

TRANSPORT AND WORKS ACT 1992

**TRANSPORT AND WORKS (INQUIRIES
PROCEDURE) RULES 2004**

**THE NETWORK RAIL
(CAMBRIDGE LEVEL CROSSING REDUCTION)
ORDER**

SUMMARY PROOF OF EVIDENCE

-OF-

JONATHAN SMITH

PROPERTY

Document Reference	NR29/3
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Network Rail (Cambridgeshire Level Crossing Reduction) Order

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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 some 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.

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2. SCOPE OF EVIDENCE

- 2.1. My evidence consists of a consideration of the rights sought by Network Rail in the Order and the compensation provisions that accompany those rights.
- 2.2. A consideration of the communication of the Order proposal through the development of the Order to the public and landowners.
- 2.3. A review of landowner objections to the Order on a crossing by crossing basis.

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3. POWERS SOUGHT BY NETWORK RAIL

Purpose of the Order

- 3.1. The purpose of the proposed Network Rail (Cambridgeshire Level Crossing Reduction) Order is to enable Network Rail to close or downgrade certain level crossings in Cambridgeshire 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 public rights of way over drains or watercourses.
- 3.2. In particular, article 5 of the Order allows Network Rail to construct and maintain works.
- 3.3. Network Rail is under an obligation under section 5(6) of the Transport and Works Act 1992 which requires Network Rail not to extinguish any public right of way unless the Secretary of State is satisfied that an alternative public right of way has been provided or that the provision of an alternative right of way is not required.
- 3.4. Hence the Order incorporates provisions to allow for the creation of alternative rights of way to satisfy the requirement noted in the paragraph above. In particular the Order enables Network Rail to compulsorily acquire 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 has 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 public rights of way 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 this scheme.
- 3.6. These powers would guarantee that should the Order be confirmed, 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.
- 3.7. The key rights and powers in the Order are listed below:
 - 3.7.1. Closure of level crossings subject to opening of new rights of way
 - 3.7.2. Closure of level crossings without substitution

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- 3.7.3. Redesignation of Highways
 - 3.7.4. Creation and maintenance of new highway
 - 3.7.5. Permanent acquisition of land
 - 3.7.6. Permanent acquisition of rights of access over land.
 - 3.7.7. Temporary Rights for construction purposes over land
 - 3.7.8. Temporary Rights of Entry for Maintenance Purposes
 - 3.7.9. Powers to Extinguish Private Rights
 - 3.7.10. Acquisition of Permanent Private Rights of Access
 - 3.7.11. Grant of rights over level crossings
 - 3.7.12. Additional Rights of Entry
- 3.8. 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.

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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.
- 4.2. The compensation provisions in the Order vary depending upon the rights being acquired or extinguished.
- 4.3. 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.
- 4.4. All property owners who have rights imposed on their land under the Order will be entitled to claim compensation in accordance with the Compensation Code, which provides a consistent approach to the assessment of fair compensation.
- 4.5. 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.
- 4.6. Compensation is also payable in respect to disturbance losses that result from the construction of the Scheme.
- 4.7. The compensation payable in relation to the acquisition of particular interests in land is set out in detail section 4.9 of my proof.
- 4.8. As set out above the Order provides for new public rights of way to be created over land. Article 15(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.
- 4.9. 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 public right of way.
- 4.10. In relation to land to be occupied temporarily Network Rail must pay compensation for any loss or damage arising from the exercise of the powers in the Order and before giving up temporary possession of such land Network Rail must restore the land to the reasonable satisfaction of the owners.

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- 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.

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5. COMMUNICATION AND ENGAGEMENT

- 5.1. As part of the development of the Scheme Network Rail undertook a series of consultation events to gauge opinion regarding the Scheme.
- 5.2. A consultation strategy was developed to adhere to the statutory requirements from Rule 10(2) (d) of the Application Rules. It also helped to ensure that the consultation process was inclusive and effective, improving the acceptability of the proposals to be applied for within Scheme.
- 5.3. Consultation was held with a number of stakeholder groups as set out below:
 - 5.3.1. Strategic stakeholders
 - 5.3.2. Statutory consultees
 - 5.3.3. Landowners and those with a legal interest in property
 - 5.3.4. Local access, user, and interest groups & the general public
- 5.4. Two significant rounds of consultation were held in 2016 by Network Rail. A phase of consultation was undertaken by Bruton Knowles from January 2017 and meetings with landowners are ongoing.
- 5.5. More specifically Landowners and other holders of property interests were contacted by Network Rail's consultants and Network Rail themselves.
- 5.6. Network Rail has confirmed to me that all identified parties in the Book of Reference have been consulted prior to submission of the Order.
- 5.7. The Scheme is unusual in that the compulsory powers in the Order are mostly related to rights rather than outright acquisition of land. Furthermore the rights sought on a permanent basis are predominantly public rights i.e. following completion of the Scheme works the Order will provide ongoing rights for the public to replace existing closed footpaths and similar routes.
- 5.8. 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.

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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. 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 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

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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 a number of landowners objected to and made representations regarding the Scheme. It can be seen therefore that the majority of interest holders have not sought to object to or make representations in relation to the Order.
- 7.2. 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.

8. OBJECTORS

- 8.1 I summarise and comment upon objections on a crossing by crossing basis, in section 8 of my proof.

Jonathan Smith
27th October 2017