

Re The Network Rail (Cambridgeshire Level Crossing Reduction) Order

CLOSING SUBMISSIONS ON BEHALF OF THE RAMBLERS' ASSOCIATION

Introduction

1. Through the proposed Network Rail (Cambridgeshire Level Crossing Reduction) Order (the “Order”), Network Rail seeks to close or downgrade the status of certain rights of way over 25 level crossings spread out across its network in Cambridgeshire. It seeks permission to carry out works for the removal of the crossings, as well as authorisation for the creation of new rights of way and for the acquisition of land and interests in land which will be necessary for the crossing closures and the provision of alternative routes.
2. The Ramblers’ Association (the “Ramblers”) is an organisation which is known for its particular expertise in protecting and maintaining the public rights of way (“ROW”) network. They have objected to the Order on a number of grounds.

Overview of the Ramblers’ objections

Legal submissions

3. Prior to the start of the Inquiry, the Ramblers made legal submissions that the use of a Transport and Works Act order (“TWAo”) is unlawful in these circumstances because it will frustrate the legislative scheme established through Part II of the Transport and Works Act 1992 (“TWA”) which was specifically designed to regulate the closure of level crossings. As was noted in the Ramblers’ opening submissions,¹ those legal submissions remain before the Inspector and the same points will not be unduly repeated here.

¹ Ramblers Opening Statement, paras 8-11.

4. However, the Ramblers do wish to reiterate their submission that the Order should be refused under section 13(2) of the TWA due to the fact that the objects of the Order “could be achieved by other means”.

5. Section 13(2) provides, in relevant part:

...Where an application has been made to the Secretary of State under section 6 above and he 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...

6. As noted in the Ramblers’ legal submissions,² when promoting this subsection the Minister stated (in response to a question from the floor as to what the phrase “other means” referred to):

That point was raised in Committee. Concern was expressed about a possible flood of applications dealing with matters for which procedures already exist. In particular, some Members feared that unscrupulous applicants might seek to use the new orders to sidestep the established procedures for extinguishing rights of way, where such a proposal was not related to a works matter that belonged to the new procedure. (Emphasis added.)

7. The same concern is evident in the TWA guidance, *A Guide to TWA Procedures*, at 1.14:

...the following matters are unlikely to be approved in TWA orders on policy grounds, unless compelling reasons can be shown:

...
Proposals which could more properly be dealt with under other existing statutory procedures – for example the closure of an inland waterway or public right of way where no associated new works requiring a TWA order are proposed. (Emphasis added.)

8. Clearly, and for reasons which are set out in more detail in the Ramblers’ legal submissions,³ section 13(2) was specifically intended to prevent the TWA process from being used to close public rights of way where there is no related works matter. The Ramblers therefore respectfully request that the Order be refused under section 13(2).

² Ramblers Legal Submissions, submitted to the Inquiry on Tuesday 21 November 2017, para 27.

³ Ramblers Legal Submissions, paras 26-32.

9. Network Rail stated in its opening statement that the order applied for includes a number of factors that “could not be achieved under the Highways Act processes”. Network Rail goes on to conclude that that is a “complete answer” to the Ramblers’ argument that the Secretary of State should, under section 13(2) of the TWA, not make the order.
10. With respect, the fact that the powers Network Rail is seeking to obtain would only be available under the TWA does not mean that use of that procedure is lawful. The question is not simply what would Network Rail like to do, but what Network Rail can do and the Ramblers, again, refer to their legal submissions in this regard.

Objection to Network Rail’s “strategic case”

11. Notwithstanding the Ramblers’ legal grounds for objection, they also object to the Order on grounds that Network Rail’s strategic case underlying the alleged need for the Order is flawed and that Network Rail has not sufficiently justified how it has chosen which level crossings to include in the Order.

Individual crossing objections

12. The Ramblers maintain objections to five of the specific crossings proposed to be included in the Order: C07, C11, C20, C25 and C27 on the basis that the proposed alternative route is not suitable or convenient for existing users.

Further submissions

13. During the Inquiry, the Ramblers provided submissions to the Inspector on:
 - (i) the definition of “convenient and suitable for existing users” in the context of section 5(6) TWA;
 - (ii) the wording of the amended draft order (NR-INQ-1) and Network Rail’s request for planning permission (NR10); and,
 - (iii) the DIA assessments carried out by Network Rail.

14. It is hoped that these submissions will have been of use to the Inquiry and the Ramblers are particularly grateful for the opportunity to provide written submissions on the wording of the amended order, without needing to attend the conditions session. The same points will not be unduly repeated here.

15. The Ramblers do, however, seek to make clear an important distinction as to the tests that need to be applied to this Order.⁴ The Order is promoted under sections 1 and 5 of the TWA. In determining whether or not a TWAO should be made under section 1 of the TWA, a wide discretion is afforded to the Secretary of State:

(1) The Secretary of State may make an order relating to, or to matters ancillary to, the construction or operation of a transport system of any of the following kinds, so far as it is in England and Wales—

(a) a railway...

(Emphasis added.)

16. The question here is essentially whether or not the case for the Order has been justified and whether or not the Secretary of State considers that the Order should be made.

17. The exercise of that discretion is entirely distinct from the test in section 5(6) of the TWA. Section 5(6) states:

(6) An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied—

(a) that an alternative right of way has been or will be provided, or

(b) that the provision of an alternative right of way is not required.

The Guide to TWA Procedures states, in Annex II on p. 105:

“[i]f an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users.”

18. However, section 5(6) merely sets out a condition precedent that must be satisfied in the event that any public right of way is to be extinguished by a TWAO. This, however,

⁴ These submissions are made without prejudice to the Ramblers position that use of TWA for purposes of the scheme underlying this Order is inappropriate.

assumes that the TWAO, itself, has been justified under section 1. Section 5(6) provides a test for when a public right of way *can* be extinguished. It does not set out a test for when a public right of way *should* be extinguished.

19. The complicating factor in this Order, arises from the fact that Network Rail’s strategic methodology for picking which crossings to close by way of diversion, depends on there being a “suitable and convenient” alternative route. In this sense, Network Rail’s underlying rationale for the Order – which considers whether or not level crossings “should” be closed – has used the same wording and concepts as the section 5(6) test - which is designed to deal with the question of whether or not public rights of way “can” be closed.
20. The distinction between the section 1 test and the section 5(6) test is crucial to a proper assessment of Network Rail’s proposed Order. There should be no assumption that a proposed level crossing closure has been justified simply on the basis that the test in section 5(6) of the TWA has been met. That is a proposition which Network Rail, if it seeks to make it, will need to demonstrate is justified.

Background context to the Order

21. At the outset of this Inquiry, the Ramblers highlighted that this Order must be assessed in context. And, its context is unique.
22. Network Rail is pursuing the Order as part of its overarching Anglia CP5 Level Crossing Reduction Strategy.⁵ This covers the whole Anglia network⁶ and the Order is being pursued simultaneously with two other TWAOs:
 - (i) The Network Rail (Essex and Others Level Crossing Reduction) Order (the “Essex Order”), which seeks to close or downgrade 59 level crossings across the whole county of Essex, as well as throughout areas of Hertfordshire, Havering, Thurrock and Southend-on-Sea.

⁵ NR18.

⁶ Including the Essex region, Cambridgeshire, Suffolk and Norfolk.

- (ii) The Network Rail (Suffolk Level Crossing Reduction) Order (the “Suffolk Order”) which proposes to close or downgrade 23 level crossings on the mainline branches across the county of Suffolk.

23. Through these three orders, Network Rail seeks to close over 100 level crossings. It seeks to do so across entire counties. In light of this, it is crucial that the Order is not assessed in isolation. It forms part of a much bigger picture.

Inappropriate scale

24. The scale of the Order, in terms of how many level crossings will be closed in one go, is clearly unprecedented. The novelty of the Order was accepted by Network Rail⁷ and it is an element of this scheme which is of serious concern to the Ramblers.

25. When public rights of way are diverted or extinguished under Part VIII of the Highway Act 1980 – whether under the specific provisions related to level crossing closure (ss118A and 119A) or the more generic provisions of s116, 118 or 119 – one proposal⁸ will usually have its own public path order, its own consultation process and its own assessment by local people and the highway authority. This is in stark contrast to Network Rail’s use of the TWA procedure for this Order, where so many, entirely unrelated, public rights of way will be affected in one go.

26. What is more, serious issues associated with the Order’s scale have become evident through the Inquiry process. Network Rail had to withdraw from the Order four⁹ of the original 29 proposals due to a widespread failure, on its behalf, to serve the requisite statutory notices on a significant number of land interests. This was in fact the reason why the public inquiry for the Essex Order (which had been scheduled to be the first of

⁷ Mr Brunnen accepted in XX that the number of level crossings proposed to be closed in the three orders is unprecedented and that it was the first time NR was using the TWAO process to address its strategic need to close crossings. Dr Algaard agreed that the Order was the “first of its type”.

⁸ More than one right of way can be included in a public path order under ss118 and 119, but they will usually be factually related.

⁹ Three of the proposed crossing closures (C03, C08 and C09) and one of the proposed re-designations of crossing status (C13). Network Rail’s withdrawal of these closures was communicated to the Ramblers in a letter dated 6 November 2017.

the three inquiries to be heard) unexpectedly adjourned on day three (20 October 2017). In relation to the Essex Order, Network Rail had failed to notify over 30 interests in over 45 plots of land, involving around 17 level crossings. Such a large-scale failing is only possible because of the inappropriate size of the proposed scheme.

27. The inappropriate scale of what Network Rail is seeking to achieve through these orders has serious repercussions on a national organisation like the Ramblers who rely on volunteers and who have limited resources. As noted in opening, whilst the Ramblers may be able to properly assess one or two proposed changes to the rights of way network, expecting it to scrutinise over 100 proposals over the same period of time is simply unreasonable.

28. The inappropriate scale of this scheme will be a recurrent theme running through these closing submissions. It pervades the whole of Network Rail's case.

The risk of setting a precedent

29. In their opening statement,¹⁰ the Ramblers highlighted the potential for this case to be a "test case" for Network Rail, submitting that, if the scheme is approved, there is a chance that Network Rail will roll out similar projects across the entire country. During the Inquiry, Network Rail did not dispute this. Indeed, in response to the point put in cross-examination, Mr Brunnen stated that "it is fair to say that the process is of interest as a whole".¹¹

30. The potential to set a precedent through this Order is particularly important because the case for the Order is not simply based on a proposal to close or downgrade 25 specific level crossings. It also relies on a "strategic case" that sets out Network Rail's justification for all the crossing closures and this "strategic case" includes a standardised methodology for how to pick the crossings that will be closed without the provision of replacement crossing infrastructure, such as bridges or underpasses.

¹⁰ Ramblers' Opening Statement, at para 7.

¹¹ Mr Brunnen, XX.

31. Furthermore, and as is evident by reference to the Essex Order, which proposes to close nearly 60 crossings, were this strategic case to be approved and then applied in other areas of the country, there would appear to be nothing to stop it from being implemented on a much greater scale (in terms of the numbers of crossings per Order) than has been applied in Cambridgeshire.
32. In this regard, the Ramblers submit that it is quite possible for the Inspector and the Secretary of State to form the view that some, or all, of the crossings contained in this Order should indeed be closed (having regard to their individual merits), but that the underlying method by which Network Rail chose them was fundamentally flawed. The Ramblers submit that it is open to the Inspector (if she is minded only to recommend that specific crossings should be closed and not that the underlying method is justified) to clearly specify in her report which aspects of Network Rail's case she has based any recommendation for approval on and whether or not the approval of specific crossing closures should also be read as an approval of Network Rail's underlying strategic case.
33. The Ramblers submit that the Inspector cannot be satisfied that Network Rail's strategic case provides a sufficiently robust methodology for how level crossing closures should be determined. Therefore, in the event that the Inspector does form the view that some of the level crossings included in the Order should be closed, the Ramblers invite her to nonetheless find that the underlying methodology is flawed.

Objections to Network Rail's "strategic case"

1. The decision-making process is flawed

The desire to close all level crossings

34. Network Rail has made it quite clear during the Inquiry that it wants to close all level crossings across the entire country.¹² There are three key reasons why Network Rail seeks to close level crossings:

¹² Mr Brunnen, XX "[we would] like to close all level crossings"; Dr Algaard, XX "we believe every level crossing should be closed"; Mr Kenning, XX stated "absolutely" in response to the question whether Network Rail would like to see all level crossings removed if possible.

- (i) to improve safety on Network Rail's network;
- (ii) to reduce the ongoing costs associated with the maintenance of level crossings; and,
- (iii) to better enable operational efficiency improvements.¹³

35. In relation to safety, Network Rail emphasised that all level crossings have an inherent safety risk (regardless of any relative assessment of safety risk at a particular crossing) and that that risk can only be “eliminated” if the level crossing is closed.¹⁴ This is clearly true and the Ramblers do not dispute it. It is also clear that closing level crossings will reduce ongoing maintenance costs and that having fewer level crossings on the network can assist in improving operational efficiency.¹⁵

36. However, Network Rail accepts that those three “strategic” reasons, taken alone, cannot justify the closure of a level crossing.¹⁶ And, of course that must be so, otherwise all level crossings could be closed tomorrow without any further consideration. Network Rail accepts that there must be some kind of “balancing act”, through which the reasons in favour of closing level crossings can be assessed against the reasons for keeping the crossings open.¹⁷

37. The need for such a balancing act arises naturally from the fact that level crossings represent an interface between the railway network and rights of access across land (whether public or private rights of way). Those rights of access may be utilised for a variety of different reasons – whether it be to access the public rights of way network, connect to basic local services, access a farm or business, or reach a private residence. Each level crossing is “unique”¹⁸ and different competing interests will be engaged when considering the closure of each one.

¹³ See, for example, Mr Brunnen's proof of evidence at 2.3. Dr Algaard agreed in XX that the strategic case is “threefold”.

¹⁴ Mr Brunnen XX and Dr Algaard XX.

¹⁵ Dr Algaard, XX.

¹⁶ Dr Algaard, XX.

¹⁷ Mr Brunnen, XX and Dr Algaard, XX. Dr Algaard recognised the “impact on wider society” that closure of a crossing could have. And, indeed Mr Turney put, in XX of Mr Buisson (appearing on behalf of the Cambridge Local Access Forum) that there was a need to work out the negative impacts and weigh these against the public interest.

¹⁸ Mr Brunnen accepted that each level crossing is unique in XX.

38. Once it is accepted that a balancing exercise must be carried out which weighs on the one hand Network Rail's three strategic reasons for closing level crossing against, on the other hand, the interests in keeping the crossing open, the crucial question then becomes: how did Network Rail carry out this balancing exercise and how did it thereby choose which crossings to close through this Order?¹⁹
39. Furthermore, it is not just the question of whether or not to close a crossing, but also whether any replacement infrastructure will be provided. One key aspect of this Order is that none of the crossings proposed to be closed will be replaced with a bridge or underpass at the site of the level crossing. Network Rail accepts that it will need to provide such "replacement infrastructure" in relation to certain level crossings, but that this will be provided during later phases of the Anglia CP5 Level Crossing Reduction Strategy.²⁰ So the Inspector will also need to assess how the balancing exercise was conducted by Network Rail in order to decide, not only (i) whether or not to close a level crossing, but also (ii) whether to provide anything in its place.

Network Rail's licence and statutory duties

40. Before moving on to consider how this balancing exercise has been carried out, it is worth highlighting the limits of Network Rail's duties under its licence conditions and other statutory regimes.
41. Mr Brunnen's proof of evidence sets out Network Rail's regulated functions under its licence (section 4) and the wider policy context under which Network Rail operates (section 5). Mr Brunnen cited to a number of different statutory and regulatory duties applying to Network Rail, including Network Rail's Operating Licence under the Railways Act 1993, the government's National Policy Statement for National Networks 2014, the Rail Safety Directive 2004 and documents produced by the Office of Rail and Road ("ORR"), Network Rail's regulator.

¹⁹ Dr Algaard agreed in XX that under matter 1 of the Statement of Matters, the Secretary of State has asked to be informed on the need for the Order and that this would include an assessment of why particular level crossings have been included.

²⁰ See further submission on the specifics of this strategy below.

42. These duties require Network Rail to operate a safe and efficient railway. However, crucially in cross-examination Mr Brunnen accepted that Network Rail’s operating licence imposed no absolute duty on Network Rail, but rather a qualified duty through use of the words “*so far as reasonably practicable having regard to all relevant circumstances*”.²¹ Indeed, similarly qualified wording can be seen in the National Policy Statement for National Networks 2014²² and the Rail Safety Directive 2004.²³ Therefore, whilst Network Rail must ensure a minimum standard of safety on its network, there is no absolute duty on it to provide a network that is “as safe as possible”. Nor, is Network Rail under any duty to improve operational efficiency beyond what is “reasonably practicable”. Overall, Network Rail’s duties are always qualified.

43. What is more, whilst the ORR has published a number of documents that emphasise the need to close level crossings and for Network Rail to consider crossing closure as the first option, again the requirements are qualified, not absolute. For example, the ORR’s “Periodic Review 2013” (extracts in NR15) states that “*Network Rail must continue to meet its legal safety obligations, improving safety where reasonably practicable*.”²⁴ The ORR’s “Strategy for regulation of health and safety risks – 4: Level crossings” (NR14) makes clear that whilst crossing closure is encouraged and should always be considered first in any risk assessment, ultimately:

The closure of level crossings requires attention to many factors, including the practicalities of replacing them with bridges or underpasses, the legal arrangements for closing rights of way, the need to minimise the possible transfer of risk to other crossings, and the possibility of importing new dangers such as increasing the likelihood of trespass.

44. Mr Brunnen further agreed in cross-examination that NR14 did not prescribe how to assess these many factors nor how Network Rail would decide whether or not to close a crossing. Similarly NR15 did not precisely say how Network Rail should reduce safety risks at level crossings.

²¹ See sub-para 1.2 of para A1 of Network Rail’s Licence, quoted at para 4.9 of Mr Brunnen’s Proof of Evidence.

²² Para 3.12 of the NPS for National Networks 2014, quoted at para 5.4 of Mr Brunnen’s Proof of Evidence.

²³ Article 4(1) of the Rail Safety Directive 2004, quoted at para 5.5 of Mr Brunnen’s Proof of Evidence.

²⁴ Para 35 of the Periodic Review 2013: Final determination of Network Rail’s outputs and funding for 2014-19, quoted at para 5.9 of Mr Brunnen’s proof.

45. Mr Brunnen highlighted that Network Rail has moved from a “reactive” to a “proactive” approach to addressing the safety risk at level crossings.²⁵ But, again, Mr Brunnen had to agree in cross-examination that the need for a “proactive” approach does not specify how Network Rail should seek to improve safety at level crossings.

46. A review of the statutory and policy context is important because it makes clear that Network Rail has needed to devise its own strategy for determining which level crossings to close and how. The approach taken by Network Rail in the Anglia CP5 Level Crossing Reduction Strategy, therefore, needs to be properly scrutinised.

Which crossings to close and how?

47. The key document for determining how Network Rail chose which crossings to close in this Order is the Anglia CP5 Level Crossing Reduction Strategy (NR18). This document was written by Mr Kenning and approved by Dr Algaard who represented the “client” for the work.²⁶ It was prepared for the whole Anglia Region, with individual Route Requirement Documents (“RRDs”) having been provided for specific parts of the Anglia Route.²⁷

48. NR18 begins by setting out the overarching purpose behind the strategy (NR18, p.5):

The Network Rail company view is that as many level crossings should be removed from the network as practicably possible and the purpose of this CRD is to set out the CP5 level crossing reduction strategy for the Anglia Route, to provide the high level thought process and show the framework to deliver further reductions in the numbers of level crossings.

The document then goes on to explain why Network Rail should attempt to use a TWAO to close level crossings (NR18, para 1.1.1²⁸) and the general “decision-making” procedure (NR18, para 1.1.2). The phases of the strategy are then set out (NR18, para 2.1.2). Five distinct phases are described, with a further “no change” phase.

²⁵ Mr Brunnen’s Proof of Evidence at para 6.12.

²⁶ Dr Algaard’s Proof of Evidence, para 1.3.

²⁷ The Cambridgeshire RRD is appended to Mr Kenning’s Proof of Evidence, Tab 1.

²⁸ See also NR18 at 2.1.1, “A Fresh Approach”.

49. The first thing to note about NR18 is that it is clearly a document written by Network Rail for Network Rail,²⁹ which takes as its starting point that all level crossings are a safety risk and should be removed where possible.³⁰

50. For example, at para 1.1.1, NR18 states:

The best way to close public highways is through a Transport and Works Act Order. In that way, all proposed changes and consents can be consulted in advance, bridges provided where appropriate, and we can argue using the greater public benefit of improved rail services.

Mr Kenning agreed in cross-examination that the “best way” really meant the “best way [for Network Rail]”.³¹ Furthermore, it is concerning that the second sentence reads as implying that Network Rail are simply using the argument of “greater public benefit of improved rail services” to make the project fit in with the TWA procedure. Indeed, Mr Kenning stated that he could “see how it can be read as that”³² whilst nonetheless disputing that that was the intention.

51. There are further concerning statements made in NR18. For example, para 1.1.2 states:

A little used crossing today can suddenly become a big problem when local circumstances change and the usage dramatically increases. This leads to closure objections and could lead to requiring the deployment of technology to manage the risk. Therefore it is important to start with the least used crossings and work up to the major crossings.

This clearly reads as Network Rail trying to simply get rid of the problem of level crossings. When this was put to Mr Kenning, he had to accept that those were “the words on the page” but claimed that if they could divert little used crossings then the sum impact would not be that great. The Ramblers submit that this paragraph demonstrates a cavalier attitude by Network Rail, who simply want to get rid of the nuisance of level crossings as quickly and as cheaply as possible.³³

²⁹ Accepted by Dr Algaard during XX.

³⁰ Accepted by Dr Algaard during XX.

³¹ Mr Kenning, XX.

³² Mr Kenning, XX.

³³ When Mr Kenning explained that the strategy arose from meetings which started in April 2014 with a new sponsor of the Anglia Route, the point was put to him that this was a month after the March 2014 findings by the

No clear test

52. One of the fundamental issues with NR18 is the uncertainty surrounding the decision-making procedure. From para 2.1.2, it seems that a filtering process is established through which the numbers of level crossings on a network are first rationalised - through closing level crossings by either extinguishing the rights of way or simply diverting them to alternative existing means of crossing the railway. Then Network Rail plans to install bridges to replace the remaining level crossings. Out of the five phases of the strategy, phases 1, 2 and 4 constitute the initial “rationalisation” stage and phases 3 and 5 will cover the stage to follow – when bridges will be provided. This Order only covers phases 1, 2 and 4³⁴ (in other words, just the “rationalisation” stage).

53. The test for whether or not a crossing will fall within phases 1, 2 or 4 is far from clear and, with respect, it did not appear to be any clearer following cross examination of Mr Kenning.³⁵ Firstly, it was highlighted during the Inquiry that a number of crossings had already been completely excluded from the strategy at the time NR18 was written and are contained in NR18 Appendix D. Mr Kenning explained, during examination in chief, that these crossings would have been excluded because, for example, they were right in the middle of a built-up area and it would not be feasible to divert them or build a bridge (providing the example of a specific crossing in Stowmarket).

54. Secondly, it appears from NR18 that crossings will be extinguished where they are “clearly...unused or have extremely little use”. It seems that this is a determination for Network Rail to make, but there did not appear to be any clear parameters for how it would do so. Mr Kenning admitted there was no specific threshold but that they would consider their existing data and usage censuses.

55. Thirdly, crossings would be closed, with diversions for the rights of access that exist across them, if there is a “nearby alternative route” which can utilise existing access

House of Commons Transport Committee, documented in the report, *Safety at level crossings, Eleventh Report of Session 2013-14*, dated 7 March 2014. Mr Kenning submitted that the timing was a “coincidence”.

³⁴ Dr Algaard’s Proof of Evidence, para 2.6.7.

³⁵ The Ramblers submit that the wording of Phase 4 is particularly unclear.

points across the railway. The “nearby alternative route” test is crucial to Network Rail’s entire case. Unless a crossing falls into the (i) Appendix D category or the (ii) “clearly unused” category, the initial “short-listing” decision for determining if it would be taken forward as a proposal for closure in this stage of the project, rested on whether Network Rail thought there was a “nearby alternative route”.

56. Mr Kenning, during cross-examination, explained that Network Rail initially carried out a desktop exercise and considered where they had existing structures across the railway which they thought they could use to divert rights of way. The suitability and convenience of any proposed alternative routes would then be further assessed through consultation and the work of Mott McDonald.

57. The Ramblers made clear, in their opening submissions, that this “initial “short-listing” decision was key”.³⁶ The reason why it is key is that ultimately the decision as to whether or not a level crossing can be closed, with no replacement infrastructure, rests simply on the basis of there being an alternative route nearby. That decision-making process does not consider who uses that crossing, how many people use that crossing, or what they use it for. It does not consider the relative safety risks at that crossing³⁷ and weigh that against the use of the public rights that traverse it. It does not consider the safety risks at that crossing and weigh that against the safety risks of the alternative route (where the alternative involves walking alongside a road). It does not consider the various costs of different safety risk mitigation measures, such as miniature stop lights, barriers or a bridge, against the level of demand for the rights of way across the crossing.

58. These are the reasons why the Ramblers submit that Network Rail’s decision-making process to determine whether or not to close a crossing under phases 1, 2 and 4 of the Anglia Route Strategy did not appropriately consider wider community interests. This is so even having regard to the later stages of the project development, when Mott MacDonald were contracted to carry out further assessments of the alternative routes,

³⁶ The Ramblers Opening Statement, para 20.

³⁷ Network Rail accepted that, whilst the All Level Crossing Risk Model scores (representing relative safety risks) were relevant as reduction in safety risk is one of the strategic reasons for closing level crossings, a level crossing was not chosen for inclusion in the Order based on its individual ALCRM score or Fatalities and Weighted Index score (Mr Brunnen’s proof of evidence at 8.24 and XX).

and the public were consulted on the adequacy of the alternative routes (discussed further below). Network Rail seems to think that as long as a “suitable and convenient” alternative route can be provided, their decision to close a crossing will, thereby, have factored in the wider community interest.

59. By contrast, the Ramblers submit that it is quite possible for there to be such a suitable and convenient alternative route, but for there to still be good reasons to keep the crossing open as an access point across the railway. Each crossing is unique and the case for whether it can be closed should be properly considered by reference to its specific circumstances and how it is used by the population. It is not appropriate for Network Rail to apply such a blanket assessment of the case for closure by reference simply to whether or not there is an alternative route nearby.

Limitations of Mott MacDonald’s brief and public consultation

60. Following on from this initial short-listing decision, there were 217 proposals for crossing closures across the Anglia route.³⁸ Network Rail then contracted with Mott MacDonald to scrutinise the alternative routes and determine if they were suitable and convenient. Network Rail later engaged in a number of rounds of public consultation on its proposals. Ms Tilbrook agreed in cross examination that consultation was crucial to ensure that balanced decision-making was achieved.³⁹

61. Crucially, however, Network Rail cannot rely on either the involvement of Mott MacDonald or the public (through consultation) to ensure that the wider community interests affected by the closure of a level crossing have been appropriately factored into the decision-making process. This is due to the fact that neither Mott MacDonald or the public were asked to assess Network Rail’s underlying strategic case for closure of level crossings.

Mott MacDonald’s brief

³⁸ Mr Kenning’s proof of evidence at 3.9.

³⁹ Ms Tilbrook XX.

62. More specifically, Mott MacDonald was only contracted to review whether or not the proposed alternative routes were suitable and convenient. It was not engaged to question the need to close a level crossing.⁴⁰

63. The Ramblers are also concerned with the scrutiny which Mott MacDonald applied to the assessment of alternative routes. Ms Tilbrook clarified during cross-examination that “every route has had a site visit at some point”⁴¹ by various teams (such as the road safety auditing team or the design team) but that they “may not have visited every part of every route”⁴² as this would depend on when land access was available. With respect, exactly how site visits were carried out, by who, and when was not clear from Ms Tilbrook’s evidence.

64. The suitability and convenience of an alternative route will need to be considered in relation to the “existing users” who use the rights of way. In this regard, it is also concerning that ROW experts were not consulted by Mott MacDonald.⁴³

Public consultation

65. In a similar vein to Mott MacDonald’s brief, the public were consulted primarily on whether or not a suitable and convenient route had been provided. They were not consulted on whether a level crossing should be closed at all⁴⁴ or, put simply, whether they might have preferred (a) to leave the level crossing as it is or (b) to close it.⁴⁵ Mr Kenning, during cross-examination, appeared to take the position that the burden should be on consultees to bring a compelling case to Network Rail that there was a need to keep the crossing open in which case Network Rail “would have considered it”.⁴⁶ The Ramblers submit that this approach is substantively different to a consultation procedure through which Network Rail actively consults on whether or not a crossing should be closed at all.

⁴⁰ Mr Kenning XX, “Mott MacDonald was not brought in to say to Network Rail that you do not need to close [a particular] crossing.” Ms Tilbrook XX also made clear that the project brief was to review and determine if the identified route was suitable and convenient.

⁴¹ Ms Tilbrook XIC.

⁴² Ms Tilbrook XIC.

⁴³ Ms Tilbrook XX.

⁴⁴ Ms Tilbrook XX.

⁴⁵ Mr Kenning XX.

⁴⁶ Mr Kenning XX.

66. What is more, the limitations as to what was being consulted on was not made sufficiently clear to consultees. It is evident from consultation documents used in the Round 2 consultations,⁴⁷ that significant amounts of crossing-specific safety information had been provided, including the ALCRM score and the number of previous incidents of misuse, near misses and accidents. The Ramblers submit that the provision of this crossing-specific information would have reasonably led members of the public to conclude that the specific safety risk at the crossing was relevant to the decision to close it. Yet it is now clear from Network Rail's evidence, that the *specific* ALCRM score at a particular crossing did not factor into the decision to close it. Network Rail highlighted that all of the strategic benefits of closing crossings were set out in the public consultation documents.⁴⁸ The Ramblers nevertheless query whether it was clear to the public the basis on which level crossings were picked for closure.
67. When it was put to Mr Kenning in cross-examination that the consultation materials were misleading in this regard, with the suggestion that it would have been easy for Network Rail to clarify that the ALCRM score of a particular crossing had not been used to pick that crossing for closure, Mr Kenning simply responded that this would not have made any difference.
68. There is an important distinction at issue here. Whilst members of the public may reasonably have thought they were being consulted on whether the crossing should be closed, in reality they were not. This undermines the value of public consultation as a mechanism by which the wider community interests is factored into Network Rail's decision-making process.
69. Put simply, it is one thing for the public to say "*if* the crossing has to be closed, then this alternative route may be acceptable". It is quite another for the public to say "this crossing can be closed *because* the alternative route is acceptable". Having heard the evidence, it appears that the former question was consulted on, but not the latter.

⁴⁷ An example is provided in Mr Kenning's appendix tab 5.

⁴⁸ For example, Mr Turney, on behalf of Network Rail, highlighted the bullet point list included in the Round 2 public consultation documents.

The benefits of and barriers to walking

70. Mr de Moor gave evidence to the Inquiry about both the benefits of walking and the barriers to walking. He explained how the public health benefits associated with walking are “underestimated”⁴⁹ and gave evidence as to the relationship between walking and public health.

71. The Ramblers submit that these considerations are relevant to an assessment of Network Rail’s case and the proposed alternative routes proposed. For the reasons set out above, the Ramblers further submit that the Inspector cannot be satisfied that such considerations have been adequately considered by Network Rail.

Conclusions on Network Rail’s strategic case

72. For these reasons, the Ramblers submit that Network Rail’s strategic case and overarching methodology for choosing which crossings to close, and how, cannot be relied upon. Competing interests – for and against the case for closure – have not been sufficiently balanced and assessed in the decision-making process.

73. The Ramblers do recognise that this Inquiry is not engaged in a judicial review of Network Rail’s decision to close level crossings. Nevertheless, the Ramblers have raised concerns relating to Network Rail’s decision-making process because Network Rail is proposing a “strategic” methodology for closure. Network Rail is not putting forward a proposal to close just one level crossing, based on its specific safety risks, maintenance costs and impact on operational efficiency of the network. Rather, it is putting forward a proposal to close *all* level crossings via a phased strategy, through which crossings are picked for closure via diversion due to there being a suitable and convenient alternative route. If Network Rail seeks to apply a standardised methodology to the closure of over 100 level crossings,⁵⁰ then the Ramblers submit that that methodology – in other words, the decision-making procedure - must be scrutinised.

⁴⁹ Mr De Moor XIC.

⁵⁰ The combined number of proposed closures in the Cambridgeshire, Essex and Suffolk Orders.

No compelling case in the public interest for compulsory acquisition

74. Furthermore, if the Ramblers' above submissions are accepted, then it follows that Network Rail has not demonstrated a "compelling case in the public interest", as is required for the exercise of compulsory purchase powers.⁵¹ Mr Smith agreed that were the Inspector to find that Network Rail's evidence had not demonstrated that the scheme was in the public interest then the grounds for a compulsory purchase order are not met.⁵²

Limitations of the public inquiry procedure

75. The Ramblers also caution against too great a reliance on the public inquiry procedure to fill any gaps in Network Rail's application. The Ramblers have expended considerable resources in responding to Network Rail's application. And they have had to do so alongside their involvement in the Suffolk and Essex Inquiries. There is a danger of allowing the burden to fall on the public inquiry procedure (and objectors, who will need to attend the inquiry), to ensure that a sufficient balancing exercise is carried out.

2. Inadequacies of Network Rail's evidence

Lack of evidence

76. At a number of stages in this Inquiry, there has been a concerning amount of information missing from Network Rail's application documents. It is concerning because the information is relevant to the matters on which the Secretary of State wishes to be informed. But it is particularly concerning in the context of a case where Network Rail is relying on an overarching and strategic methodology through which it seeks to justify the closure of level crossings across an entire county. If Network Rail is really

⁵¹ DCLG Guidance on compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion (October 2015) p.6.

⁵² Mr Smith XX.

seeking the approval of the Secretary of State for this entire “fresh approach”,⁵³ then the Ramblers would have expected much more diligence, on the part of Network Rail, in ensuring sufficient information had been provided to enable the Inspector to adequately scrutinise the project.

77. In this regard, a number of relevant documents have now been produced in response to the questioning of Network Rail’s witnesses. For example, a note was produced documenting a break-down of the costings for the crossings (NR-INQ-05) and Appendix B of NR18 was produced to the Ramblers (although it does not appear to have been provided to the Inspector).

78. Dr Algaard’s proof of evidence contains estimates for the cost savings to be expected for the entire Order.⁵⁴ This is clearly relevant information in a case in which Network Rail is relying on cost savings as one of the three key strategic reasons behind the need to close level crossings. Dr Algaard, however, confirmed during cross-examination that these order-specific cost saving figures had, in fact, been included in her proof of evidence for this Inquiry in response to questions (on the lack of such evidence) put to her in the Essex Inquiry on behalf of the Ramblers.⁵⁵

79. The point here is that the burden should not be on objectors to actively request sufficient information to enable a proper scrutiny of Network Rail’s application. Such information should have already been put forward by Network Rail itself in order to justify to the Secretary of State the need for this Order.

80. Furthermore, the failure to produce this evidence at the outset, again, indicates that the scale of what Network Rail is proposing is inappropriate. The fact that there have been so many gaps in Network Rail’s evidence is likely due to the scale of the task that Network Rail have set for themselves. In short, through proposing these three orders simultaneously it appears that Network Rail has bitten off more than it can chew.

⁵³ NR18 at 2.1.1.

⁵⁴ See Dr Algaard’s proof of evidence at 2.2.5, quoting a renewals cost saving of £3,311,150 over a 30-year period and at 2.2.8 and 2.2.9, figures of £15,063,675 and £5,801,760 respectively.

⁵⁵ Dr Algaard XX.

Consideration of planning policy

81. The Secretary of State has asked to be informed on the extent to which the proposals in the TWAO are consistent with the National Planning Policy Framework, national transport policy, and local transport, environmental and planning policies.⁵⁶ Further, Network Rail, as part of its application, is seeking deemed planning permission (NR10).
82. However, until the Inspector raised concerns⁵⁷ that there was insufficient evidence on how the scheme complies with planning policy,⁵⁸ Network Rail was seemingly willing to rely on the information provided in Dr Algaard's proof of evidence at 2.6.12 – 2.6.19, as well as the statements made by Ms Tilbrook that the alternative routes are considered to comply with planning policy because they are suitable and convenient, as sufficient evidence that Network Rail's scheme complies with planning policy.⁵⁹
83. This is of serious concern. Neither Dr Algaard nor Ms Tilbrook are planners. The relevant section of Dr Algaard's proof merely consists of short statements as to why the Order complies with a number of selected planning policies. This is not sufficient. What is more, during questioning, Dr Algaard clearly demonstrated a railway-centric perspective in assessing the project against planning policies. She was not even aware of the recent Department for Transport's Cycling and Walking Investment Strategy (April 2017).⁶⁰
84. A good example of Network Rail's railway-centric approach to the consideration of planning policy arose during cross-examination. When asked to explain how the proposals "assist[] in actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling" (at para 2.6.13 of Dr Algaard's proof), Dr Algaard responded that if the railway network were to be improved, this would enhance the economy which would, in turn, better enable investment in walking and cycling.⁶¹

⁵⁶ Statement of Matters, Matter 3.

⁵⁷ Which were echoed by the Ramblers.

⁵⁸ Inspector's note, sent on 19 January 2018.

⁵⁹ Ms Tilbrook XIC, specifically in regard to compliance with Cambridgeshire's ROWIP. Reference was also made to 1.13 of Ms Tilbrook's proof and p.189 of Ms Tilbrook's appendices (which includes a blank Appraisal Summary Table Template).

⁶⁰ Dr Algaard XX.

⁶¹ Dr Algaard XX.

It is readily apparent from that answer, that when Network Rail considers planning policy, it does so from the perspective of Network Rail.

Network Rail's note on planning policy

85. The Ramblers became aware on Friday 16 February that Network Rail had submitted a 22-page note, including appendices, on planning policy considerations on Thursday 15 February. The Ramblers recognise that “Network Rail...is satisfied that the proposals are consistent with those policies” and that the note “is intended to provide further information to support that conclusion”.⁶² However, the Ramblers would seek to highlight further relevant planning policies which the Ramblers submit are material considerations for the Inspector to consider.

86. In relation to the National Policy Statement for National Networks, which Network Rail quote from at para 24 of the note, this document must be considered as a whole. Reference should also be made to para 3.1 of the document which notes how the:

need for development of the national networks, and the Government’s policy for addressing that need, must be seen in the context of the Government’s wider policies on economic performance, environment, safety, technology, sustainable transport and accessibility, as well as journey reliability and the experience of road/rail users.

87. The Government’s policy on “sustainable transport” is set out at 3.15 – 3.18 of the document, para 3.16 then provides:

As part of the Government's commitment to sustainable travel it is investing in developing a high-quality cycling and walking environment to bring about a step change in cycling and walking across the country.

The Ramblers submit that the Government’s most up-to-date policy document⁶³ on the need to encourage sustainable transport is the Department for Transport’s Cycling and Walking Investment Strategy 2017, which has an overarching “ambition for England” to “make cycling and walking the natural choices for shorter journeys, or as part of a

⁶² NR-INQ-32 NR Note 15 – Planning Policy Note, para 2.

⁶³ The NPSNN is dated December 2014.

longer journey”.⁶⁴ The Ramblers query whether the Order complies with the objectives of this strategy.

88. Finally, the Ramblers wish to highlight para 5.184 of the NPSNN, which states (under the heading of ‘mitigation’ within the section of ‘Land use including open space, green infrastructure and Green Belt’):

Public rights of way, National Trails, and other rights of access to land (e.g. open access land) are important recreational facilities for walkers, cyclists and equestrians. Applicants are expected to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. In considering revisions to an existing right of way consideration needs to be given to the use, character, attractiveness and convenience of the right of way. The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements in respect of these measures might be attached to any grant of development consent.

89. Network Rail has not referred to these parts of the NPSNN. They clearly show the importance of a proper consideration of the impacts which new schemes will have on the ROW network.

Conclusions on planning policy

90. It is clear that where the Ramblers dispute that a particular alternative route is “suitable and convenient”, they also dispute that the proposal accords with relevant planning policy, particularly policy which is directed to the protection and enhancement of rights of way and to the encouragement of walking and cycling as sustainable modes of transport.⁶⁵

91. The Ramblers is a volunteer-based organisation of walkers and rights of way users. It does not offer any evidence of planning issues for this Inquiry. However, the Ramblers submit that the Inspector must be satisfied on the basis of robust evidence that Network

⁶⁴ OBJ-26-INQ-04 DfT Cycling and Walking Strategy, p.7.

⁶⁵ Including Cambridgeshire’s Rights of Way Improvement Plan.

Rail's strategic case for the closure of level crossings complies with planning policy if she is to recommend that the Order be made on that basis.

Diversity impact assessments

92. Network Rail provided the Scoping Report, Equality and Diversity Report and three Diversity Impact Assessments (DIAs) following a request made by the Inspector during the Inquiry.

93. The Ramblers have submitted a note on the DIA information and will not unduly repeat the same points in these closing submissions.⁶⁶

94. In short, the Ramblers submit that it is not surprising that the Inspector requested the information to be supplied. The Secretary of State must be satisfied that his public sector equality duty, under section 149 of the Equality Act 2010, has been carried out. Whilst the Secretary of State can (if satisfied that they are robust) rely on the assessments carried out by Network Rail, the public sector equality duty is non-delegable.⁶⁷ In order to properly supervise how Network Rail has sought to discharge their duty, the Secretary of State will, therefore, need to consider the DIA information and determine if it is adequate. Again, the fact that Network Rail did not consider it necessary to disclose such information to this Inquiry is of serious concern.

Flawed evidence

95. A number of Network Rail's proposed alternative routes will take users alongside roads. Network Rail are relying, to a significant extent, on road safety audits ("RSAs"), which have been carried out by Mott MacDonald, to demonstrate that these routes are safe to use.

96. The Ramblers have raised a number of concerns with Mott MacDonald's RSAs through the written evidence of Mr Russell, a technical director at Motion Consulting, which

⁶⁶ [OBJ-26-INQ-09].

⁶⁷ *R (Brown) v SSWP* [2008] EWHC 3158 (Admin) at [94].

specialises in transport planning, transport engineering and highway design.⁶⁸ These concerns include the fact that the Stage 1 RSAs that have been carried out do not factor in a number of pieces of data, including traffic speeds, traffic flows, non-motorised user flows and collision data.⁶⁹ Network Rail's response is that Stage 2 RSAs will be carried out at the detailed design stage.⁷⁰ However, this will not occur until *after* the Order is (in theory) made. There appears to be no legal mechanism in the Order to ensure that these Stage 2 RSAs are carried out appropriately. The Ramblers, therefore, submit that the Order cannot be made on the basis of the Stage 1 RSAs alone.

97. It is worth noting that Ms Tilbrook has highlighted that the auditing team did not request more information from the design team, which they must do, according to the HD 19/15 guidance if they think that they have insufficient information for their purposes.⁷¹ However, the Ramblers submit that the question is not whether or not the audit team had enough information for the purposes of carrying out a Stage 1 RSA, but rather whether this Order can be made on the basis of Stage 1 RSAs, with no legal guarantee that Stage 2 RSAs will be undertaken.

98. Mr Russell's evidence also highlights that Network Rail is relying on highway verge for a number of its alternative routes. Mr Russell highlights⁷² that it is not clear:

- (i) if the highway verge is, indeed, highway land;
- (ii) how Network Rail intends to secure the continued use by pedestrians of highway verge; or,
- (iii) how Network Rail will ensure that highway verge will be maintained.

⁶⁸ The Inspector granted the Ramblers' application to submit written evidence from Mr Russell to the Inquiry on 28 November 2017. The evidence consisted of (i) the summary proof of evidence, proof of evidence and rebuttal proof of evidence of Mr Russell which had been submitted to the Essex Inquiry and (ii) two letters addressing similar concerns as to the independence of the auditing process carried out by Mott MacDonald which had been submitted to the Essex Inquiry and Suffolk Inquiry respectively.

⁶⁹ Mr Russell's proof of evidence for the Essex Inquiry, section 3.

⁷⁰ Ms Tilbrook XX.

⁷¹ NR-INQ-06 Note 3 – Rebuttal of issues raised in John Russell's evidence for the Ramblers on other orders at 1.6.5.

⁷² Mr Russell's proof of evidence for the Essex Inquiry at 1.11.

99. In response, Network Rail has explained that it is relying on the field boundary presumption to establish the highway boundary.⁷³ However, this presumption is rebuttable. It was put to Ms Tilbrook that it would have been relatively easy to ask the Highway Authority to carry out a search of their records to establish ownership of the land. This does not appear to have been done.

100. In relation to (ii), it is not possible for Network Rail to guarantee that future highway or development schemes will not impact on the highway verge. Network Rail point to the fact that in considering any future scheme, the highway authority will consider the impact on pedestrian users. With respect, that is no answer to the point. Network Rail are not proposing to add those parts of the alternative routes that rely on highway verge onto the definitive map and statement. These routes will, therefore, lack the same legal protection that the current public rights of way enjoy.

Preferred approach – crossing specific assessment

101. The Secretary of State has asked to be informed about the “main alternative options considered by Network Rail and the reasons for choosing the proposals comprised in the scheme”.⁷⁴ Network Rail have relied on a strategic case to justify the closure of level crossings. It has also relied on a standardised methodology for how it determined which level crossings to close by way of diversion. The Ramblers submit that it was open to Network Rail to, instead, adopt a crossing-specific approach to deciding whether or not a particular crossing should be closed and, if so, whether it could be closed by diversion. This would still be a “proactive” approach to addressing risk at level crossings,⁷⁵ but it would better accommodate the individual circumstances of each level crossing.

102. In this regard, the Ramblers would prefer the crossing-specific application of a “public interest” test similar to what has been proposed by the law commission and endorsed by the House of Commons Transport Committee in its report on *Safety at level crossings* (7 March 2014) (at paras 28-29). As set out by the Transport Committee,

⁷³ NR-INQ-06 at 1.2.2.

⁷⁴ Statement of Matters, Matter 2.

⁷⁵ Mr Brunnen’s proof at 6.12.

this test would consider a “non-hierarchical” and “non-exhaustive” list of the following factors:

- (i) the safety of the public;
- (ii) the convenience of the public;
- (iii) the efficiency of the transport network (including the network of public paths);
- (iv) the cost of maintaining the crossing;
- (v) the need for the crossing and its significance for the local community (including the protection of heritage); and
- (vi) the costs and environmental impact of any works needed to replace the crossing or upgrade other crossings.

103. The Ramblers consider this to be a crossing-specific test, through which, for example, the particular safety risk at a particular crossing is weighed against the significance of that particular crossing for the local community. Dr Algaard has given evidence that, in her view, Network Rail’s proposals for this Order have considered all these factors. However, if it is accepted that the “public interest” test is to be applied on a crossing-specific basis, then it is difficult to see how this can be so. Network Rail has now clarified that it did not consider the *specific* ALCRM score at a particular level crossing, when considering its case for closure. Nor, does it appear from Dr Algaard’s evidence that the *specific* cost of maintaining that crossing weighed into the decision-making process relating to closure. On that basis, it would not have been possible for Network Rail to weigh up points (i) and (iv) against, for example, point (v).

Crossing-specific objections

104. Notwithstanding, and without prejudice to, the above submissions, the Ramblers also object to a number of the alternative routes proposed by Network Rail on the basis that they are not convenient and suitable replacements for existing users.

“Suitable and convenient”

105. The Ramblers submitted a note to the Inquiry setting out how the Ramblers interpret the “convenient and suitable replacement for existing users” test in the

Guidance to TWA Procedures. During cross-examination, Ms Tilbrook agreed that each route will need to be assessed individually. She also agreed that the following factors are relevant to an assessment of suitability and convenience of an alternative route:⁷⁶

- length
- accessibility
- safety
- scenic views (including enjoyment and journey quality)
- flooding
- width
- how the ROW network may be disconnected.

106. Ms Tilbrook accepted that these factors can interrelate.⁷⁷ She also agreed that where Network Rail are wholly relying on a route which already exists on the highway network for the proposed alternative route, then this constitutes an extinguishment rather than a diversion to the public right of way affected.⁷⁸

107. The Ramblers submit that a new route will need to be of the same protected legal status as the existing route. Network Rail, however, take the view that where a public right of way is diverted, the alternative route will need to be highway.

“Existing users”

108. At paragraph 4 of the Ramblers’ note on the “suitability and convenience” test, the Ramblers emphasised that “the Inspector must have regard to who is currently using each of the rights of way proposed to be diverted, as well as the purpose for which they are using it.” Ms Tilbrook agreed that in order to assess this part of the test, we will need to know who the existing users are and why the purpose for which they use the route.⁷⁹

⁷⁶ Ms Tilbrook XX.

⁷⁷ Ms Tilbrook XX.

⁷⁸ Ms Tilbrook XX.

⁷⁹ Ms Tilbrook XX.

109. Whilst it is essential to a proper consideration of the suitability and convenience test that the Inspector has regard to those who are currently using the route, the Ramblers wish to clarify that they interpret the term “existing users” to mean not only (i) those who currently use the route but also (ii) anybody who has a legal right to use the route. On this basis, there would still be “existing users” of a right of way in circumstances where that right of way has, for example, been unlawfully closed or obstructed.

Public enjoyment

110. The Ramblers submit that the “suitability and convenience” test incorporates an assessment of public enjoyment of the route as a whole. The assessment of public enjoyment of the route is one of the factors to consider in assessing whether the route is a suitable and convenient replacement.

C07 No 37 Harston - Footpath No 4 Harston

111. The Ramblers maintains its objection to the closure of this crossing and requests that the Inspector recommends to the Secretary of State that it be withdrawn from the proposed Order so that a better solution can be found. The Ramblers does not object in principle to the closure of this crossing; the issue remains that the proposed closure removes a pleasant country path and proposes an unsuitable and inconvenient replacement, primarily because of the need to negotiate two sets of steps. Even steps constructed to the ‘appropriate’ standard present an insurmountable barrier to some users. It is accepted that Network Rail has improved on its original proposal by relocating parts of the proposed alternative route away from the roadside verge and into adjoining fields. Whilst it might be acceptable to have a replacement for the footpath that is longer, circuitous and involves two road crossings; this combination together with the two flights of steps is unacceptable as a replacement for the current step free, direct route through woodland and across an open field. In comparison to the current route the proposed alternative is unsuitable and inconvenient. Even without making a direct comparison the route cannot be said to be convenient and suitable.

112. Ms Tuffnell's evidence was that the area around Harston has few paths and that this footpath provides the only direct off road route between Harston and Newton. The introduction of long flights of steps would present a problem for people with mobility issues and those with buggies. The current route has no such obstacles and could be more readily used by people with buggies before Network Rail changed the wicket gates at the crossing to kissing gates⁸⁰.

113. In cross examination (on behalf of the Council) Mr Kenning accepted that the introduction of steps rendered the proposed route less convenient to the public than the current route. He also accepted that if the current proposal failed, Network Rail would consider installing a bridge at the current crossing site to provide a grade separated crossing.

114. In cross examination (on behalf of the Council) Ms Tilbrook accepted that the proposed new route was less convenient for users who had issues with steps and (in cross examination on behalf to the Ramblers) that steps proposed a particular problem for people with respiratory issues.

C11 A Furlong Drove - Byway 33 Downham

115. The Ramblers maintains its objection to the closure of this crossing and requests that the Inspector recommends to the Secretary of State that it be withdrawn from the proposed Order so that a better solution can be found.

116. The Ramblers also cannot agree with the principle put forward on behalf of Network Rail that it does not now need to provide a suitable alternative route for the public in vehicles larger than motorcycles. Network Rail should not be able to avoid making specific alternative provision for lawful users where those users have been prevented from using the route by illegal obstruction. It is immaterial how long the crossing has been illegally obstructed⁸¹.

⁸⁰ Round 1 consultation photographs which Mr Kenning accepted were potentially taken in September 2015 show wicket gates, not kissing gates.

⁸¹ The length of time that it has been impossible to take vehicles larger than motorcycles over the crossing was a matter of some disagreement between Network Rail and Mr Taylor.

117. The special ambience of this historic route (see the evidence of Anna Bailey), chosen for inclusion in the promoted long distance route by the designers of the Hereward Way, cannot be replaced by the alternatives proposed, which with the exception of the proposed new length of bridleway and footpath, are already available to the public to use.

118. Diversions of walkers either to the west following in part the proposed new bridleway and Byway 34, or to the east, along Main Drove are both longer than using the existing Byway 33. The diversion along Main Drove involves walking along a road, with no dedicated footway, that is used by HGVs. Ramblers consider that both diversions are unacceptably long and inconvenient. It was accepted by Mr Kenning (cross examination by the Ramblers) that the Main Drove route would involve walkers having to walk next to the road. It was accepted by Ms Tilbrook (cross examination by the Ramblers) that walkers using Main Drove would probably use the hard-surfaced road and would have to step aside onto verges when vehicles approached. She accepted that this experience would be very different to using Byway 33.

119. Having heard the evidence of Mr and Mrs Taylor and Mr Martin the Ramblers now have concerns that using the proposed length of bridleway will involve walkers passing very close to diesel lorry engines operating agricultural pumping equipment⁸². This is unsuitable. It is submitted that Network Rail has not fully considered the practical difficulties of providing a suitable bridleway route at this location.

C20 Leonards - Footpaths 114 and 101 Soham

120. The Ramblers maintains its objection to the closure of this crossing and requests that the Inspector recommends to the Secretary of State that it be withdrawn from the proposed Order so that a better solution can be found.

121. Ms Tuffnell's evidence to the inquiry was that the proposed alternative is neither suitable nor convenient, the diversion of footpath 101 is around three sides of a square,

⁸² Evidence of Mr Martin.

in parts it crosses land prone to flooding, and in part it passes next to land which has brambles established over it. There are no commuted sums provided to the landowner who will have to deal with brambles encroaching from the side and it is likely that this will present a long term maintenance (or enforcement) issue.

122. The diversion of footpath 114 was to a route in a low lying clay field; in practice this will not be used as it will be difficult to walk over, forcing users to walk further along Mill Drove Road. Ms Tuffnell accepted that she currently uses Mill Drove Road but stated that this was not a pleasant experience (cross examination by NR). Mill Drove Road is used by HGVs and the proposal overall means that walkers come back on themselves and this adds a long stretch of road walking; somewhere between a third again or perhaps double the present amount. Whilst this may not be significant as part of a longer walk from say Soham to Wicken it is significant as part of a shorter circular walk.

123. The Ramblers submit that the nature of the diversion of footpath 101 around three sides of a square and the proposal overall with the doubling back is unsuitable and inconvenient. In her evidence in connection with C11 A Furlong Drove/Byway 33 Ms Tilbrook (in answer to a question from Mrs Taylor) said that people didn't generally like to feel that they were doubling back on themselves but nevertheless considered that doubling back on the proposed diversion for footpath 101 is not a problem. We disagree and consider that a better proposal needs to be put forward by Network Rail before this crossing can be closed.

C25 Clayway - Footpath 11 Littleport

124. The Ramblers maintains its objection to the closure of this crossing and requests that the Inspector recommends to the Secretary of State that it be withdrawn from the proposed Order. The Ramblers supports the County Council in that the loss of this direct connecting route in an urban area removes the opportunity for local short circular walks and severs the connection with off-road routes. Although the proposals now (as distinct from 2004) provide a footway for pedestrians, walkers will still be forced to use the road environment (at the controlled, road level crossing), whereas the current route is away from the road.

125. Camilla Rhodes' evidence clearly demonstrated that the current route is a local convenience leisure route for people making use of using short circular routes as well as being part of longer circular routes. The route takes people directly from the town to the river, via off road paths. It is used by people with heart conditions (see the evidence of Mr Clarke). The alternative cannot provide the same enjoyment that the current route does, as the current route is the only access to the riverside path via off-road routes. The current route is an historic route. The Ramblers agree with the County Council that it is easy to misunderstand the value that short routes such as this one have to local people.

C27 Willow Row Drove - Byway 30 Littleport

126. The Ramblers maintains its objection to the closure of this crossing and requests that the Inspector recommends to the Secretary of State that it be withdrawn from the proposed Order so that a better solution can be found.

127. The proposed alternative route is circuitous, Ms Tilbrook accepted that it was longer and a significant diversion on foot, her estimate was that the diversion would take between 15 and 20 minutes longer; the Ramblers estimate, (see our Statement of Case) was that it would take 20 to 30 minutes longer. Ms Tilbrook also accepted that for some journeys it would feel that a walker was going out of their way. Walkers will have to use the Poplar Road crossing, which if the Willow Row Drove crossing is closed, will be subject to all of the agricultural traffic displaced from Willow Row Drove (see Mr Murfitt's evidence), including large agricultural vehicles. This road level crossing is unsegregated.

128. The alternative route is inconvenient and unsuitable for walkers. Walkers will have to utilise the proposed new bridleway which runs alongside the railway.

Conclusion

129. Network Rail is presenting over 20 proposals for crossing closures for which they submit they have got the balance right. But at the end of the day, in relation to a

number of the crossings, Cambridge County Council, the Ramblers Association, Cambridgeshire Local Access Forum, the National Farmers Union and a number of other individuals all disagree that this is so.

130. The Ramblers submit that for the reasons set out in these submissions, the Inspector should conclude:

- (i) That the use of a TWAO for the purposes of this scheme is inappropriate and unlawful;
- (ii) In the alternative, the Order should not be made because the objects of the Order could be achieved by other means (section 13(2) TWA);
- (iii) In the alternative, Network Rail's strategic case cannot be endorsed because it fails to appropriately balance the competing interests that are engaged in the decision as to whether or not a level crossing should be closed; and,
- (iv) Furthermore, and in the alternative, a number of the alternative routes being proposed by Network Rail are not suitable and convenient replacements for existing users. In the event that the Inspector were to recommend that the Order be made, the Ramblers request that these particular crossing proposals be removed, namely C07, C11, C20, C25 and C27.

MERROW GOLDEN
23 FEBRUARY 2018

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