

The Network Rail (Cambridgeshire Level Crossing Reduction) Order

Level crossing C14 Eastrea Cross Drove

Network Rail Note 9

C14 Eastrea Cross Drove Level Crossing

Explanatory note

Process

In common with other statutory processes for the authorisation of infrastructure (e.g. hybrid Bills and Development Consent Orders under the Planning Act 2008), applications under the Transport and Works Act 1992 are not expected to be fully worked up at the time when the application is made or, later, when the Secretary of State determines whether to make the Order. Rather, the Order provides statutory authorisation for the principle of the scheme described in the Order and accompanying plans.

There is no legal requirement under the relevant statutory Rules for such applications to be accompanied by any further information relating to the design of the works to be authorised by the draft Order. However, in this case Network Rail has submitted a Design Guide setting out its proposals for each level crossing in the Order.

Transport and Works Orders (TWOs) provide statutory authorisation for schemes but do not provide planning consent under the Town and Country Planning Act 1990 for the development required to implement those schemes (in this case, the works described in article 5 of and Schedule 1 to the draft Order). For this reason, when applications are made, they are usually accompanied by a request for planning consent. The Applications Rules anticipate this and provide for the planning request to be decided by the Secretary of State together with the Order. It is entirely usual for the request for deemed planning consent to provide for matters of detailed design to be reserved for the approval of the local planning authority in due course. In this case, as is usual, Network Rail has provided the Secretary of State with details of those planning conditions that it considers appropriate and reasonable to be discharged in advance of the implementation of the authorised works proportionate to the limited scope and scale of those works.

Orders will often include provisions for the protection of bodies such as the Environment Agency and drainage authorities that would – apart from the Order- have statutory responsibility for consenting works that are now authorised by the Order. This is the case here.

Further, in the case of the local highway authority, the Order provides in terms that where an alternative diversionary route is to be provided, Network Rail may NOT close the level crossing concerned unless the local highway authority has certified that such alternative has been constructed to its reasonable satisfaction. See articles 14 and 16, the text to which is set out below.

In the event of a disagreement as to whether or not a refusal to certify a crossing is unreasonable, the Order provides for dispute resolution by means of arbitration.

Proposals relating to C14 Eastrea Cross Drove Level Crossing

Network Rail's statement of case states as follows:

"The Order would confer powers to close the level crossing to all users and extinguish public rights of way over the crossing. It would divert FP50 on the north of the railway via a new 2m wide unsurfaced footpath in field margin, heading west to connect to BW49 Lake Drove. This new footpath would be approximately 70m in length [this is a typographical error and should state 700m]. A steel footbridge (>8m in length) would be provided across a drainage ditch along the new footpath route. Users would then head south east on Wype Road using existing verges to cross the railway at Eastrea level crossing. Approximately 350m of FP50 to the south of the railway would be extinguished. Crossing infrastructure would be removed and fencing would be installed to prevent trespass onto the railway."

CCC's concerns

At a meeting between Network Rail and CCC on 1 December 2017 CCC raised a number of concerns in relation to Network Rail's proposals at this crossing. CCC requested that Network Rail provide an engineered path at this location as it was concerned about the quality of the surface of the proposed footpath due to ground conditions and use of agricultural vehicles. CCC was also concerned about drainage issues and the interface/ maintenance of the adjacent IDB drain.

The Network Rail (Cambridgeshire Level Crossing Reduction) Order

Level crossing C14 Eastrea Cross Drove

Network Rail Note 9

Standards in the Design Guide

The issues of concern raised by CCC relate to detailed design.

The proposals provide for a new public footpath route to the north of the railway linking the level crossing (to be closed), to Wype Road, approximately 600m to the west. This footpath runs within field margins on third party land. Immediately to the south of the proposed footpath is a surface water drain (Drain 23) managed by the Whittlesey & District Internal Drainage Board. The IDB has been consulted and confirmed that while maintenance takes place from both sides of the drain, any arisings are spread to the south side (therefore not over the proposed footpath route). The IDB also confirmed that it had no records with flooding issues with this drain. In terms of ground conditions, it is noted that the farmer currently utilises the field right up to the boundary, with historic aerial photos showing this to be the case going back a number of years. This implies that the ground conditions are reasonable for a proportion of the year. At the time of the Mott MacDonald engineering and ecology site visits no evidence was found of poor ground conditions. However, it is accepted that such conditions can change through the seasons or after significant periods of rainfall – this is not uncommon for the PROW network.

That being said, this particular issue raised by CCC has been anticipated, and dealt with, in the Design Guide accompanying the application which envisages that an appropriate degree of engineering will be carried out where necessary to provide that surfaces of unsurfaced footpaths will be compacted and suitably firm underfoot.

“2.4.2 Footpath Type P1 -unsurfaced footpath PROW

2.4.2.1 Footpath Type P1 is a new unsurfaced footpath 2.0m wide to be used as the general surfacing for rural footpath diversions. Where provided adjacent to field edges there will be a minimum offset of 0.5m to ensure that the proposed footpath is clear from adjacent vegetation.

2.4.2.2 Where necessary to achieve a suitable walking surface along the route, the existing ground is to be excavated 60-100mm deep and this material will be re-laid, and compacted to form a surface with a crossfall of approximately 2%. The surface should be smooth, well compacted and firm underfoot. Any area where this work is carried out will be re-seeded.”

In this case, the design freeze plan for this crossing states that the path to be constructed will be a type P1 footpath. It is therefore proposed to be constructed to the standard specified in the design guide. As set out below a proposed Side Agreement with CCC provides for further details of the detailed design process.

If CCC is not satisfied with the finish of the footpath proposed by Network Rail, it can reasonably refuse certification for the new highway, and Network Rail will be unable to close the level crossing.

Proposed side-agreement

As explained above, the Transport and Works Act process does not anticipate that a scheme will be developed to detailed design at this stage of the process.

However, Network Rail accepts completely that, as a prerequisite to achieving certification in accordance with the requirements of the Order, it will submit detailed designs for each of the authorised works associated with any particular crossing for approval to the relevant highway authority, Cambridgeshire County Council (“CCC”) in advance of implementing those works.

Network Rail understands that CCC is broadly content with the process to be incorporated in a side-agreement as described above. CCC has yet to advise Network Rail of any changes it wishes to the detail of that process.

Detailed design

In the case of C14 Eastrea Cross Drove Level Crossing, Network Rail has, through its contractor Mott Macdonald developed the design of the proposed works to GRIP Stage 3.

The proposals in the Design Guide for this footpath identify it as a P1-type footpath. The Design Guide anticipates that the provision of such a footpath may require the excavation of 60-100mm and relaying of a surface to provide a suitable surface. Network Rail recognises CCC's concerns about the ground conditions in

The Network Rail (Cambridgeshire Level Crossing Reduction) Order

Level crossing C14 Eastrea Cross Drive

Network Rail Note 9

this area and therefore will give consideration to the adequacy of this proposal in this location as detailed designs are formulated, including through carrying out a limited intrusive survey to inform the design of the path. From this work, Network Rail will consider whether a greater degree of engineering will be required e.g. through the provision of a greater depth of fill. Network Rail will also consider whether any particular provision is required for drainage. The results of these design considerations and surveys will be shared with CCC and NR will seek to agree appropriate mitigation measures, if required, prior to submitting the detailed design for approval.

CCC has also raised a concern about the impact of farm vehicles on the proposed footpath. The path is generally at the field edge and therefore it is not considered that the whole path needs particular treatment to allow vehicles to drive over it. However, existing culverts over the drains are used by farm vehicles to access the fields (these vary in width from 3.6m to 4.8m). Where the proposed footpath intersects with those crossing points, particular consideration will be given to the provision of an engineered solution allowing farm vehicles to cross the footpath without causing damage at these locations. The detail of such provision will be determined during detailed design and following further investigation to establish, for instance, the nature of the surface over the culvert.

A further concern of CCC relates to signage at the Eastrea level crossing to which users of footpaths 48 and 50 will be diverted. CCC is concerned to ensure that existing Network Rail warning signs and user visibility are protected and that they may need to be enhanced. Network Rail can confirm that this is a matter that will be considered at the detailed design stage.

Legislative certification process

The TWAO is itself a piece of legislation; meaning that the consents/certification process set out in the relevant articles of the Order is a statutory requirement.

Article 14 of the Order applies so that a level crossing cannot be stopped up until the new highway has been constructed and completed to the reasonable satisfaction of the highway authority:

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

14.—(1) Subject to paragraphs (3) and (5), the level crossings specified in column (2) of Part 1 of Schedule 2 (Closure of level crossings) are stopped-up and discontinued.

(2) Subject to paragraph (5), upon the stopping up and discontinuance of the level crossings referred to in paragraph (1)—

(a) any rights of way over those crossings are extinguished to the extent specified in column (2) of Part 1 in Schedule 2; and

(b) any public rights of way specified in column (3) of Part 1 of Schedule 2 are extinguished to the extent specified, by reference to the numbers and letters shown on the deposited plans.

(3) Paragraphs (1) and (2) are not to have effect until, in respect of each level crossing in that table, the new highway specified in column (4) has been constructed and completed, to the extent specified by reference to the numbers and letters shown on the deposited plans, to the reasonable satisfaction of the highway authority in accordance with article 16 (creation and maintenance of new highway) and is open for use.” [our emphasis added]

Article 16 of the Order provides:

“Creation and maintenance of new highway

16.—(1) The new highways specified in column (4) in Schedule 2 (closure of level crossings) are to be completed to the reasonable satisfaction of the highway authority and are to be maintained by and at the expense of Network Rail for a period of 12 months from their completion and after the expiry of that period by and at the expense of the highway authority.” [our emphasis added]

Schedule 2 of the Order includes the new footpath to be created at:

(1) Area	(2) Extent of level crossing to be stopped up and discontinued	(3) Extent of highway to be extinguished	(4) Status and extent of new highway

The Network Rail (Cambridgeshire Level Crossing Reduction) Order

Level crossing C14 Eastrea Cross Drove

Network Rail Note 9

<i>County of Cambridgeshire District of Fenland Parish of Whittlesey</i>	<i>Eastrea Cross Drove between points P005 and P005A</i>	<i>Footpath 50 between points P004, P005, P005A and P006</i>	<i>Footpath between points P006, P007 and P009 and between points P007 and P008</i>
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Application of protective provisions

Schedule 16 to the draft Order includes protective provisions for the benefit of drainage authorities, including Internal Drainage Boards. This defines “specified works” as “so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources.

These protective provisions require Network Rail to provide the drainage authority with plans of its proposed works and such further particulars as may reasonably be required. The drainage authority may impose conditions requiring Network Rail to construct such protective works as may be reasonably necessary to safeguard any drainage work against damage or to secure its efficiency for flood defence purposes (as prescribed in paragraphs 2 and 3 of those provisions).

Winckworth Sherwood LLP

13 December 2017