

THE NETWORK RAIL (CAMBRIDGESHIRE LEVEL CROSSING REDUCTION) ORDER

OPENING SUBMISSIONS ON BEHALF OF NETWORK RAIL

1. Through this Order, Network Rail seeks powers to close or downgrade rights over 25 level crossings in the County of Cambridgeshire, together with associated powers (including the acquisition of land and deemed planning permission) to allow works to be carried out to provide diversionary routes.
2. In respect of 20 of the crossings, public rights of way are affected. In respect of the remaining 5¹, only private rights are affected. At the outset it is noted that Network Rail no longer pursues powers in respect of 4 level crossings included in the Order² where an issue arose in respect of the notification of landowners. A further crossing³ was withdrawn at an earlier stage. No further evidence will be called on those crossings.
3. It is not proposed, in opening, to explain the case for each crossing. Rather, these submissions are limited to an explanation of why we are here, and why in broad terms Network Rail says that the Order should be confirmed.
4. Level crossings are the largest single contributor to train accident risk on the railway network. They present a risk to those walking, riding or driving over the crossing; and to those driving and riding on trains. A number of high profile and appalling incidents on level crossings have (rightly) drawn national attention to the risks that they present. At any particular crossing those risks can be managed but can only be *avoided* through closure.

¹ C02; C26; C33; C34; C35. The existence of public rights at C26 is, however, the subject of dispute.

² C03; C08; C09; C13.

³ C18

5. Network Rail must – for reasons explained below – carefully manage that risk. That means that resources are called for to assess, maintain, and where necessary upgrade, each of the crossings on the network. There are many thousands of them and 771 on the Anglia Route alone. In practical terms, that imposes a significant operational cost to Network Rail which is ultimately borne by railway users. It is self-evident that reducing the number of crossing points reduces the number of individual locations in which those resources must be deployed. Risk can be concentrated into fewer locations, which can then be more closely managed.
6. Level crossings are, in practice, a constraint on the operation of the network. They are an integral part of the railway system and, quite obviously, the manner in which the railway is operated must account for the presence of level crossings and therefore pedestrians, horse riders, motorcycles, farm vehicles etc. on the railway track. Thus level crossings can affect the speed at which trains can operate; they can interfere with upgrade works such as laying additional track; they can affect signalling operations.
7. Closing a level crossing removes the risk. It removes the management and maintenance burden. It removes the constraint.
8. In these circumstances, Network Rail has adopted a strategy for level crossings which *includes* a process of reducing the number of crossings. It proposes, in this Order, to do so through co-ordinated multiple closures and diversions. This is distinct from the process of individual closures for safety reasons. It is also distinct from the ongoing work to improve the safety of retained crossings.
9. This strategy has not been adopted in a vacuum. Network Rail is wholly owned by the Government. It owns and operates the railway network under a licence from the Government. It is responsible for the maintenance, repair, renewal and safe operation of the railway. It has a duty to enhance and improve the railway network in operational terms. It is required to meet these duties in a way which is regulated by the Office of Rail and Road (“ORR”).
10. The ORR has expressly endorsed level crossing closure as part of Network Rail’s output in the current “control period” (“CP5”). It has provided ring-fenced funding for

reducing risk at level crossings *including through* closure. Of course, the detail for how that is delivered is left to Network Rail. Here, the detail is also a matter for the decision-maker on the Order – the Secretary of State. But Network Rail submits that through this Order it is seeking to do that which it has been told to do by its regulator.

11. This Order will deliver material safety benefits at level crossings. Risk at the affected crossings will be excluded or materially reduced (where downgrading is proposed). The number of opportunities for conflict between users of crossings and trains will be reduced. This is not an illusory benefit, as the accident at Nairns (C02) in 2016 confirms. There will be a net reduction in the Fatalities and Weighted Injuries (“FWI”) value, both through this Order and through the wider strategy⁴.
12. The Order will substantially reduce the costs of asset inspections and renewals, and the costs of upgrading the crossings in accordance with Network Rail’s policy of improving safety at retained crossings. The cost savings to the public purse are substantial, as is highlighted in Dr Algaard’s evidence. These savings alone exceed the costs of the implementation of the Order, even without having regard to the other benefits of the Order. There are further costs associated with the delay caused by incidents at level crossings which can be avoided through closure.
13. This Order will also assist in the delivery of capacity enhancements on the Anglia network, through removing the level crossing constraints. In a number of instances there are identifiable network enhancement schemes which affect the sections of the network in which these level crossings lie.
14. This Order therefore is made to secure the following benefits⁵:
 - a. Improving the safety of level crossing users, railway staff, and passengers;
 - b. Creating a more efficient and reliable railway;
 - c. Reducing the ongoing operating and maintenance cost of the railway;
 - d. Reducing delays to trains, pedestrians, and other highway users;
 - e. Facilitating capacity and line speed increases on the network in the future.

⁴ See E Algaard Proof, NR28/1, 2.3.2

⁵ See Statement of Aims NR04, para 14

15. These objectives accord firmly with Network Rail's licence obligations and the outputs required by its regulator. They also are in the public interest. They allow benefits of rail travel for people and goods to be more fully realised. They reduce the costs of such travel. They make the network safer. All of these things accord with transport policy at a local and national level.
16. It is true to say that there are impacts of the Order proposals which fall on private and public users of the crossings. These have been carefully taken into account by Network Rail. However, Network Rail has concluded, after careful consideration, that this Order strikes the correct balance between those interests and the wider public interest explained above. Clearly, some disagree with that judgment, and through this Inquiry their position will be taken into account by the Secretary of State. They are important interests which is why their case will be heard.
17. There are two specific points to bear in mind in respect of these interests:
- a. So far as private rights are affected, the Order provides for compensation to be paid in accordance with the Compensation Code. Private rights are therefore compensated for in monetary terms, in addition to the provision of accommodation works for the benefits of the users;
 - b. So far as public rights are concerned, the Order provides for alternative routes. Those routes are to be provided before the crossing in question is closed. Network Rail will physically undertake the necessary works and make a contribution to their future maintenance. Network Rail will show that these alternatives are suitable and convenient for users even though they may require a longer walk, ride or drive for some.
18. The interests of users of the crossings and the interests of Network Rail are more aligned than appears to be recognised in some of the objections. The risk to the users of crossings described in Network Rail's evidence is risk to users themselves. Despite the rigour of their objections, both the County Council and Ramblers appear to accept the principle of the need to close level crossings to reduce risk.

Objections – overview

19. Some of the objections to the Order which go beyond the specific crossings challenge the basis upon which Network Rail has selected the 25 crossings before this Inquiry. In outline, there are three main reasons why that is barking up the wrong tree:

- a. All level crossings carry risk. The fact that there are other crossings with greater risk does not mean that the Order fails to achieve risk reduction. At every affected crossing, and cumulatively, it does. Similarly, every crossing imposes a management burden, and every crossing poses a constraint on the network (whether or not it is a constraint which, today, obviously needs to be lifted). The crossings in this Order have not been selected based solely on risk, but on the basis that closures can be delivered without the provision of substantial new infrastructure (e.g. bridges and underpasses);
- b. It is not the task of this Inquiry to examine whether there could have been a *better* level crossing reduction order. The question is whether what is proposed is justified in the terms of the Transport and Works Act 1992 (“TWA”) and any relevant policies;
- c. It is not the task of this Inquiry to carry out a judicial review of Network Rail’s processes. The statutory requirements have been met. The question is whether the Order as put before the Inquiry should be confirmed: i.e., we should be concerned with the merits of the proposals, not the process.

20. Both the Ramblers and the County Council pursue what appears to be a more fundamental objection to the Order, namely that it should not be allowed to proceed because there is an alternative available by way of applications under s 118A or s 119A Highways Act 1980. This is essentially a legal issue. Fuller submissions will be made in closing on the point, and doubtless the Secretary of State will seek his own legal advice on the submissions made. However, for present purposes Network Rail submits that this is entirely misconceived for the following reasons:

- a. This Order falls squarely within s 1(1) TWA: “an order relating to, or to matters ancillary to, the construction or operation of... a railway”;

- b. So far as it is argued that the Highways Act process is better, that is irrelevant. If the application is lawfully made under the TWA then a “better” route is nothing to the point – the application must be determined on its merits;
- c. In any event that general point is very obviously wrong. It would require 20 separate applications under the Highways Act. It would be for the highway authority to decide whether to co-operate in the closures – if they did not, whatever Network Rail’s position was would be irrelevant. If the proposals got off the ground, it would require 20 Inspectors to hold 20 inquiries;
- d. The more sophisticated legal point made by the Ramblers is that s 13(2) TWA provides that where the Secretary of State considers “that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order”;
- e. The starting point here is the “order applied for” – i.e., that which Network Rail seeks and not that which objectors say we should have. This matters because the order applied for includes:
 - i. Compulsory acquisition of land
 - ii. Temporary possession of land
 - iii. Disapplication of legislation
 - iv. A request for deemed planning permission
 - v. Extinguishment of private rights
 - vi. Closure (and associated alterations of rights of way) across multiple crossings.

Those matters could not be achieved under the Highways Act processes. This is a complete answer to the argument.

- f. Further, the objects of the Order are ones which the Highways Act provisions simply do not take into account. The sole basis for closure under s 118A/119A is for the safety of users of the crossing. That is an important part of the objects of this Order – but not the only part. The safety of users of the railway; its operational efficiency; and its future capacity are all elements of the

justification. As ss 118A and 119A does not allow for extinguishments or diversions on the grounds of operational efficiency, the Highways Act is dealing with a materially different proposition;

- g. It should be recalled that s 13(2) is expressed as a discretion (“may on that ground determine not to make the order”). The Secretary of State is not required to refuse the Order even if the points above are rejected. Here there are very good – indeed compelling – reasons why he should not do so, including:
 - i. The Secretary of State has on at least 5 separate occasions⁶ made orders to close level crossings under the TWA;
 - ii. The applicant specifically canvassed this issue with the Orders Unit in advance of the application being made. The Orders Unit confirmed that it was appropriate to proceed under the TWA.
- h. It should also be remembered that this objection to the use of the TWA only “bites” where public rights of way across the railway are affected. Thus, in respect of 5 crossings, this is a non-issue even taking the Ramblers/CCC case at its highest.

21. These arguments risk distracting from the true purpose of the Inquiry. There is a compelling case for the Order, for the reasons set out above. It is of course necessary to examine the actual impacts at the actual crossings affected. That is doubtless where the Secretary of State will most wish for assistance. That detail – when we get to it – will be the subject of further submissions in closing.

22. Network Rail will invite the Inspector to recommend that the Order is made, subject to the proposed modifications. In doing so, a safer, more efficient, more resilient and more capable railway will be created.

⁶ Swynedyke Level Crossing Order 1995; Ammanford Level Crossings Order 1996; Seaham Level Crossing Order 2013; Northumberland Park and Coppermill Lane Level Crossing Closure Order 2017; Abbots Ripton Level Crossing Order 2017.

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