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Joanna Vincent

From: Jane Wakeham <jwakeham@wslaw.co.uk>
Sent: 12 December 2017 10:55
To: Joanna Vincent
Cc: 'Richard Turney'
Subject: FW: Letter to Cheffins re Palmers' crossings 12/12/17
Attachments: Palmer letter 12 Dec v 2.docx

Good morning Joanna

We thought it would be helpful for the Inspector to see the attached letter sent by email to Jonathan Stiff at Cheffins this morning in response to his updated position statement.

Thanks and regards

Jane

From: Jane Wakeham
Sent: 12 December 2017 10:03
To: 'jonathan.stiff@cheffins.co.uk'
Cc: Eddy Nicholas; Christopher.Mills@networkrail.co.uk; kirsty.young@networkrail.co.uk; Bannister Daniel <Daniel.Bannister@networkrail.co.uk> (Daniel.Bannister@networkrail.co.uk); Hazel Anderson; Chris Mayne; 'Kenning Andrew'
Subject: Letter to Cheffins re Palmers' crossings 12/12/17

Good morning

I attach our response to your latest position statement on behalf of your clients in respect of crossings C01, C02, C33 and C34. We hope this will assist in narrowing the issues for the Inspector at the Inquiry.

Please let me know if we can be of further assistance.

Kind regards

Jane

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12 December 2017

Dear Mr Stiff

Cambridgeshire Level Crossing Reduction Order

Thank you for providing your statement of your client's position on the proposed closure of level crossings on FC Palmer's land (C01 Chittering, C02 Nairns, C33 Jack O'Tell and C34 Fysons). It now appears clear that the dispute in respect of the proposals is limited to a single issue, namely whether if Network Rail's proposals are to be implemented, the retained crossing (either Nairns or Jack O'Tell) should be fitted with a full barrier.

As has previously been explained to you, Network Rail has no obligation to enhance level crossings at its own expense for the benefit of private users, and it is not willing to provide a full barrier level crossing on your client's land. Its proposal is to upgrade the retained level crossing through the provision of miniature stop lights (MSLs) which would provide a visual and audible indication as to whether it is safe to cross. This would obviate the need to use the telephone unless a large or slow moving vehicle is crossing. The MSLs can be programmed in a bespoke way to accommodate the nature of the use by FC Palmer, such that sufficient time to cross for the majority of vehicle movements can be provided for. Again, this will reduce the need to use the telephone.

A full barrier crossing would not be practical or economic in this location, nor is it necessary for safety reasons. If necessary, Mr Kenning will give evidence to explain that the introduction of a full barrier crossing in this location would introduce significant complexity to the signalling arrangements in this area of the network. In contrast to MSLs, a full barrier crossing must be protected using signals on the track. The land lies at the boundary of two signalling areas, requiring extensive works. This means that in addition to the cost of the infrastructure at the crossing itself (c. £1.2m), there would be a very significant infrastructure cost (in excess of £800,000) to carry out the related signalling works. These costs to the public purse can simply not be justified. If Network Rail were to be able to introduce a new full barrier crossing in this area, it would undoubtedly prioritise doing so on the public road crossings such as at Dimmocks Cote.

Mr Prest will give evidence that a full barrier is not required for safety reasons. The users of the retained crossing at FC Palmer's land would be there with the permission of the owner, and can reasonably be expected to follow instructions. Indeed, all employees are obliged by the general duties of s. 7 Health and Safety at Work Act 1974 to take reasonable care for the health and safety of themselves and of other persons who may be affected by their acts and omissions at work. The addition of the MSLs makes such instructions clearer than the present position. In addition, Network Rail proposes works to improve the approaches to the retained crossing which would again improve its safety. It will provide new safety briefings when the new equipment is installed. The provision of a full barrier would provide some additional safety benefit, but not one which would possibly justify the additional cost.

Your client may consider that a full barrier crossing would be more convenient to its farming operations. Whilst there are superficially some benefits (e.g. that barrier opens automatically, without the need for the driver or someone else to open the gate), the time that a full barrier is "down" (i.e. closed to cross the railway) may be greater than the time that MSLs would be on "red". Thus a full barrier in this location is likely to have a "down" time of 3 minutes for each train pass. MSLs would be adjusted for the needs of the user (and the time taken to traverse the railway) and therefore the time on "red" could be set to be less than 3 minutes. On Network Rail's understanding of the use of the crossing a 90 second period might be appropriate. The difference in "down" time is

due to the presence of protecting signals for a full barrier crossing, meaning that the barrier must be closed before the train passes the furthest protecting signal from the crossing, which here will be over a mile away.

Accordingly, it would be wrong to assume that a full barrier would provide any material benefit to your client's farming operations.

As previously explained, Network Rail keeps safety at level crossings under review and future technological changes or enhancements at particular crossings cannot be pre-judged. However, as things stand, we can see no possibility of Network Rail electing to provide a full barrier crossing at its own expense on FC Palmer's land.

Network Rail will also refer as necessary to the history of negotiation with FC Palmer. It is noted in particular that in December 2013, FC Palmer indicated a willingness to release its rights over the crossings concerned for £250,000. A counter offer was made by Network Rail in January 2014 but the matter was not progressed by FC Palmer. In July 2015, a meeting was held between Network Rail and FC Palmer in which FC Palmer indicated a willingness for all crossings save for Jack O'Tell to be closed, and suggested that MSLs could be installed at Jack O'Tell. Thus FC Palmer's position in July 2015 was essentially the same as Network Rail's position at this Inquiry. It was not until September 2015 that FC Palmer decided that it would resist the closure of any crossing on its land.

We set these points out in writing in advance of your appearance at the Inquiry since we do not think that FC Palmer has any reasonable case to pursue in terms of its request for a full barrier at the retained crossing as a condition for its withdrawal of its objections to the Order. It is unreasonable to pursue this demand in the face of clear evidence against your case, and without any evidence from your side on the safety, cost, or practicalities of your proposals. We request that you reconsider whether it is reasonable to pursue this argument through the Inquiry, or at all.

Yours etc.