

Network Rail (Cambridgeshire Level Crossing Reduction) Order

Network Rail Note 5 on C28 – Black Horse Drove

The crossing

Black Horse Drove is a public road maintainable by the local highway authority that runs from east to west across the railway (C28 Black Horse Drove level crossing), before becoming a private road approximately 240m west of the crossing. The section within the railway boundary is a public road but is maintained by Network Rail, at Network Rail's expense.

Black Horse Drove serves a cluster of properties comprising the following interests shown on the Land Registry plan appended at **Appendix 1**:

NK393494	Mr and Mrs Alderton
NK243859	M.H. Rains Ltd
NK178689	William Price
NK131283	South Yorkshire Pensions Authority

The crossing is a user worked crossing with vehicular and separate pedestrian gates on either side.

The proposal at this crossing

The Order would confer powers on Network Rail to extinguish all public rights at the crossing. Upon implementation of those powers, the crossing would then become a private user worked crossing for registered users who would be granted rights. A turning head within the adopted highway is already provided on the east of the railway. The level crossing would continue to be maintained by Network Rail, in line with other private user worked crossings on the network.

There are no land parcels affected by the proposal other than CCC's interest in the road over the crossing, and hence no other landowners' notices besides CCC.

There is an overall benefit to reducing the public access to the railway. Those who need to use the crossing will be granted rights to do so and their access across the railway will be unaffected.

Pre-application consultation

There were two rounds of public consultation in advance of the application for the proposed Order.

Notices advertising the public consultation were attached to the level crossing gates in advance of the relevant consultation events in June and September 2016. Photos of these are attached at **Appendix 2**.

Newspaper adverts were placed in the Ely Times, Cambridgeshire Times and Cambridge News in the week prior to the consultation events in June and September 2016.

Flyers were hand delivered to residences in the vicinity of the level crossing in advance of the consultation events in June and July 2016. Attached at **Appendix 3** is output from the GPS

tracker used by the distribution company. It should be noted that for Round 2 the distribution areas were reviewed and the GPS recording frequency was increased.

Mr Alderton, the owner of Scotland Farmhouse was consulted by Network Rail well in advance of the application.

- 9/6/16 – Site meeting (Gately-Hamers) – David Alderton – owner Scotland farmhouse
- 23/6/17 – Incoming email – David Alderton – summary of use of Scotland farmhouse and level crossing
- 19/9/16 – Incoming email – David Alderton – against closure of the level crossing and stopping up of Black Horse Drove due to maintenance liability, impact on business, decrease in value of property, and access for service vehicles

Project team members spoke to Mr Alderton regarding the proposals and how the operation of the locked gate might work at the Round 2 consultation event at Littleport on 12/9/16

On 11 January 2017, Network Rail's property agents recorded engagement with David Alderton of Scotland Farmhouse, Black Horse Drove. A record of that engagement states:

"Call received from Mr Alderton further to receipt of letter/proposal. He advises that the property they own is a holiday let and they have concerns over the downgrade of the LX to private as he would need to provide a key for access to all tenants and could cause problems when people are trying to make deliveries etc. He advised he sent an email to Sam Blaze of Hamers and Steve Day of Network Rail dated 19/09/16 asking various questions which he has not yet had a response to. Mr Alderton would like us to chase up this email. A keypad entry system where Mr Alderton could provide the access code to people may be a compromise here."

Following this, further engagement was had with Mr Alderton regarding arrangements for authorised user access over the crossing. An email response was sent to Mr Alderton to address various points of concern on 23 January 2017.

Mr and Mrs Rains were also consulted by Network Rail well in advance of the application:

- 7/6/16 – Incoming email - Peter Rains – local farmer – states level crossing is required for day to day operations
- 13/6/16 – Incoming email – Malcolm Rains – local farmer – requesting meeting
- 22/7/16 – Meeting – Peter Rains – against closure due to increased maintenance liability of stopped up highway and practicalities of locked gate

On 20 January 2017, a note of contact with Mr and Mrs Rains records that:

"The Rains' expressed similar concerns to Mr Price with regards to the upkeep of the road once it becomes private and what sort of system would be used on the crossing to ensure security and safety. The Rains' also believed a keypad system to be a feasible idea, but expressed concerns with regards to action if it were to break. Stating that if it were to do so during harvest, the results would be very bad for their business. Alternatives to the keypad system, such as an automatic barrier and a remote control, were suggested. Mr Rains expressed concern regarding a crossing to the south 'Peacocks' which he believes to be dangerous. Mrs Rains also raised concern that Network Rail might have plans to expand the railway to a double track."

On 13 January 2017 Mr Price emailed Network Rail objecting to the proposal on the basis of increased time to operate a locked gate and downgrading of the road from an adopted highway.

CCC, as highway authority, was also consulted. The highway authority wished Network Rail to extinguish not only the public road over the railway in which Network Rail had an interest, but the public highway to the west. Network Rail had no reason to interfere with the road to the west of the railway for the purposes of the Order scheme and it was determined not to do so.

The Order application

The application for this Order was submitted on 14 March 2017. The application documents required for compliance with the Applications Rules include both a draft Order and set of Order plans.

Schedule 4 of the Order is entitled “Redesignation of highways” and sets out those highways where Network Rail has sought a change to the status of a particular highway. Likewise, the Order plans show where this occurs. There is no redesignation of Black Horse Drove in the Order or Schedule 4.

Notice of the application

Notices of the application were displayed on the gates on either side of the level crossing and at the sites shown on the plan at **Appendix 3**.

Photographs showing the notices at the crossing are at **Appendix 4**.

Objections/support for the closure of this crossing

There were no objections to the closure of this crossing. There was one letter of support.

Cambridgeshire County Council’s position on C28

CCC’s position in relation to this crossing is that it has no objection to the closure provided that all public highway rights to the west of the crossing are stopped up and replaced by private rights for authorised users.

CCC did not object to the closure of this crossing.

CCC’s Position Statement of 31 October 2017 records that it has no objection to the closure of the crossing provided that all highway rights are stopped up west of the crossing and a refuge area is created to the east of the crossing.

As explained above, Network Rail’s proposals explicitly extinguish the public rights over the railway and replace them with private rights. However, the Order is silent on the highway to the west of the railway which provides a link to the private road to the cluster of properties.

CCC’s concerns about the legal effect of the Order were first provided to Network Rail on 14 November. The Council was concerned that, at common law, it is impossible to have a stretch of public highway that is not linked to the public highway network. Network Rail’s initial response was by email of 17 November, which pointed out that – assuming CCC’s interpretation of the common law was correct – the end result would be exactly what CCC had been pressing for in terms of stopping up the public highway. The position was further discussed during a meeting between NR and CCC on 21 November.

At that meeting, CCC stated that it intended to write to each resident to the west of the railway to advise them of the potential legal implications, as the council assessed them, for the highway to the west of the railway of extinguishing the public highway over the crossing. It was agreed by both CCC and NR that CCC would prepare a first draft of the letter for NR to consider and provide input.

On 27 November – a full week later – Winckworth Sherwood received notification by email from Camilla Rhodes on behalf of CCC that she had already settled and sent out a letter to residents in the following form:

As you may be aware, Network Rail is promoting an Order under the Transport & Works Act 1992 to close a number of level crossings across Cambridgeshire. A four-week public inquiry into the matter commences on Tuesday 28th November 2017 at the Hallmark Hotel, Bar Hill. The level crossing on Black Horse Drove is one of those crossings proposed to be closed, reference C28.

Details are on the Persona Associates website <http://cambridge-level-crossings.persona-pi.com/>

At present, public carriageway highway rights exist over Black Horse Drove as far as Willow Row Drain, just before Scotland Farmhouse, as shown on the enclosed plan. The C28 proposal is to stop up all highway rights over the level crossing, with private rights being granted over the crossing to those who can prove a need, provided they make themselves known to Network Rail.

The proposal implies that the highway to the west of the crossing at point A will remain. As the local Highway Authority, Cambridgeshire County Council is concerned to ensure that owners of land to the west of the crossing (point A on the plan) are aware that in fact it is likely that the effect of the Order will be to extinguish this highway. This is because, under common law, it may not be possible for an island of public highway to exist. This would leave the properties served by it in an unsatisfactory state of legal limbo.

As an affected owner/occupier, you may need to proactively make contact with Network Rail in order to ensure that an easement for access to your property and any compensation that may be due are agreed, as it may not otherwise happen. The easement would need to be agreed with the owner of the subsoil underneath the road, whoever that is (it is not the County Council). Maintenance would also need to be agreed. It would be advisable to ensure that any new rights of access and maintenance arrangements are included in the registered title for the property, in order to avoid potential future issues over access.

As this is a technical area of law, you may wish to take legal advice on the matter. Any member of the public or landowner affected by the proposed Order is able to make representation to the Inspector at the public inquiry. If you wish to do this, I would suggest that you contact the Inquiry Programme Office.....”

In Network Rail's view this letter was, unfortunately, expressed in a way designed to maximise the concern of residents and to the prospects of their seeking to oppose the proposed Order at the Inquiry as it suggested that they would be left in an unsatisfactory state of legal limbo as a result of the making of the Order.

It is Network Rail's case that such residents would be entitled to continuing access over the former highway, whether by private treaty or operation of law. Any financial consequences flowing from this to the owner or residents, would be compensated for under the national, statutory compensation code as applied by the relevant provisions of the Order.

Proposed amendments to the Order

It is not Network Rail's intention to leave any property without a right of access to the public highway and Network Rail does not accept that this would be the effect of the Order. However, to address any potential ambiguity as to the rights of access of those potentially affected properties to the west of the level crossing, Network Rail will request that the Secretary of State make the following minor amendment to article 15 of the Order to include the new article 15(4):

“(4) The closure of Black Horse Drove to the public is not to be taken to affect the right of passage on foot and by vehicle of owners of properties who until the downgrade of the level crossing have obtained access to their property over that part of Blackhorse Drove which lies to the west of the level crossing.”

The principle within this provision has precedent in both private and public legislation including section 13(4) of the British Railways Act 1966, section 67(5) of the Natural Environment and Rural Communities Act 2006 and in article 2(4) of the Railtrack (Swinedyke Level Crossing) Order 1995 (an Order made under the Transport and Works Act 1992).

Summary

It would not have been possible for users of the crossing (in particular, residents), to cross the railway without seeing the notices of the application and they had an opportunity to consider the Order proposals, to take advice and to object if they chose to do so.

This proposed minor amendment to the Order will ensure, on the face of this piece of legislation, that residents retain the same rights of access to their properties after the Order is made as they enjoyed immediately before the downgrade of the level crossing. This amendment clarifies the effect of the Order reflecting both the proposals that were consulted upon and the intent of the Order.

Winckworth Sherwood

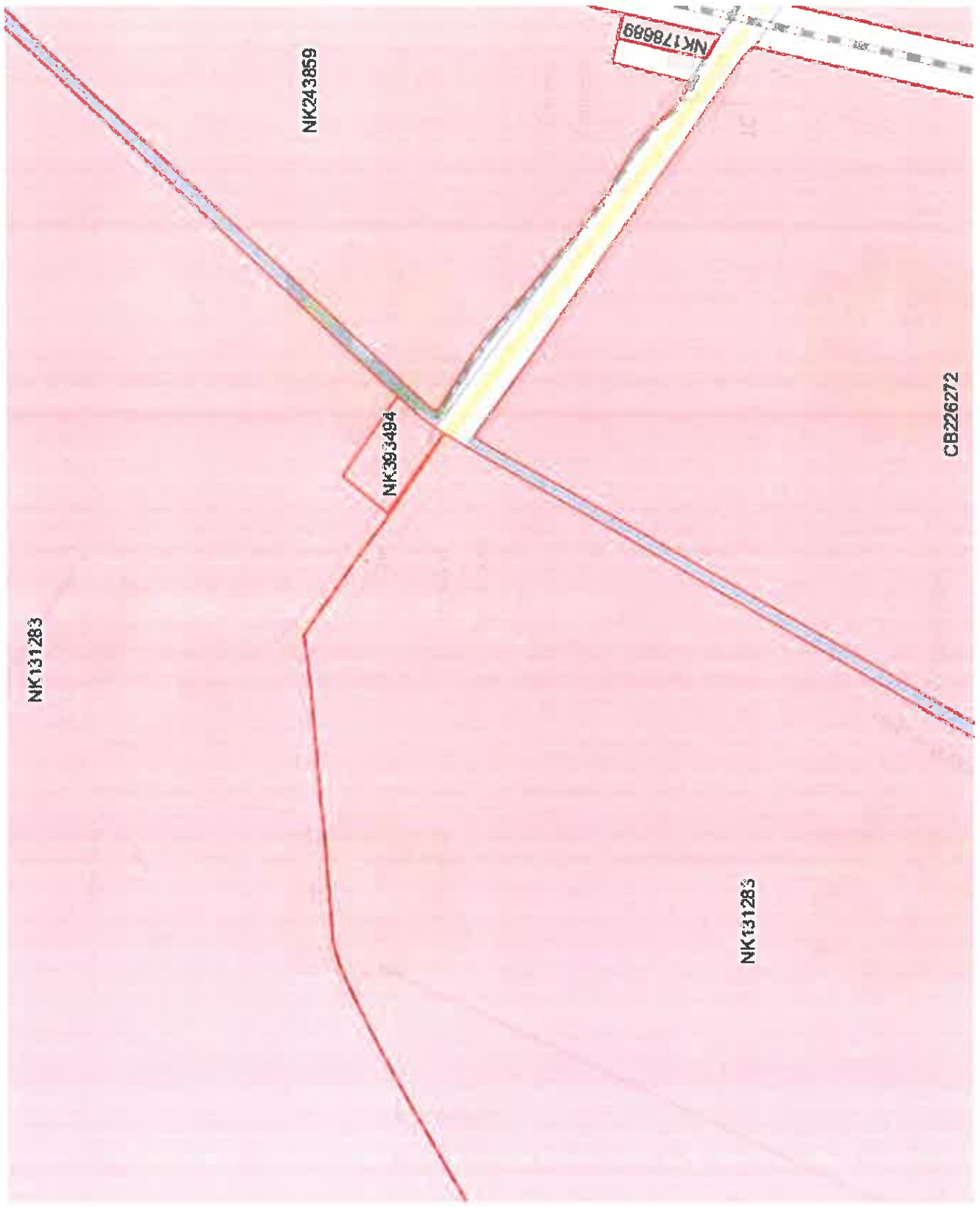
8 December 2017

C28 Blackhorse Drove Land Ownerships East Side

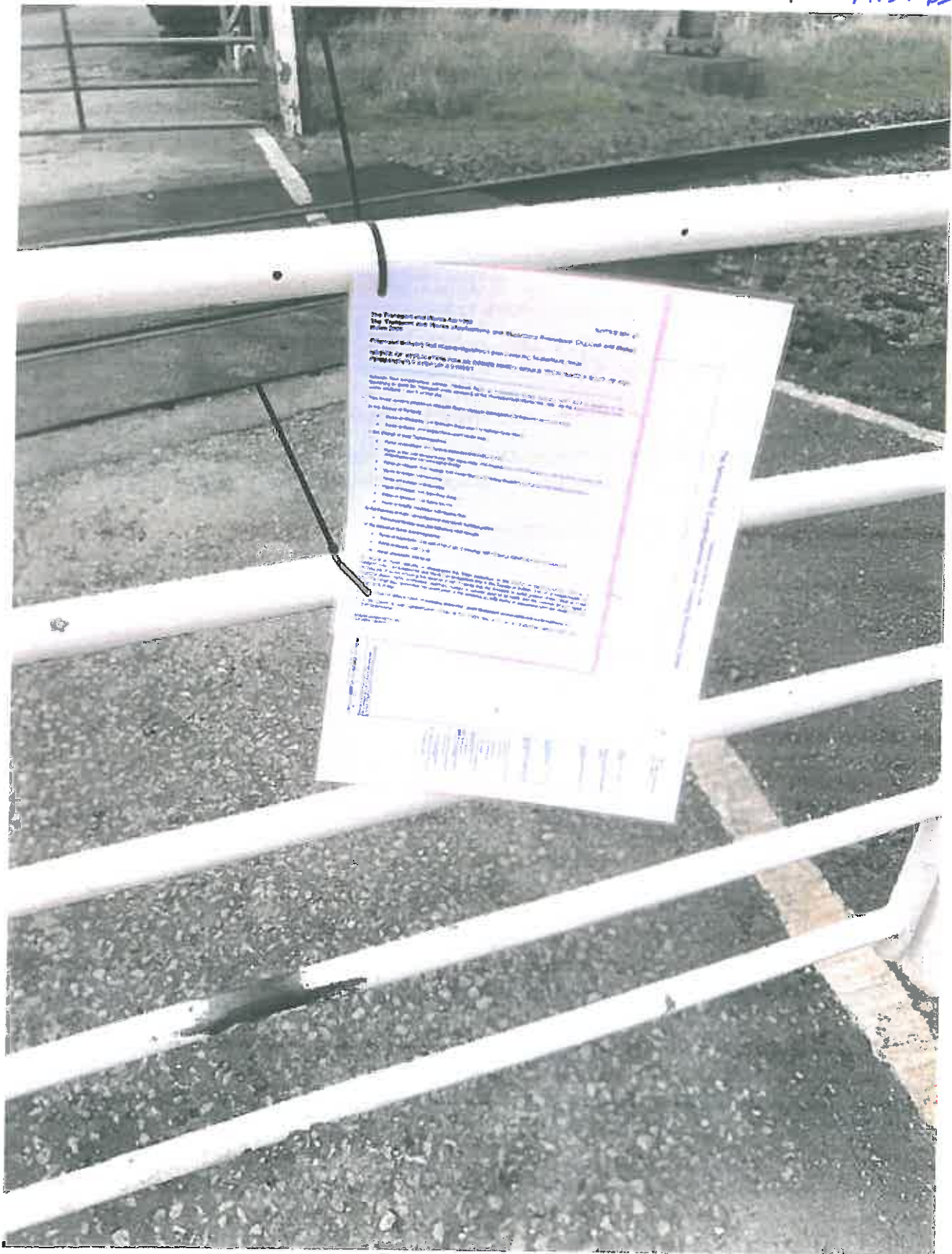
APPENDIX 1



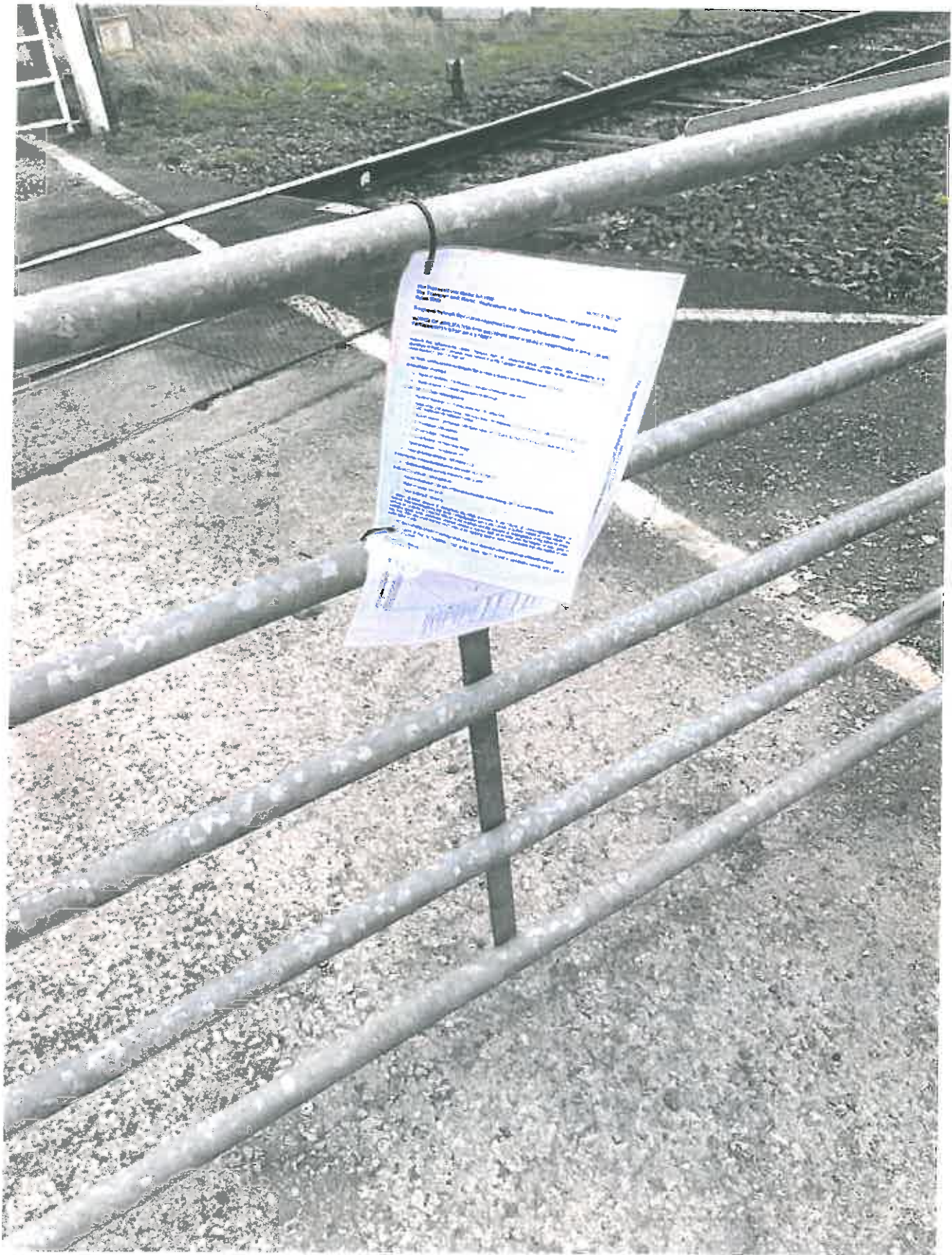
C28 Blackhorse Drove Land Ownerships West Side



14/03/17 APPENDIX 2



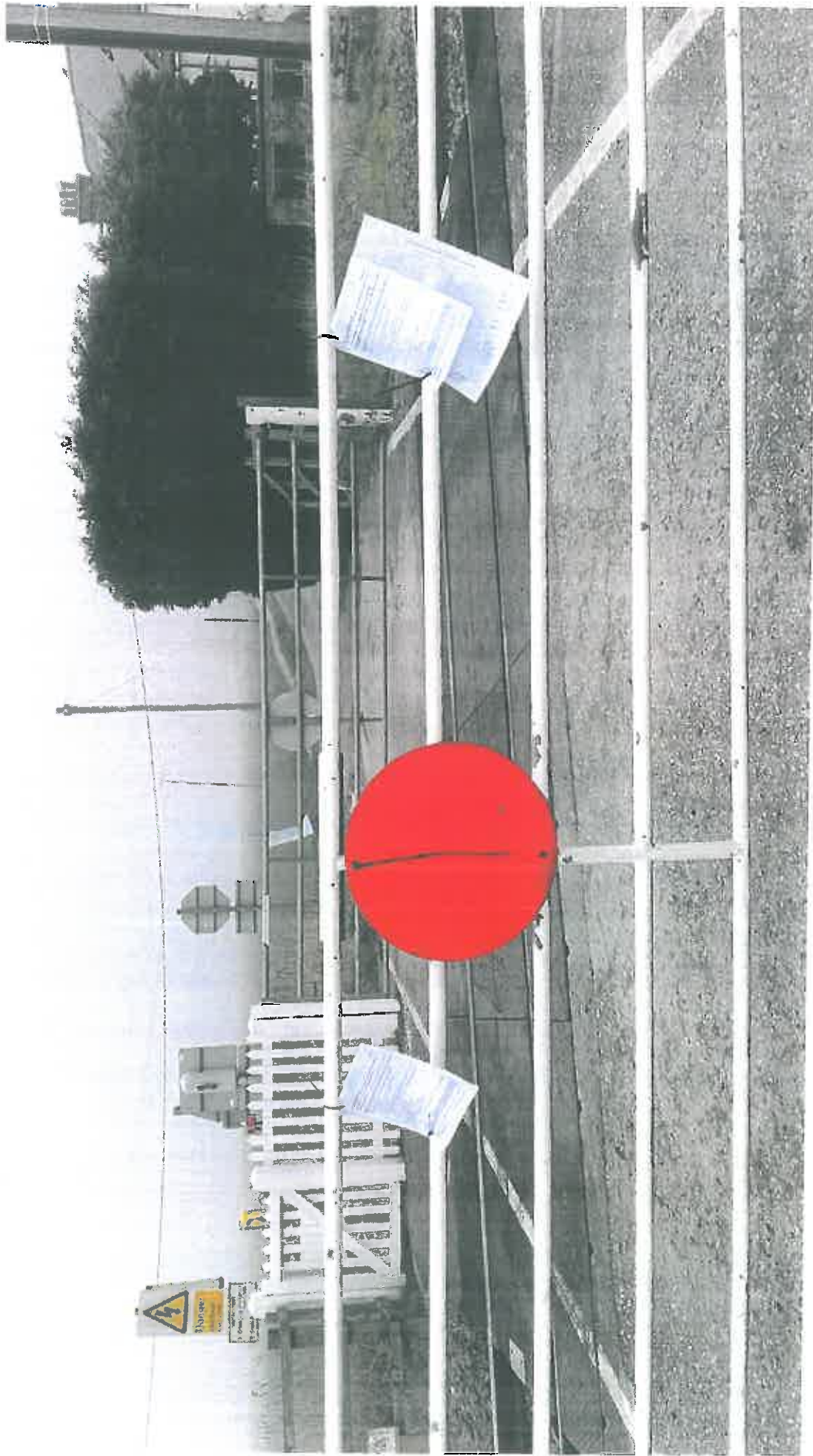
14/03/11



28/03/17



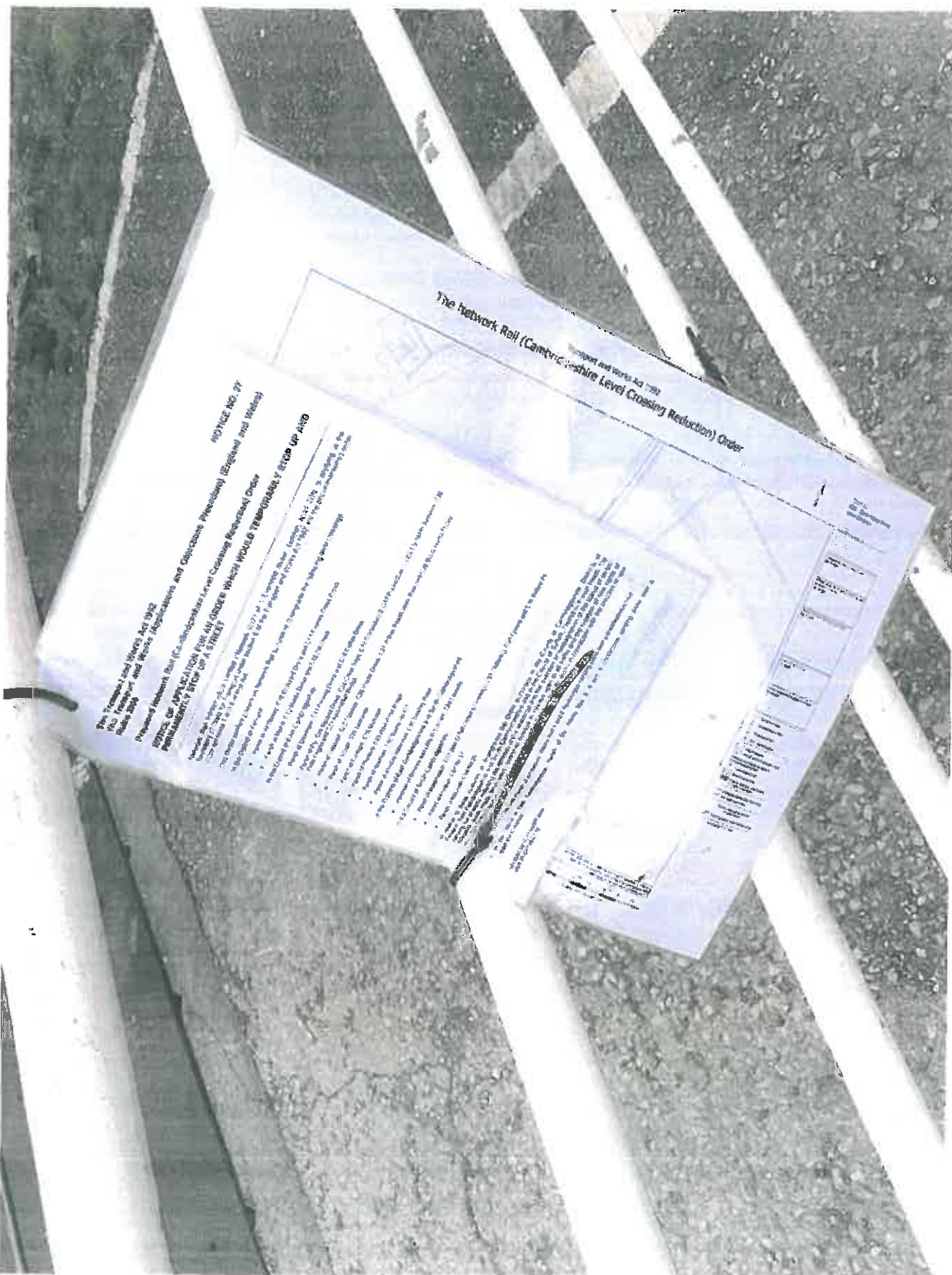
28/03/17



07/04/17



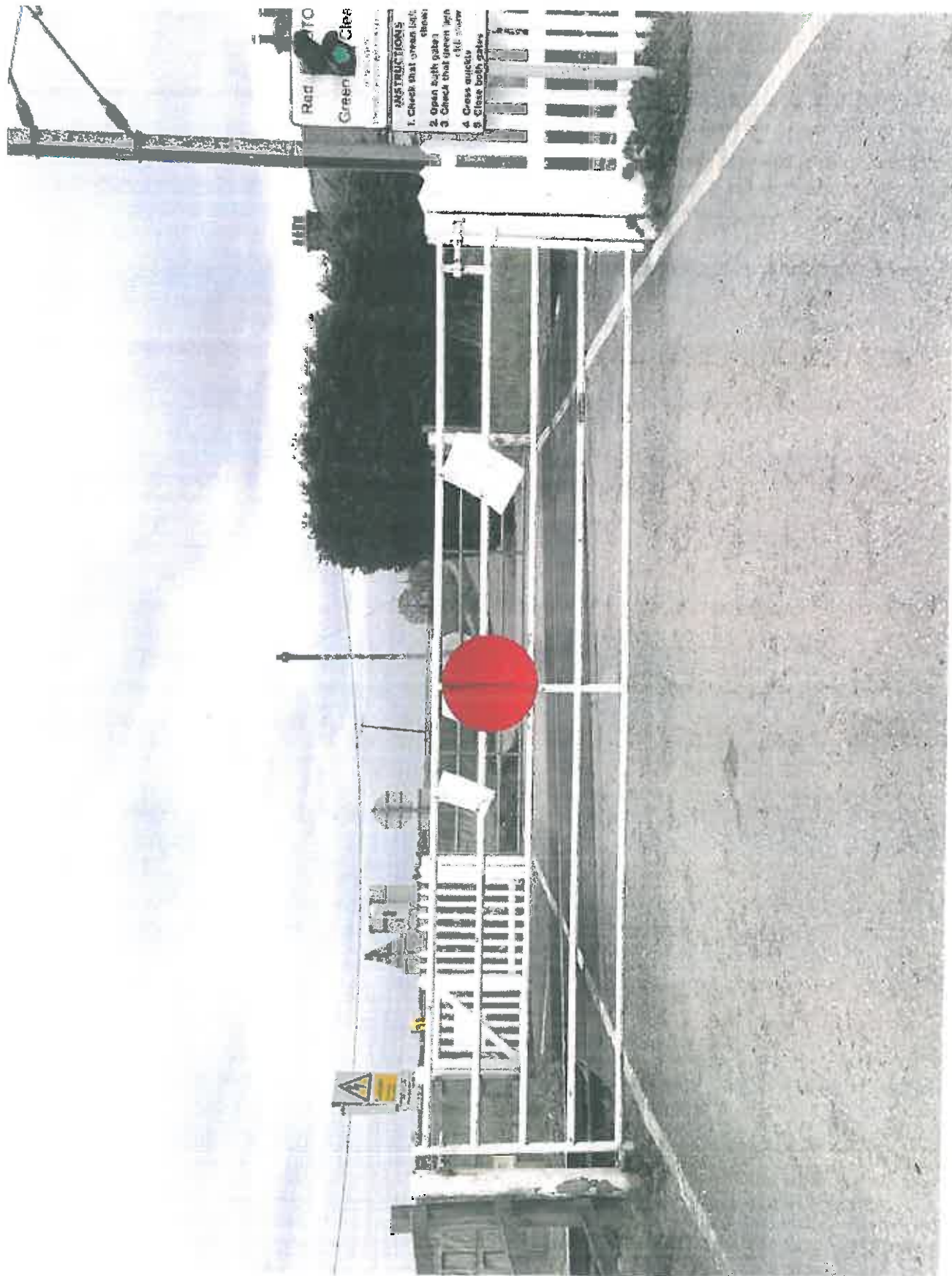
07/04/17



10/04/17



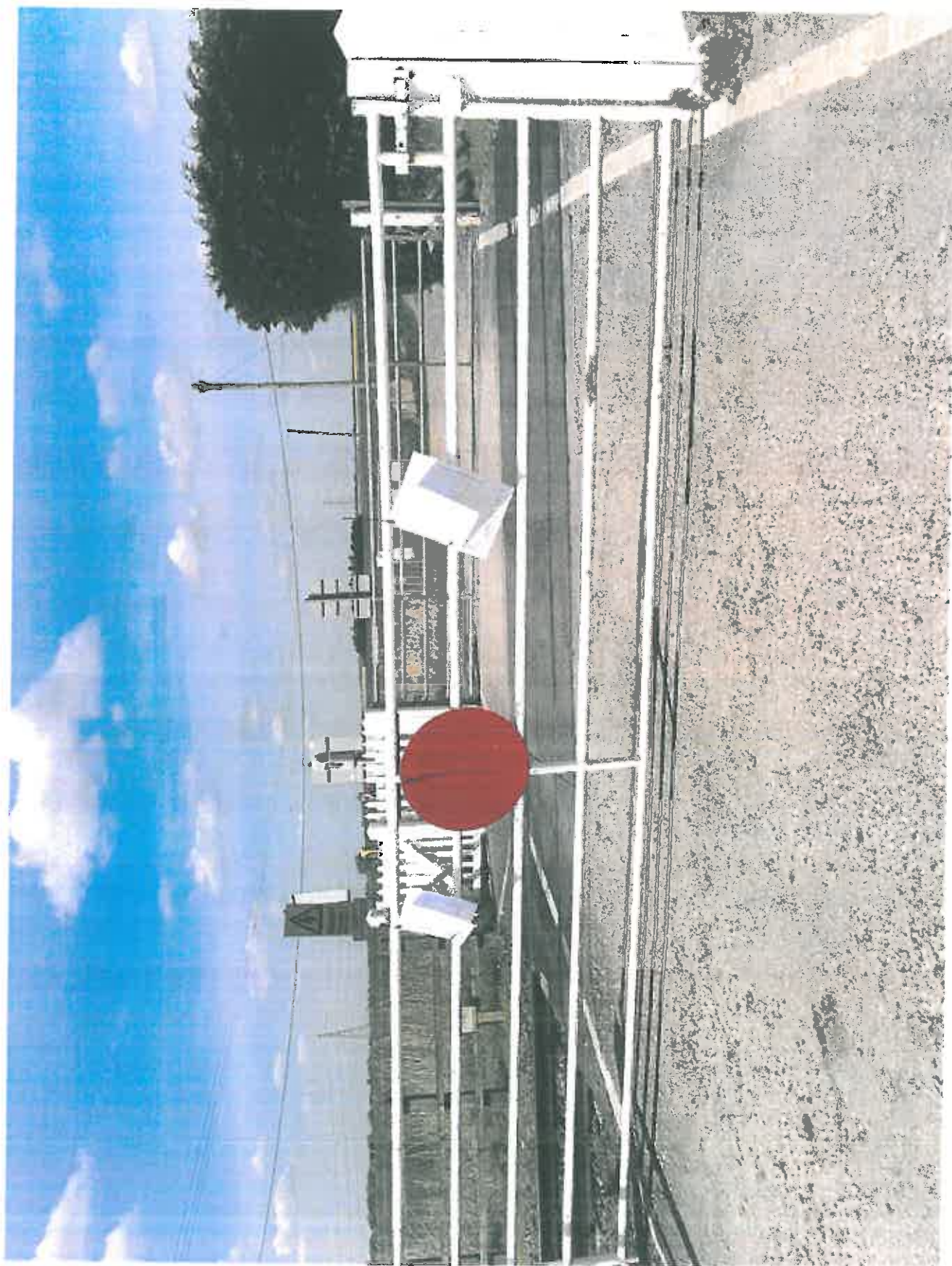
12/04/17





19/04/17

19/04/17



27/04/17

NOTICE NO. 27

Representations and Objections Procedure) (England and Wales)

Adgeahire Level Crossing Reduction) Order

**TEMPORARILY STOP UP AND
OR AN ORDER WHICH WILL
STREET**

London, NW1 2UN. is applying to the
Act 1992, for the above-mentioned order

following level crossings,

See Order.

27/04/17



SITE NOTICE

NOTICE OF PROPOSED WORKS

1

17

100

United States
Department of Education
Office of Education
Washington, D. C. 20540

Control

11

1997

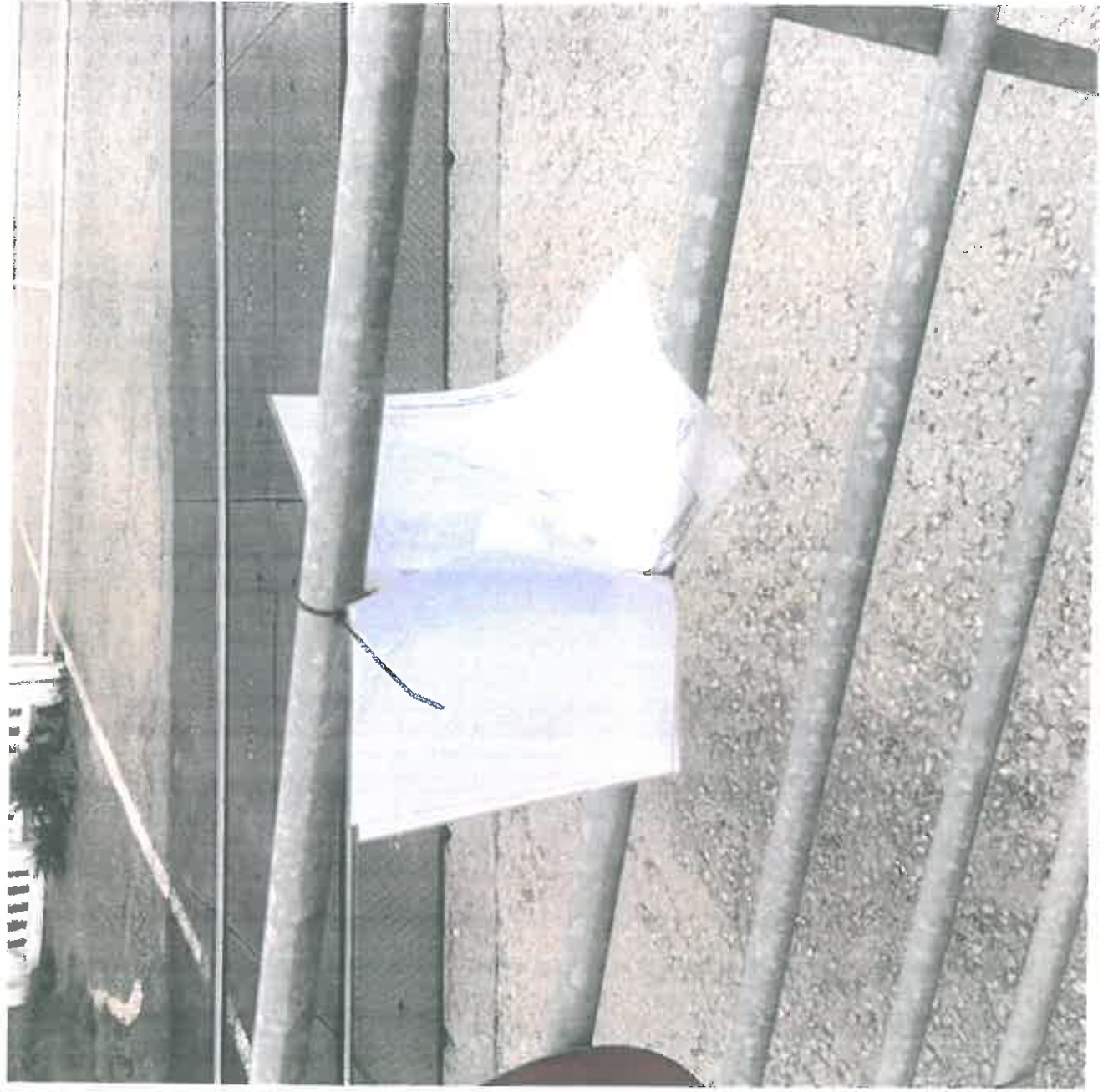
11

11

1990

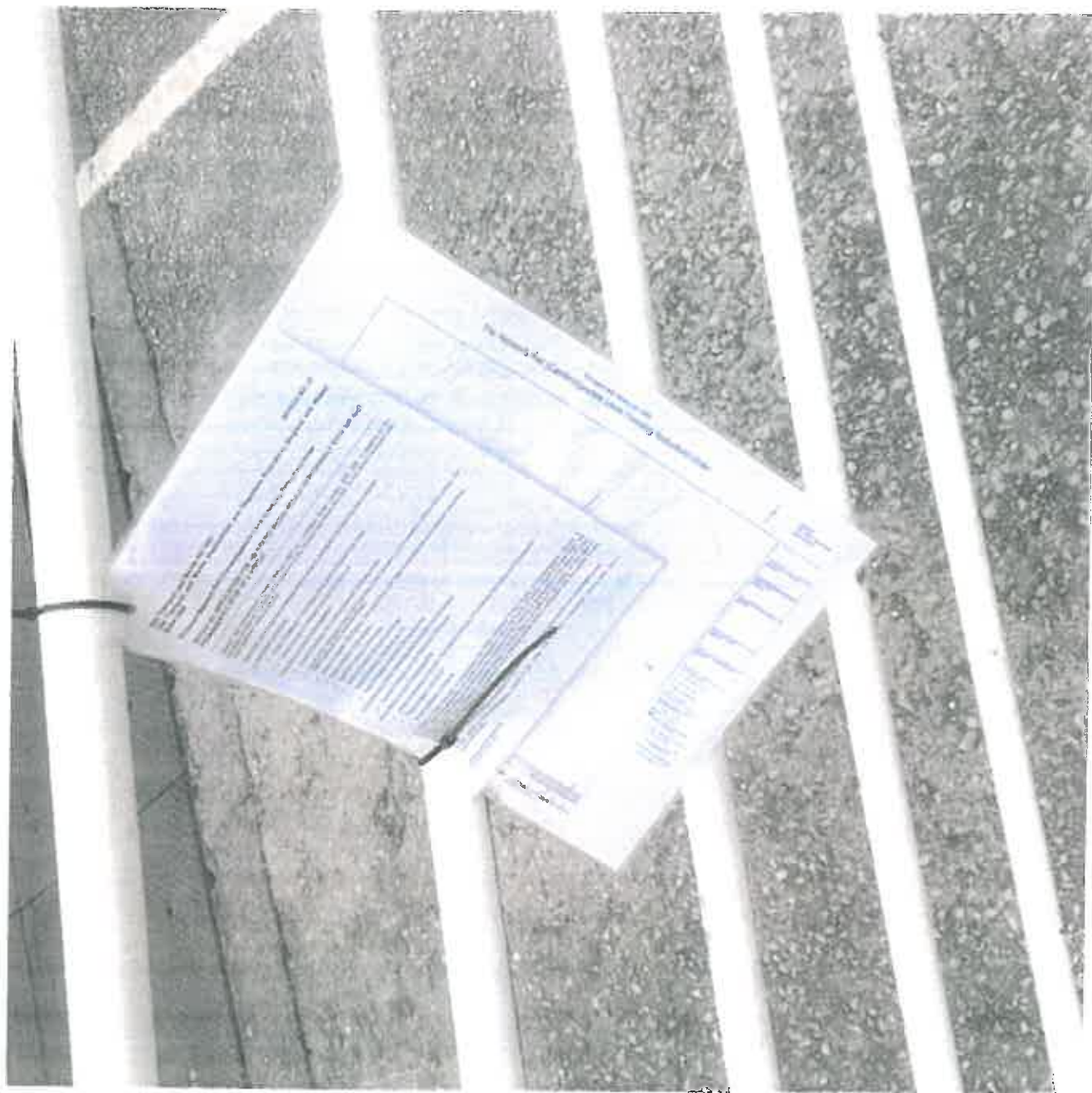
COPIES

100



27/04/17

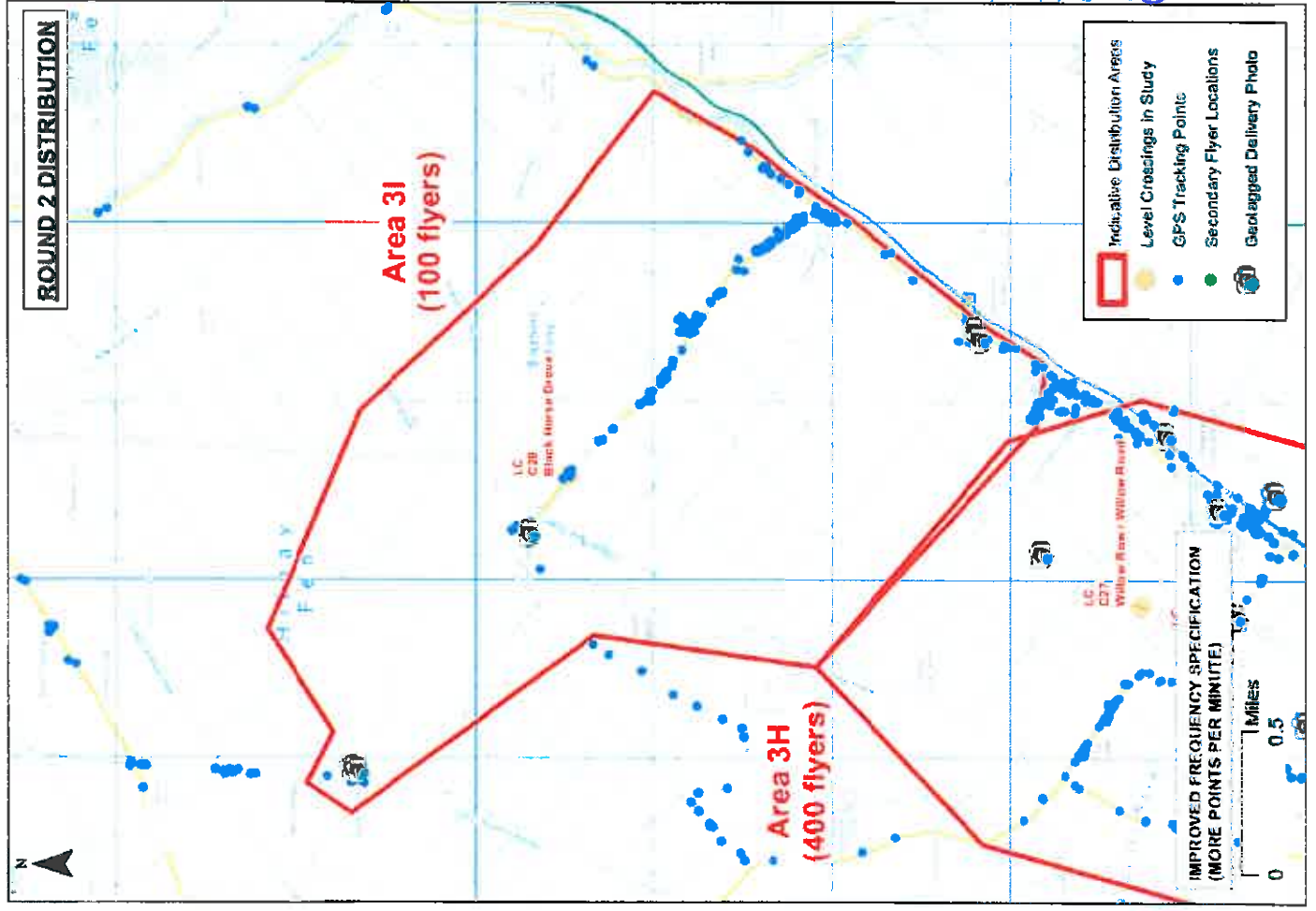
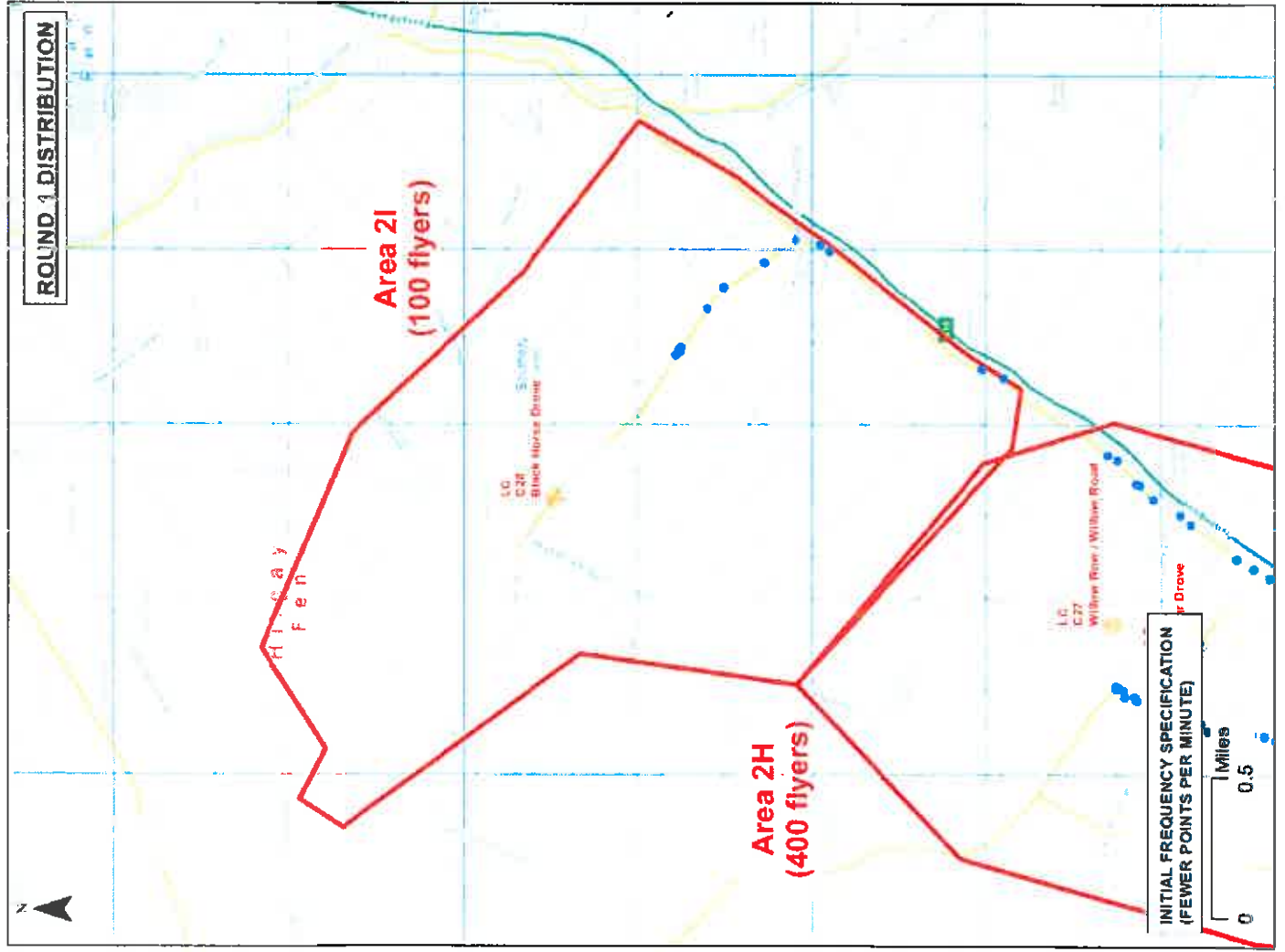
27/04/17



27/04/17



Distribution Area 3I (Round 2 Numbering)





Black Horse Drive

