised in your statement of case and in your meeting with Bruton Knowles on the proposed Waterbeach New Settlement Scheme, we note that the land in your clients ownership is proposed for useage under the Scheme.

We understand that your proposals would include a new railway station to the south of C35 Ballast Pit Crossing and also access via a bridge, to the north of the crossing.

We would therefore be interested in discussing the Waterbeach Scheme with you in detail at a later date, however we note that the Scheme is still in its early developmental stage and as the inquiry for the Order is due to be held in November this is our area of focus at the present time.

As stated above, the decision has been made not to proceed with the purchase of the fishing lakes as this option is not financially viable for us.”

8.20 C27 Willow Road/ Willow Row and C26 Poplar Drove

Objector – Matthew Murfitt freeholder of plots 4, 5, 6, 7, 8 and 10 Parish of Littleport

Network Rail Objector Reference – OBJ/36

8.20.1 A summary of the main areas of objection is set out below:

8.20.1.1 The crossing bisects farm land, so we need continuous access back & forth at busy times.

8.20.1.2 Feels census data was not accurate

8.20.2 Response to Objection

8.20.2.1 Bruton Knowles has considered the objections made by Mr Murfitt, Point 8.20.1.2 is not concerning a property related matter and this will be dealt with in the proof of evidence submitted by Susan Tilbrook.

8.20.2.2 Bruton Knowles considers the issue raised in point 8.20.1.1 has been dealt with in a letter from Network Rail dated 6 October 2017, the substantive response is set out below:

"In 2016 we undertook 23 rounds of public consultation, which you attended, and which covered proposed changes at C26 Poplar Drove and C27 Willow Row level crossings. Unlike C27 Willow Row, Poplar Drove level crossing is tarmacked and suitable for larger agricultural vehicles such as a combine whereas C27 Willow Row is suitable for vehicles up to the size of a tractor and trailer only. It was therefore decided, as the proposals were worked up prior to application, that of the two, it was preferable to retain rights for authorised users which would include Willow Road Farm over Poplar Drove and to close Willow Row level crossing. We appreciate that this will be less convenient to you than the existing route;, however, the Ten Mile Bank is a quiet rural road on which other users will expect to see agricultural vehicles. Also, pedestrian users of the existing crossing at Willow Row will be able to take advantage of footpath 28 to avoid the road."

8.21 C27 Willow Road/Willow Row and C26 Poplar Drove

Objector - Jane Murfitt freeholder of plots 4, 5, 6, 7, 8 and 10 Parish of Littleport

Network Rail Objector Reference – OBJ/54

8.21.1 A summary of the main areas of objection is set out below:

8.21.1.1 Level crossing is an asset and part of fen network.

8.21.1.2 The new proposed footpath would devalue the field, and allow trespassers to roam with their animals and could contaminate the field.

8.21.2 Response to Objection

8.21.2.1 Point 8.21.1.1 is not property related and this will be dealt with in the other proofs of evidence submitted by Susan Tilbrook.

8.21.2.2 I have reviewed the objection letter from Ms Murfitt and considers the issues raised in Point 8.21.1.2 above have been dealt with in a letter from Network Rail dated 29 September 2017, the substantive response is set out below:

"We also note your objection to the creation of a new bridleway link connecting to the level crossing at Poplar Drove. You cite, as reasons for your objection, that the new bridleway would decrease the value of your land and allow trespassers to roam. The new

bridleway link proposal, connecting Willow Row with Poplar Drove, was developed following consultation with the local highway authority who were concerned to ensure mitigation for equestrian and cycle users of Willow Row crossing.”

“For further information on public rights of way, you can also refer to the ‘Landowners and Farmers guide to Public Rights of Way’, on the following link, for guidance or contact your local Public Rights of Way Officer.

https://ccc.live.storage.googleapis.com/upload/www.cambridgeshire.gov.uk/residents/libraries-leisure-&-culture/Rights_of_Way_guide_for_landowners.pdf

With regard to potential trespass on your field, and risk associated with this, under existing arrangements at Willow Road byway there are no measures in place to prevent trespass on the adjacent fields. Closure of the byway over the railway will prevent users, including vehicle users, crossing the railway to access your land from the west. “

8.22 C08 Ely North

Objector – Paul Seymour freeholder of plot 67b Parish of Ely

Network Rail Objector Reference – OBJ/37

8.22.1 A summary of the main areas of objection is set out below:

8.22.1.1 Creation of new footpath to rear of property will prejudice owner's security.

8.22.1.2 Proposal changed after public consultation and states December update not received. First alerted with BK draft notice.

8.22.1.3 Creation of new footpath will devalue objector's land

8.22.2 Response to Objection

8.22.2.1 Points 8.22.1.1 and 8.22.1.2 are not property related and will be covered in the other proofs of evidence submitted by Susan Tilbrook and Andrew Kenning

8.22.2.2 I have reviewed the objection letter and consider the issue raised in Point 8.22.1.3 above has been dealt with in a letter from Network Rail dated 16 October 2017, the substantive response is set out below:

“Network Rail notes your concern that its proposals will leave your property, and adjacent homes, vulnerable by creating a new access to the rear of the properties along this part of Ely Road. As part of its proposals new fencing will be erected on both sides of the footpath alongside your field margin, to restrict public access into the field. Network Rail would be happy to discuss your concerns in more detail to see if they can be allayed, including whether any reasonable mitigation measures might be appropriate.”

8.23 C01 Chittering, C02 Nairns No 117, C33 Jack O'Tell, C34 Fysons

Objector – Lucy Fraser QC MP on behalf of F C Palmer & Sons Freehold Owners and Tenants of Plots of land within the Parishes of Waterbeach and Stretham

Network Rail Objector Reference – OBJ/38

There are a number of objections relating to the proposed closure of level crossings CO1, C02, C33 and C34 and the potential impact on the farming business owned by F C Palmer & Sons. The objections are very similar in nature and therefore have been dealt with together.

8.23.1 A summary of the main areas of objection is set out below:

8.23.1.1 No safety case to close crossings.

8.23.1.2 Closure of the two user worked crossings at C02 Nairns and C33 Jack O'Tell in particular will cause great inconvenience due to high usage for transporting farm produce and plant

8.23.2 Response to Objection

8.23.2.1 Network Rail met with the partners of FC Palmer & Sons and their representatives on 12 June 2017 to discuss the concerns raised in their objection and understand whether these could be addressed.

8.23.2.2 A site meeting was held 27 September 2017 between Network Rail engineers and FC Palmer & Sons in order to consider works required to address their concerns.

8.23.2.3 I have considered the various objections on behalf of F C Palmer & Sons and believe that these have been dealt with in the letter Network Rail have written to F C Palmer & Sons on 13 October 2017 and the substantive response is set out below:

“You refer in your objection letter to census data on frequency of use and accidents at the crossings within the last 10 years. This information is set out in Network Rail’s Statement of Case. In particular, and as you know, there was a very serious incident at Nairns level crossing in 2016 when your employee drove a Landrover onto the crossing without first using the telephone to seek the permission of the signaller to cross. The car was struck by a train. The driver admitted a charge of endangering the safety of persons on the railway and was sentenced on 28 July 2017 to 10 months’ imprisonment. Network Rail has received a number of letters of support for its proposed closure of these crossings, including one letter (SUPP/4), specifically concerned with Nairns. There have also been 2 near misses in recent years at Jack O’Tell crossing, including one with a tractor.

Network Rail notes that the track to Fysons level crossing is currently ploughed over and that this crossing is the least versatile of the three in terms of providing suitable access across the farm.

Network Rail appreciates your acknowledgement that Network Rail has, in the past, been very good at listening to you and working with you to develop your safe working procedures. We can assure you that Network Rail is still listening to you, and will

continue to engage with you to understand the full implications of the closure of the farm crossings on your family's business and your particular concerns about the impacts of diverting farm traffic along the public highway. In particular, Network Rail is currently considering whether a solution is deliverable that would keep either Nairns or Jack O'Tell crossing open for your private vehicular use.

If either Jack O'Tell or Nairns crossing is to remain open for farm traffic, it will be for Network Rail to determine what safety measures may be appropriate. This includes the question of whether automation of any particular crossing is justified. Where there is a single entity user with private rights, as in the case of your farming business, there is no obvious reason why automation, particularly with full length barriers and vehicle radar, should be required. Indeed, it amounts to a suggestion that you are not confident of securing compliance with safe practice when employees cross the railway, and that you expect Network Rail to enforce this on your behalf. You suggest the alternative of a bridge; however, the cost of constructing a bridge and associated track network suitable to carry your loaded farm vehicles would be prohibitively expensive.

The future strategy for level crossings, and the desire to reduce risks that cannot be eliminated, will lead to more technology being installed at passive level crossings. However, an increased level of warning equipment at level crossings leads to a railway which is more complex, and hence more expensive, to operate and maintain. It is not always cost effective or proportionate to improve safety of a crossing by the introduction of technology. There will be more signalling equipment to inspect, maintain and renew, and more failure points to investigate and rectify. As level crossings may share some technology, say for train detection, failures may impact on several level crossings simultaneously. Elimination rather than mitigation of the risk remains a preferred solution, in line with the approach of the ORR.

With regard to your comments about the crossing at Bannolds, this is a crossing of a public road with automatic half barriers, road traffic lights, audible alarms and signage. It has a lower risk rating than any of the three vehicular crossings with which you are concerned.

There have been no incidents of suicide at Bannolds crossing within the period to which you refer. However, wherever people can gain easy access to the railway, there will sadly be the risk of suicides. The railway industry is working with the Samaritans to improve staff awareness and training, with some success, and Network Rail's efforts to close level crossings are working towards a railway with fewer entry points.

In conclusion, Network Rail has engaged, and will continue to engage, with you to understand the implications of its proposals for your business and potential impacts on the local highways. However, there is a public interest in reducing the number of level crossings and the three vehicular crossings on your farm are high risk crossings. The fact of the matter is that there are alternative routes available to you via the public highway in the event that these crossings are closed, and the statutory compensation code will apply in the event that your business suffers as a result of the implementation of the Order.

We hope that our response has provided some clarity on Network Rail's position in relation to each of the points made in your objection. It would be helpful if you could

advise us, and the Department for Transport, whether you intend to sustain your objection to the closure of C01 Chittering and C34 Fysons at the public Inquiry. We look forward to learning your position.

Meanwhile, if you require further information please do not hesitate to contact me by email on ALCross@networkrail.co.uk or on the address above, quoting the reference number provided."

8.23.2.4 In addition to the above letter F C Palmer & Sons, Network Rail have written to Lucy Fraser QC on 13 October 2017. The substantive response is set out below:

"The Department for Transport has passed to us your letter to the Rt Hon Chris Grayling MP dated 13 April 2017, which was submitted on behalf of your constituent Mr Luke Palmer of FC Palmer & Sons. Your letter has been allocated the reference OBJ/38. .

Network Rail is aware of, and sympathetic to, the concerns of the Palmer family regarding the potential impacts of the proposed level crossing closures on their farming operations. We understand, as your letter suggests, that the potential for both Jack O'Tell and Nairns crossings to be extinguished is of particular concern.

Network Rail has engaged, and will continue to engage, with the Palmer family to understand the implications of the closure of Jack O'Tell and Nairns crossings on the farm business and is currently considering whether it can deliver a solution that would keep one of these crossing open.

If one or other of Jack O'Tell or Nairns crossings remain open, it will be possible for farm traffic to avoid the route via the A1123 and over the level crossing at Dimmocks Cote by instead routing traffic along an existing track it currently uses which passes across Little Farm and over which it has rights under a Farm Business Tenancy. We understand that this periodic tenancy has been renewed in the past and there is no reason to suspect that it would not be renewed again when it expires, although we accept this is not a certainty.

There is an existing risk of increased agricultural traffic on the public highway if the right across Little Farm were lost. If either Jack O'Tell or Nairns crossings were closed, the volume of this traffic could be increased. Network Rail has initiated discussions regarding a permanent right of access across Little Farm. We understand that there may be an additional need for a permanent right of way across land that is currently contract farmed. These issues will take some time to resolve, but the willingness is there on the part of Network Rail to fully explore them.

The future strategy for level crossings, and the desire to reduce risks that cannot be eliminated, will lead to more technology being installed at passive level crossings. However, an increased level of warning equipment at level crossings leads to a railway which is more complex, and hence more expensive, to operate and maintain. It is not always cost effective or proportionate to improve safety of a crossing by the introduction of technology. There will be more signalling equipment to inspect, maintain and renew, and more failure points to investigate and rectify. As level

crossings may share some technology, say for train detection, failures may impact on several level crossings simultaneously. Elimination rather than mitigation of the risk remains a preferred solution, in line with the approach of the Office of Rail and Road (ORR).

We have explained above why closure of level crossings is in the public interest and it is also worth noting, as explained in our Statement of Case, that each of the private vehicular crossings with which your letter is concerned has been assessed as a high risk crossing. The fourth crossing, C01 Chittering, is a footpath crossing with no vehicular rights of way and appears from census data and site visit to be unused.

The fact of the matter is that in the event of the closure of the private crossings used by the Palmers there exist alternative routes available to farm traffic via the public highway, and the statutory compensation code will apply in the event that the business suffers financially as a result of the implementation of the Order.

You refer in your objection letter to a lack of census and other data. Information is provided in respect of each crossing in Network Rail's Statement of Case. There was a very serious incident at Nairns 2016 when a farm employee drove a Landrover onto the crossing without first using the telephone to seek the permission of the signaller to cross and the car was struck by a train. The driver admitted a charge of endangering the safety of persons on the railway and was sentenced on 28 July 2017 to 10 months' imprisonment. Network Rail has received a number of letters of support for its proposed closure of these crossings, including one letter (SUPP/4), specifically concerned with Nairns. There have also been 2 near misses in recent years at Jack O'Tell level crossing, including one with a tractor.

With regard to the comments about the crossing at Bannolds, this is a crossing of a public road with automatic half barriers, road traffic lights, audible alarms and signage. It has a lower risk rating than any of the three vehicular crossings referred to in your objection.

There have been no incidents of suicide at Bannolds crossing within the period to which you refer. However, wherever people can gain easy access to the railway, there will sadly be the risk of suicides. The railway industry is working with the Samaritans to improve staff awareness and training, with some success, and Network Rail's efforts to close level crossings are working towards a railway with fewer entry points.

Network Rail's intention to close level crossings is part of Network Rail strategic aim to enable the furtherance of Network Rail duties under its licence and ORR policy. The proposed Order will, if made, lead to real safety benefits to users, reduce Network Rail's maintenance burden, improve reliability and facilitate future rail enhancement schemes.

To conclude, Network Rail's case for seeking to close these crossings is explained above. Each of these crossings has been assessed as high risk and, in the case of Nairns, was recently subject to a serious incident arising from misuse that endangered Network Rail's driver and members of the public on that train.

The closure of these crossings may be inconvenient and costly for Mr Palmer and the family business but there are alternative routes available to it via the public highway and the compensation code provides a remedy for losses incurred as a result of the closures.

However, Network Rail has been engaging, and will continue to engage, with Mr Palmer and his partners to understand the impact of the closures on its business and to determine whether it would be appropriate to keep either Jack O'Tell or Nairns crossings open for farm traffic.

We hope that our response has provided sufficient clarity on each of the points made in your objection, and has addressed your concerns about these level crossings. If so, we would be grateful if you would kindly let the Department for Transport know by withdrawing your objection. We look forward to learning your position.

Meanwhile, if you require further information please do not hesitate to contact me by email on ALCross@networkrail.co.uk or on the address above, quoting the reference number provided.

8.23.2.5 There are ongoing discussions with the representatives of FC Palmer & Sons and Network Rail's position for the Inquiry is set out below in the Position Summary issued on 24 October 2017.

"Having considered the objections of FC Palmer & Sons and their subsidiaries (together with other third party objections), Network Rail has concluded that it should not close both of Nairns and Jack O'Tell crossings, and that one of those crossings should remain open to vehicular traffic relating to FC Palmer & Sons' farming operations.

The decision about which of Nairns or Jack O'Tell should remain open depends on the provision of appropriate means of access between the crossing in question and the remainder of the farm holding. In both cases, land which is currently farmed by FC Palmer & Sons/its subsidiaries can be used for such means of access. However, some of that land is farmed under contract or pursuant to a farm business tenancy, and in each instance the freeholder's agreement would be required to create permanent rights of access over the land for the benefit of FC Palmer & Sons. Negotiations are underway with the relevant freeholders, but until those negotiations are concluded, it is not possible to determine which of the crossings should remain open.

The means of access referred to above will be illustrated on plans in due course.

Because at least one of the crossings is to be closed but it is not yet clear which one will be closed, Network Rail continues to seek the powers in the Order to close both of the crossings.

However, it undertakes as follows:

- (1) Network Rail will not exercise the powers in the Order to close both of Nairns and Jack O'Tell;*

- (2) *Network Rail will not exercise the powers in the Order in respect of either Nairns or Jack O'Tell until a permanent means of access from the crossing which is to remain open to the remainder of FC Palmer's landholding has been secured;*
- (3) *If permanent rights to use the existing means of access between Nairns and the farmed land to the east of the railway can be secured by agreement, the powers in the Order will not be exercised so as to close Nairns to farm traffic and the crossing will be upgraded through the provision of Miniature Stop Lights. The telephone system will be maintained. Network Rail will continue to review level crossing risk and whether further enhancements are required;*
- (4) *If the rights referred to in (3) above cannot be secured by agreement, but a new means of access from Jack O'Tell northwards along the eastern side of the railway can be, the powers in the Order will not be exercised so as to close Jack O'Tell to farm traffic and the crossing will be upgraded through the provision of Miniature Stop Lights and the installation of a telephone system. Network Rail will continue to review level crossing risk and whether further enhancements are required.*

Network Rail considers that this is a reasonable and proportionate response to the objections, which continues to serve the Order's purposes but which reduces the impact on FC Palmer and Sons' farming operations. The undertakings above also address the concerns of other objectors in respect of increased farm traffic on the local highway network."

8.23.2.5 Having considered the position with regard to F C Palmer & Son's land, I believe that the amelioration proposed will ensure continued access across the railway within F C Palmer & Son's farmed land.

8.24 C01Chittering, C02 Nairns No 117, C33 Jack O'Tell, C34 Fysons

Objector – Ian Palmer Freehold Owner of Plots 23, 24, 25, 26, 33, 34 and Tenant of Plots 6, 7, 8 Parish of Stretham Plots 18, 21, 22 Parish of Waterbeach

Network Rail Objector Reference – OBJ/39

8.24.1 A summary of the main areas of objection is set out below:

8.24.1.1 No safety case to close crossings.

8.24.1.2 Closure of the two user worked crossings at Nairns and Jack O'Tell in particular will cause great inconvenience due to high usage for transporting farm produce and plant

8.25 C01Chittering, C02 Nairns No 117, C33 Jack O'Tell, C34 Fysons

Objector – David Palmer of F C Palmer & Sons Freehold owner of Plots 17, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 Parish of Waterbeach and occupier of Plots 6, 7 and 8 Parish of Stretham and Plots 1, 2, 3, 8, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 Parish of Waterbeach

Network Rail Objector Reference – OBJ/40

8.25.1 A summary of the main areas of objection is set out below:

8.25.1.1 No safety case to close crossings.

8.25.1.2 Closure of the two user worked crossings at Nairns and Jack O'Tell in particular will cause great inconvenience due to high usage for transporting farm produce and plant

8.26 C01Chittering, C02 Nairns No 117, C33 Jack O'Tell, C34 Fysons

Objector – Adam Palmer Freehold Owner of Plot 7 Parish of Stretham and Plots 17, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 and Tenant of Plots 6 and 8 Parish of Waterbeach and Plots 1, 2, 3, 7, 8, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 Parish of Waterbeach

Network Rail Objector Reference – OBJ/41

8.26.1 A summary of the main areas of objection is set out below:

8.26.1.1 No safety case to close crossings.

8.26.1.2 Closure of the two user worked crossings at Nairns and Jack O'Tell in particular will cause great inconvenience due to high usage for transporting farm produce and plant.

8.27 C01Chittering, C02 Nairns No 117, C33 Jack O'Tell, C34 Fysons

Objector – Kier Petherick Freehold Owner of Plot 7 Parish of Stretham and Plots 21, 22, 25, 26, 27, 28, 30, 31, 32, 33 Parish of Waterbeach and Tenants of Plots 6 and 8 Parish of Stretham and Plots 1, 2, 3, 6, 7, 8, 18, 23, 24, 29, 34 Parish of Waterbeach

Network Rail Objector Reference – OBJ/42

8.27.1 A summary of the main areas of objection is set out below:

8.27.1.1 No safety case to close crossings.

8.27.1.2 Closure of the two user worked crossings at Nairns and Jack O'Tell in particular will cause great inconvenience due to high usage for transporting farm produce and plant.

8.28 C01Chittering, C02 Nairns No 117, C33 Jack O'Tell, C34 Fysons

Objector - Luke Palmer Freehold Owner of Plot 7 Parish of Stretham and Plots 17, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 Parish of Waterbeach and Tenant of Plots 1, 2, 3, 7, 8, 18, 29 Parish of Waterbeach

Network Rail Objector Reference – OBJ/51

8.28.1 A summary of the main areas of objection is set out below:

8.28.1.1 No safety case to close crossings.

8.28.1.2 Closure of the two user worked crossings at Nairns and Jack O'Tell in particular will cause great inconvenience due to high usage for transporting farm produce and plant.

8.29 C02 Nairns No 117, C33 Jack O'Tell, C34 Fysons

Objector - Jonathan Stiff, Cheffins agent on behalf of F C Palmer & Sons Freehold Owners and Tenants of Plots of land within the Parishes of Waterbeach and Stretham

Network Rail Objector Reference – OBJ/15

- 8.29.1 A summary of the main areas of objection is set out below:
 - 8.29.1.1 Access to farmland would be severed by closure of crossings.
 - 8.29.1.2 Proposes alternative to automate C33 and close C02 and C34.

9. DECLARATIONS

9.1 I hereby declare as follows:

(i) This proof of evidence includes all facts which I regard as being relevant to the opinions that I have expressed and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion.

(ii) I believe the facts that I have stated in this proof of evidence are true and that the opinions expressed are correct.

(iii) I understand my duty to the Inquiry to help it with matters within my expertise and I have complied with that duty

A handwritten signature in dark ink, appearing to read 'JPLS', is positioned above the printed name 'Jonathan Smith'.

Jonathan Smith

Date

