

TRANSPORT AND WORKS ACT 1992

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

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

ANDREW KENNING

**REBUTTAL OF
PROOFS OF EVIDENCE**

-OF-

CAMBRIDGESHIRE COUNTY COUNCIL

Document Reference	NR30/4
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I have reviewed the 'Written Proof of Evidence by Camilla Rhodes' submitted by Cambridgeshire County Council (the highway authority) in support of the objection to the Order (Obj/12). I have the following comments on the evidence as presented:

1. In paragraphs 21 & 22 Commuted Sums are covered;
 - a. There is no requirement under the Transport and Works Act procedure for a promoter of a scheme to pay commuted sums. However, Network Rail is willing to consider commuted sums where there is a specific increased maintenance burden on the highway authority through the provision of new PRow and additional highway assets resulting from its proposals. Each scheme must be assessed on its own merits.
 - b. In this case, Network Rail recognises that the nature of the proposed Order would involve significant number of changes to the PRow network and a number of additional, albeit modest, highway assets. Network Rail is willing to pay a one-off commuted sum that reflects ongoing costs to the highway authority for maintaining the new assets constructed pursuant to the Order. I understand that there is "unit cost" spreadsheet that would require Network Rail to make payments that extend beyond this. A point to bear in mind is that Network Rail is not a commercial developer and cannot be expected to pay a supplement/contribution to the highway authority's costs over and above that which actually reflects the specific increased maintenance burden to them.
 - c. Like the highway authority, Network Rail is publicly funded and must comply with the Government's managing public money principles so it is not appropriate for one public body to impose conditions or payments at commercial rates onto another. It is therefore right that Network Rail challenge this position as there needs to be a clear audit trail for the acceptance of any side agreement linked to a statutory process.
 - d. Further, Network Rail does not agree that it would be appropriate to include an amount for inspections and surveys, as there is already a need for the highway authority to inspect and survey its PRow network and the effect of the Order scheme on this would be negligible.
 - e. In particular, and taking into account the 2017 Guidance from the Association of Directors of Environment, Economy, Planning and Transport (ADEPT), a 60 year maintenance period in respect of any new bridge would be acceptable (as these are not strategic highway infrastructure). However, a 60 year period would not be appropriate or acceptable in relation to other new assets. In respect of non-bridge assets, Network Rail would be prepared to pay a sum that reflects the principles set out in section 7 of Cambridgeshire County Council's "Highways Policies and Standards" document (November 2014 revision).
 - f. Network Rail envisages that the commuted sum will reflect the net increase in length over the PRow network and any improvements to existing PRow's that increase the ongoing maintenance requirements.
 - g. Network Rail would seek to apply a discount rate to any commuted sums payment, which would take into account the current Government guidelines, at the point in time of when the lump sum commuted payment is made to the highway authority for the particular level crossings in question.
 - h. These are the principles that would be acceptable to Network Rail, as I understand them, and further meetings are planned to discuss this further with the highway authority.
 - i. Network Rail would add that it would be a departure from precedent, and inappropriate, to include provisions for commuted sums within the body of a TWAO. The appropriate place is within an undertaking or side-agreement. This has the benefit that it may be varied from time to time between the parties, should this be necessary, without the need for a further application for TWAO to amend the original Order.
 - j. The insertion of such a provision into the Order has not, and would not, be agreed with any of the other councils affected by the Anglia route proposals.

2. In paragraph 27 the subject matter of new route acceptance by the highway authority is mentioned.
 - a. Due to the complexity and nature of the proposed alternatives, it is very unlikely that Network Rail would seek to request acceptance of large numbers of alternative routes in one go. Network Rail is happy to cap the maximum number of routes for which it will request certification in any given month so as not to overwhelm the highway authority.

3. In paragraphs 28 & 29 the subject of undeliverability and the concerns of the highway authority on this matter should the order powers be granted.
 - a. It would appear that there is some confusion between the way in which the Highways Act deals with PRowS and the way the Transport and Works Act deals with them. When using the Highways Act, all details of the alteration must be known before the order is confirmed. A diversionary route would generally be expected to be ready to use before confirmation of the Order, which would then take effect on the date it is confirmed or on an appointed date. Some powers of early entry are granted to the highway authority for surveying etc.
 - b. However, under the Transport and Works Act, granting of the powers for which Network Rail is applying confers powers on NR to implement the diversionary routes, providing powers to occupy land temporarily etc. There is no absolute requirement to exercise the powers that have been granted. A diversionary route would be constructed without any risk to the highway authority, but in the knowledge that, if it is completed to the reasonable satisfaction of the highway authority, the diversion will take legal effect. If it were found during construction that a proposed diversion is undeliverable, such that the new route would not be accepted by the highway authority, the existing route (and the level crossing) would not be closed under the Order.
 - c. To emphasise, the risk of alternative routes being undeliverable sits with Network Rail, and at no point is the existence of the existing PRow network at risk if a route should be found to be undeliverable for any reason.

4. In paragraph 37 there is reference to the highway authority's scoring mechanism for assessing PRow diversions using the Highway Act, and in applying the same scoring to the diversions contained in the Cambridgeshire TWAO, few would attain the threshold score for promotion.
 - a. I acknowledge that our diversions may not pass the tests normally applied to footpath diversions. I would point to the Network Rail Statement of Case where we set out the strategic need to undertake these changes. These strategic needs go beyond the needs of those only using the PRowS, and as such a balance has to be found.
 - b. I acknowledge that the highway authority has a ROWIP, however Network Rail is not funded to improve PRowS, nor is it allowed as a public body to use compulsory powers to acquire more land than is required for the provision of the new rights of way.

I have reviewed the 'Written Proof of Evidence by Alison Arnold, Anna Bailey, Karen Champion, & Lynda Warth' submitted by Cambridgeshire County Council (the highway authority) in support of the objection to the Order (Obj12). I have the following comment on the evidence as presented:

5. I note there are issues at Clayway level crossing (on the Ely – Peterborough railway line) where there are only vehicular gates and it does not have a Non-Motorised User (NMU/bridleway gate).
 - a. With the removal of Second Drove from the project, there will be no impact on Clayway by this project and so any proposed upgrade of Clayway by this project will be removed.

- b. That said Network Rail recognises that there is a need to improve the facilities at Clayway and this is intended to be managed through the business as usual work that Network Rail undertakes in optioneering its 6,000+ level crossings across the UK.

I have reviewed the 'Written Proof of Evidence by Laurence Smith' submitted by Cambridgeshire County Council (the highway authority) in support of the objection to the Order (Obj/12). I have the following comment on the evidence as presented:

- 6. In paragraphs 4 & 6 the speeds of trains are discussed, and Mr Smith suggests that the speed of trains is limited due to the narrowness of the Meldreth Station platforms.
 - a. The trains that travel along this section of railway line can travel at speeds up to 90mph. I note that there is no restriction of speed through the platforms of Meldreth Station and trains that are travelling through without stopping do not reduce speed because of the station, and can travel through at the maximum permitted speed of 90mph for this section of line.

I am not rebutting every proof of evidence submitted by Cambridgeshire County Council and the fact that I have not addressed any point in this rebuttal does not mean I accept it. I am still relying on my proof of evidence.

Witness declaration

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.