

TRANSPORT AND WORKS ACT 1992

**TRANSPORT AND WORKS (INQUIRIES
PROCEDURE) RULES 2004**

**THE NETWORK RAIL
(ESSEX AND OTHERS LEVEL CROSSING
REDUCTION)
ORDER**

PROOF OF EVIDENCE

-OF-

NIGEL BILLINGSLEY

PROPERTY

Document Reference	NR/29/1
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9. DECLARATIONS

1. INTRODUCTION

- 1.1. My full name is Nigel Billingsley. I am an equity partner at Bruton Knowles, a firm of chartered surveyors with the head office at Olympus House, Quedgeley, Gloucester GL2 4NF. The firm operates from some 12 offices throughout England and Wales and I am based in the Leeds office.
- 1.2. I am a member of The Royal Institution of Chartered Surveyors (RICS) having qualified in 1990 and a RICS registered valuer. I obtained a BSc Degree in Minerals and Estates Management from Sheffield Polytechnic in 1988 and was awarded a post graduate diploma in Urban Studies from Northumbria University in 1992.
- 1.3. I have worked for Bruton Knowles since 2004 and have practiced predominantly within the field of compulsory purchase and compensation. I have acted for a number of acquiring authority clients and claimants affected by projects including Compulsory Purchase Orders, Development Consent Orders and Transport & Works Act Orders (TWAOs).
- 1.4. In 2015 Bruton Knowles tendered for inclusion on the Network Rail Property services framework and was successful. The areas of work covered by the tender included compulsory purchase and Bruton Knowles was awarded a commission to undertake property support services in respect of the Anglia level crossing reduction program. The award was made under the auspices of the framework contract in November 2016.
- 1.5. The Anglia Level crossing reduction program is being promoted by means of three separate TWAOs being made, of which the current Order, the Essex and Others Level Crossing Reduction Order ("the Scheme"), is one.
- 1.6. My role is to manage the Bruton Knowles team delivering the work awarded under the contract, the work involves sending notices and positioning and checking site notices across the three TWAOs. In addition Bruton Knowles are providing support to Network Rail's in house property and consents team including through the post-deposit and inquiry process, and negotiating with affected landowners and interest holders.
- 1.7. I am aware of the details of the Scheme from the study of the application documents including Scheme drawings. I have familiarised myself with the crossings affected including attending site visits where appropriate. I have also attended meetings with the other members of the Scheme project team.

- 1.8. Where I have not undertaken discussions personally with landowners I have been kept fully informed by Network Rail staff, consultants, and contractors. Where Bruton Knowles have engaged in direct discussions colleagues have reported details of the meetings to me. Where appropriate, Network Rail staff have provided me with notes of meetings and relevant correspondence.
- 1.9. I have studied publicly available information on properties that I have not been able to inspect and I have considered the objections and representations that have been submitted.

2. SCOPE OF EVIDENCE

- 2.1. My Proof of Evidence will address the property impacts of the Scheme and will cover the matters set out below:
- 2.2. A description of the purpose of the draft Transport and Works Act Order (NR02) and consideration of the rights and powers that are sought by Network Rail in the Order to facilitate the Scheme and the approach to acquiring the rights focussing on those rights and powers that affect private land are considered.
- 2.3. A review of the compensation provisions available to those private landowners affected by the Scheme.
- 2.4. A description of engagement with landowners during the period prior to and after the publication of the TWAO.
- 2.5. Response to objections by landowners on a crossing by crossing basis.

3. **POWERS SOUGHT BY NETWORK RAIL**

Purpose of the Order

- 3.1. The purpose of the proposed Network Rail (Essex and Others Level Crossing Reduction) Order is to enable Network Rail to close or downgrade specified level crossings in Essex, Hertfordshire, Thurrock, London Borough of Havering and Southend on Sea and, where necessary, to extinguish existing public and/or private rights over crossings; and to create alternative public or private rights of way in substitution. The Order authorises Network Rail to carry out works associated with the closure or downgrade of level crossings and creation of alternative rights of way, including the construction of footbridges to carry new public rights of way over drains or watercourses.
- 3.2. In particular, article 5 of the Order allows Network Rail to construct and maintain works:
- 3.2.1 for the creation of the new rights of way set out in column 4, Part 1 of Schedule 2 to the Order;
- 3.2.2. associated with the removal of the crossings and extinguishment of existing rights set out in Schedule 2;
- 3.2.3 to provide private rights of access set out in Schedule 3, and
- 3.2.4 relating to the redesignation of certain highways set out in Schedule 4.
- 3.3. Network Rail is under an obligation under section 5(6) of the Transport and Works Act which requires Network Rail not to extinguish any public right of way unless the Secretary of State is satisfied that an alternative public right of way has been provided or that the provision of an alternative right of way is not required.
- 3.4. Therefore, Network Rail, acting in accordance with both the DCLG Guidance on the Compulsory Purchase process and the Crichel Down Rules (“the DCLG Guidance”) and the DfT Guide to TWA Procedures, identified a number of key rights and powers that are to be sought in the TWAO. In particular the Order enables Network Rail to compulsorily acquire permanent rights in land and to temporarily occupy land in connection with the construction of the works to be authorised by the Order. The rights and powers predominantly affect private landowners.
- 3.5. Network Rail is willing to seek to acquire the temporary occupation or rights (including for access) in land by agreement but in order to provide suitable and convenient public rights of way (bearing in mind its obligation under section 5(6) of the Transport and Act), which connect coherently to the existing PROW network, Network Rail has sought to compulsorily acquire the necessary land or rights in land. Network Rail has however limited the extent of the acquisition to only what is

reasonably needed in order to construct the scheme. It has therefore taken powers only to temporarily occupy land so as to create the new public rights of way and has not sought to acquire outright strips of private land which it does not need and which would be wholly disproportionate given the nature of this scheme. Network Rail therefore considers that there is a compelling case in the public interest to acquire the necessary use and rights in land to enable the closure and downgrade of level crossings as set out in the proposed Order.

3.6. These powers would guarantee that should the Order be made, all the land required for the Scheme can be acquired in a realistic timescale and that no individual landowner can hold up the Scheme through a refusal to sell or licence its interest. It would also ensure that no adverse interests prevent the Scheme being delivered. In practice, it would be impossible to assemble all the necessary land interests in a reasonable timescale without the use of such compulsory powers.

3.7. The rights and powers in the Order are explained in more detail below.

3.7.1. Closure of level crossings subject to opening of new rights of way

3.7.1.1. Article 13 of the Order provides for closure of the level crossings and extinguishment of public rights of way as set out in Part 1 of Schedule 2. Part 1 of Schedule 2 to the Order sets out the status and extent of the new highway in column 4 by reference to the Order plans. The alternative routes are either along existing public highway or are created across private land.

3.7.1.2. It is important to note that article 13 imposes a restriction on Network Rail so that it cannot close any of the crossings contained in Part 1 of Schedule 2 until the new public rights of way has been completed to the reasonable satisfaction of the highway authority. Article 13 also makes provision for anyone who suffers loss in relation to the extinguishment of a private right over a crossing specified in Part 1 of Schedule 2 to claim compensation. The rights of statutory undertakers are not affected by the closure of the crossing.

3.7.2. Closure of level crossings without substitution

3.7.2.1. Article 14 of the Order provides for closure of the level crossings in Part 2 of Schedule 2 in cases where no substitution is required. Part 2 of Schedule 2 deals with those locations where no new alternative right of way is being provided. In the case of each of the crossings identified in Part 2 of Schedule 2 to the Order (E01 Old Lane, E10 Dixies, E15 Parsonage Lane/Margaretting, E36 Cranes No. 2, E54 Bures, E49 Maria Street, E43 High Elm, HA1 Butts Lane, HA2 Woodhall Crescent, E26 Barbara Close, and E32 Woodgrange Close) Network Rail considers that a suitable and convenient route already exists (as indicated on the design freeze plans in the Design Guide (NR12) and has not therefore provided a new right of way in substitution. Article 14 makes provision for anyone who suffers loss in

relation to the extinguishment of a private right over a crossing specified in Part 2 of Schedule 2 to claim compensation. The rights of statutory undertakers are not affected by the closure of the crossing.

3.7.3. Redesignation of Highways

3.7.3.1. Article 12 provides for the redesignation of highways set out in Schedule 4 from the current designation in column 3 to the designation in column 4.

3.7.4. Creation and maintenance of new highway

3.7.4.1. Article 15 sets out the position relating to creation and maintenance of the new public rights of way set out in Part 1 of Schedule 2 to the Order. The new public rights of way (highways) are to be completed to the reasonable satisfaction of the highway authority and obtain formal status when they are formally completed. They will then be maintained by Network Rail for the first twelve months, after which the Highway Authority will be responsible. Article 15 also applies the compensation provisions under section 28 of the Highways Act to the new public rights of way, to allow those who wish to bring a claim to contact Network Rail.

3.7.5. Permanent acquisition of land

3.7.5.1. The only plot in the Order as applied for over which powers of permanent acquisition were sought, agreement has now been reached for Network Rail to acquire the land by agreement.

3.7.6. Permanent acquisition of rights of access over land

3.7.6.1. The Order, if approved, would authorise Network Rail to acquire new rights of access over the land detailed in Schedule 6 to the TWAO. The purposes for which such rights may be acquired are for access, for access for the creation of a public right of way, access for the removal of a level crossing and associated infrastructure, access for construction of the authorised work or access for maintenance.

3.7.6.2. Although the acquisition in the Order is for a permanent right of access over land, except in those cases of access for maintenance and access to the railway, the rights required are, in effect, temporary, to be exercised only in relation to the works to close the level crossing, any extinguishment of existing public rights of way, and in relation to works to create the alternative public or private rights of way.

3.7.7. Temporary Rights for construction purposes over land

3.7.7.1. The Order, if approved, would also authorise Network Rail to enter upon and take temporary possession of land specified in Schedule 7 to the Order for use as a worksite during construction, to create the new public rights of way on the land including construction of any associated footbridges, creating any temporary accesses for removal of the level crossing, creation of the new public right of way or construction of authorised works. The powers are time limited and the land must be returned to the landowner within twelve months of the completion of the works for which the land was taken.

3.7.8. Temporary Rights of Entry for Maintenance Purposes

3.7.8.1. The TWAO also provides powers in article 23 for the temporary use of any land within the Order limits if it is reasonably required for the purpose of maintaining the authorised works and to construct any temporary works associated with that maintenance. These powers cover a twelve month maintenance period commencing upon the date that the work is opened for use. Network Rail will be responsible for the new public rights of way and related footbridges for the first twelve months after construction, after which the local highway authority takes responsibility.

3.7.9. Powers to Extinguish Private Rights

3.7.9.1. The TWAO further provides for the extinguishments of private rights of way over five accommodation crossings, listed at article 27(2) and are set out below:

- Ugley Lane crossing between points P097 and P098 in the Parish of Henham, District of Uttlesford, County of Essex (E07);
- Wallaces crossing between points P135 and P136 in the Parish of Wendens Ambo, District of Uttlesford, County of Essex (E12);
- Wivenhoe Park crossing between points P290 and P291 in the Parish of Wivenhoe, Borough of Colchester, County of Essex (E57);
- Fowlers crossing between points P056 and P057 in the Parish of Thorley, District of East Hertfordshire, County of Hertfordshire (H09); and
- Slipe Lane crossing between points P008 and P009 in the Borough of Broxbourne, County of Hertfordshire (H03).

3.7.9.2. These crossings are included separately in article 27 because either there are no public rights of way over them (Ugley Lane, Wallaces and Fowlers) or

because the public rights of way which also exist are not being extinguished. In each case, therefore, they do not appear in Schedule 2. Whipps Farmers crossing however has both the public and private rights extinguished and so it does appear in Schedule 2.

3.7.10. Acquisition of Permanent Private Rights of Access

3.7.10.1. As set out above, the Order provides for the extinguishment of private rights over a number of level crossings. The Order provides the power in article 21 to permanently acquire at four specific locations new private vehicular rights of access for the benefit of certain land (shown cross hatched on the Order plans) affected by the extinguishment of private rights over the crossings. The locations where the new private rights are being acquired are set out in Schedule 3 to the Order and in more detail below:

- In relation to the removal of private vehicular rights at Slipe Lane crossing in the Borough of Broxbourne, County of Hertfordshire between points P008A and P009A and plot 8 shown on sheet 03 of the Order plans.
- In relation to the removal of private vehicular rights at Fowlers crossing in the District of Thorley, County of Hertfordshire over Plot 32 in the Parish of Thorley on sheet 09 of the Order plans
- In relation to the removal of private vehicular rights at Wivenhoe Park crossing in the Borough of Colchester, County of Essex between points P289A, 289B, 289C and 289D over plots 1, 2, 3, 4, 6, 7, 8, 9 and 10 shown on sheet 42 of the Order plans; and
- In relation to the removal of private vehicular rights at Whipps Farmers crossing in the Borough of Colchester, County of Essex between points P375 and P376, plots 38 and 40, on sheets 57 of the Order plans.

3.7.11. Grant of rights over level crossings

3.7.11.1. Article 28 clarifies that in relation to Trinity Lane and Parsonage Crossings where public vehicular rights of way are to be extinguished, vehicular rights of access will be retained for certain users permitted by Network Rail.

3.7.12. Additional Rights of Entry

3.7.13. In addition to the primary rights outlined above the TWAO provides powers to Network Rail to lop trees overhanging the works as set out in article 32 of the Order and to enter on Private land for survey and investigation purposes as set out in article 17 of the Order.

- 3.8. The Order also provides for certain works to alter or interfere with the highway. This includes powers to temporarily stop up streets (article 9), alter the layout of streets (article 7) or to carry out other works in the street (article 8) associated with the provision of alternative routes or the extinguishment of existing rights, including to provide new or extended footways or pedestrian refuges (traffic islands). The streets specifically identified as affected by these powers are set out in Schedules 8 and 9 and 10. The Order also incorporates certain provisions of the New Road and Street Works Act 1991 where works are required in the street or streets closed temporarily.
- 3.9. Hence if approved the TWAO will grant powers to, close certain level crossings, create new rights of way, construct works, downgrade the status of other crossings and related highways, take land on a temporary basis, impose rights on land, extinguish private access rights, grant private rights over certain crossings, undertake works affecting the highway and allow entry for survey and tree lopping purposes. The rights set out in the TWAO are all required to facilitate delivery of the Scheme.

4. COMPENSATION PROVISIONS

- 4.1. Where Network Rail impact upon private land and rights the TWAO provides for compensation to be paid to the landowners. The TWAO incorporates elements of the legislation which makes up the Compensation Code, and provides for appropriate variations to that legislation as it applies to the present Order: in particular the Compulsory Purchase Act 1965, the Land Compensation Act 1973 and the Land Acquisition Act 1981, these being key cornerstones of the UK Compensation legislation. Along with case law and other legislation these help form the Compensation Code which provides for proper compensation to be paid to those having land taken from them to facilitate schemes undertaken in the public interest in the UK.
- 4.2. The compensation provisions in the TWAO vary depending upon the rights being acquired or extinguished which I detail below by reference to each right.
- 4.3. As set out in section 3 of my proof above, the powers sought in the Order will enable Network Rail to take temporary possession of land or acquire new rights in land for access for construction of the works, and to take permanent rights of access for third parties as a consequence of the closure or downgrade of a crossing upon service of appropriate notices.
- 4.4. As also set out in section 3 of my proof, although the powers would enable Network Rail to take possession without the landowner's consent if necessary, Network Rail is willing to reach agreement in advance of using compulsory purchase powers in accordance with the DCLG Guidance.
- 4.5. The Order invokes Part 1 of the Compulsory Purchase Act 1965 which, through its application, has the effect of requiring Network Rail to pay compensation to qualifying parties under the Compensation Code for acquisition of new rights in land for access for construction of the works, or for rights of access for third parties. Compensation for temporary possession of land is addressed in article 22(5) and article 23(6).
- 4.6. All property owners who have rights imposed on their land under the Order, as set out in Schedules 3 and 6, will be entitled to claim compensation in accordance with the Code, which provides a consistent approach to the assessment of fair compensation (as may legally be varied from time to time).
- 4.7. In addition to compensation being paid for the value of land taken, compensation will also be payable in respect to any loss in a landowner's retained property caused by it being severed from the land acquired, or by the Scheme itself.
- 4.8. Compensation is also payable in respect to disturbance losses that result from the construction of the Scheme. The total compensation to be paid is usually agreed

between the parties. In the event that agreement cannot be reached then fair compensation can be independently determined by both parties making a joint reference via the Alternative Dispute Resolution (ADR) process, or by one or both parties making a reference to the Upper Tribunal (Lands Chamber).

- 4.9. The compensation payable in relation to the acquisition of particular interests in land is therefore as follows:

4.9.1. Permanent acquisition of land

4.9.1.1. As explained in section 3 above, Network Rail is no longer acquiring any land permanently under this Order.

4.9.2. Permanent acquisition of rights over land

4.9.2.1. As explained in section 3, the TWAO provides Network Rail with the power to permanently acquire new rights for third parties, over the land specified in Schedule 3 and also to acquire rights for access over the land set out in Schedule 6. Network Rail acknowledges that it is appropriate to provide for compensation to those who have a land interest that is affected by the new rights. This would be effectively on the same basis as if the land had been acquired permanently, that is on the basis of the value of the interest acquired and loss due to injurious affection

4.9.2.2. Schedule 13 of the TWAO provides, in paragraph 2(3) for section 7 of the Compulsory Purchase Act 1965 (which sets out the compensation payable for severance of land) to be applied in a modified form in the case of acquisition of such new rights. Paragraph 2(3) sets out that the measure of compensation to be applied is not only the extent to which the value of the land has been depreciated by the acquisition of the new rights, but also to any damage sustained by the owner due to the taking of the right or injurious affection arising from the exercise of the powers in the TWAO.

4.9.2.3. A number of other heads of claim are also recoverable including reasonable surveyors fees and interest.

4.9.3. Temporary Rights for construction purposes over land and Temporary Rights of Entry for Maintenance Purposes

4.9.3.1. In relation to land to be occupied temporarily under the powers in article 22, as set out in Schedule 7 to the Order, and under article 23 for maintenance of works, Network Rail must pay compensation for any loss or damage arising from the exercise of the powers in the TWAO. This provision is different to that where permanent rights are taken or where land is acquired because in exercising temporary powers Network Rail is not required to take a legal interest in the land. In the event that the parties cannot agree the amount of any

compensation to be paid the dispute will be referred to the Lands Chamber of the Upper Tribunal.

In all cases where land is required to be used by Network Rail on a temporary basis such land will be returned to the landowner within the time limits set out in articles 22 and 23 of the Order. Before giving up temporary possession of such land Network Rail must restore the land to the reasonable satisfaction of the owners of that land in accordance with the provisions contained in either article 22(4) or article 23(5) of the Order as appropriate.

4.9.4. Powers to Suspend or Extinguish Private Rights

4.9.4.1. Articles 9, 13, 14, 26 and 27 of the Order extinguish or suspend private rights and provide for affected landowners to claim compensation. There is also a provision in the Order to take disputed compensation to the Upper Chamber for determination. A claim will be based on a diminution in the value of the land without the right in place.

4.9.5. Additional Rights of Entry

4.9.5.1. In both the circumstances where overhanging trees are lopped or land is accessed for survey work the TWAO provides for Network Rail to pay compensation for loss or damage arising from the exercise of the powers.

4.9.6. New Public Rights of Way over Land

4.9.6.1. As set out above the TWAO provides for new public rights of way to be created over land. Compensation for any loss or damage resulting from the works to create those new rights of way is set out above, however Article 15(3) makes express provision for compensation to be paid for depreciation in the value of the interest in land or for damage suffered by being disturbed in the enjoyment of the land by applying the provisions of section 28 of the Highways Act 1980 (which provides for compensation for landowners affected by a public path creation order) to the present Order.

4.9.6.2. The provisions are restricted to claiming for loss incurred on the land across which the path crosses rather than general loss to the interest which is affected by the land as the landowner retains the land subject to the imposition of the new public right of way.

- 4.10. The TWAO also makes provision for dealing with as to the quantum of compensation to be paid, in that the parties are able to refer the dispute Upper Tribunal (Lands Chamber) for determination.

- 4.11. Hence although the TWAO provides Network Rail with powers to interfere with private land interests such interference is subject to the payment of compensation and the interference is kept to only that which is required to secure the purposes of the Order.

5. COMMUNICATION AND ENGAGEMENT

- 5.1. As part of the development of the Scheme Network Rail undertook a series of consultation events to gauge opinion regarding the Scheme. Details of the consultation that was undertaken is set out in the Statement of Consultation (**NR/05**) and addressed more specifically in the evidence of Eliane Algaard and Andrew Kenning. This demonstrates that considerable efforts were taken to consult with interested parties prior to confirming the Scheme proposals.
- 5.2. A consultation strategy was developed to adhere to the statutory requirements from Rule 10(2) (d) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. It also helped to ensure that the consultation process was inclusive and effective, improving the acceptability of the proposals to be applied for within Scheme. Again, this is detailed in the Statement of Consultation.
- 5.3. Consultation was held with a number of stakeholder groups as set out below:
- 5.3.1.1. Strategic stakeholders (Local Planning and Highway Authorities; MPs, Councillors, Parish Councils etc.)
 - 5.3.1.2. Statutory consultees (i.e. as identified within Schedules 5 and 6 of the Transport and Works Act 1992);
 - 5.3.1.3. Landowners (including tenants, occupiers, and parties with private rights of way);
 - 5.3.1.4. Local access, user, and interest groups;
 - 5.3.1.5. The general public.
- 5.4. Two significant rounds of consultation were held in June 2016 and again in September /October 2017. These were supplemented by an information update in December 2016 where feedback on the results of consultation was presented publicly.
- 5.5. More specifically landowners and other holders of property interests were contacted by Network Rails consultants and Network Rail themselves. I have noted above that Bruton Knowles were not involved in the project until early 2017 and I set out understanding of the consultation process as confirmed to me by Network Rail and their advisors.
- 5.6. The approach adopted for consulting with landowners and other affected parties is described below :

- 5.7. Details for affected landowners were obtained from the Land Registry; this enabled the team to undertake initial desktop investigations and discussions with landowners. This also enabled the identification of other affected parties (including tenants, occupiers, and parties with private rights of way).
- 5.8. At GRIP Stage 1, a prioritised list of potentially directly affected landowners were consulted, to enquire about the operation of the land, make arrangements to gain access for surveys and obtain information for initial compensation cost estimates. This was undertaken via letter and telephone discussions. In addition a small number of additional land owners were consulted during site visits if the opportunity arose.
- 5.9. At GRIP Stage 2-3, written correspondence and discussions continued with landowners during three phases of activity as set out below:
- 5.10. An initial phase of consultation activity (between April and July/August 2016) was undertaken with landowners directly affected by the proposals; namely, where the proposals involved the creation of a new public right of way across their land, where their private user rights to a level crossing would be affected, or for land adjacent to a public level crossing being affected.
- 5.11. A second phase of consultation between August and October 2016 for key landowners on single preferred options.
- 5.12. The third phase of consultation (between November and December 2016) was undertaken with landowners where there were potential significant impacts, or where changes to the proposals as a result of the consultation process or other engineering or environment reason had taken place, etc., and where design evolution had identified new landowners / parties affected by the proposals.
- 5.13. A fourth phase of consultation activity (between December 2016 and February 2017) was undertaken by Bruton Knowles with landowners/affected parties including those subject to the acquisition of temporary access rights. This comprised progression of discussions with parties previously engaged and the engagement of new parties where identified through earlier consultation. This was undertaken through written correspondence, telephone discussions.
- 5.14. All landowners/affected parties identified through the referencing process were written to, given an opportunity to discuss the proposals, advised of how their interest could be affected and where to view the current design.
- 5.15. The team made on average three separate attempts to contact individual land parties to ensure that they had sufficient opportunity to be consulted. Furthermore, to establish the use of private user crossings, a questionnaire was produced for completion by those with rights to use at least one of the four private user crossings

being considered within the Essex and others area. Crossings identified within the study area within the Essex and others area are as follows: E07 Ugley Lane, E12 Wallaces, E57 Wivenhoe Park, H09 Fowlers.

- 5.16. This questionnaire sought to capture not only the average use of the level crossing but also whether there were any times of the year when usage peaked (such as during the harvesting season). The questionnaire was posted to interested parties on Friday 2nd December 2016. A freepost return addressed envelope and details of the project email address to which responses could be sent were enclosed. The deadline for responses was set as Friday 16th December 2016. The survey was issued again to those who had not provided a response on Wednesday 11th January 2017, with a revised response date set for 23rd January 2017. Of the questionnaires issued to the five private users, only two responses were received one at E57 and one at E12.
- 5.17. Network Rail has confirmed to me that all identified parties in the Book of Reference have been consulted prior to submission of the Order.
- 5.18. Network Rail considers it important to minimise the land required in the TWAO and the engineering design and consultation processes have been undertaken to ensure the land identified for both temporary and permanent acquisition is that which is required for the successful development of the Scheme...
- 5.19. To provide an alternative route, where required under s.5(6) of the 1992 Act, Network Rail must either utilise existing highway or create a path across private land. There are often competing interests which need to be balanced when identifying the appropriate solution. In particular, private landowners would often prefer that replacement path be provided along the existing highway, rather than their property, but that may not be a suitable solution, with an infield walking route needing to be provided rather than requiring pedestrians to utilise the existing highway land.
- 5.20. The replacement routes may also require a path to be provided across parcels of land in different ownership and, as set out above, need to connect coherently to the wider PROW network. This means that Network Rail does not have the same flexibility as a developer might have on a different scheme to try to reach agreement with an affected landowner as to those parts of his land required for the Scheme. Further, Network Rail must also bear in mind the needs of third party users who are not party to any such discussions with the affected landowner. The scope to enter into detailed discussion and enter private arrangement with landowners is thus limited by the Network Rail obligations to those third party users, which must be weighed in the balance when considering the appropriate diversionary route.
- 5.21. Network Rail is seeking compulsory acquisition powers in the TWAO (NR02-ECC) to enable Network Rail to secure, in a timely, efficient and economical manner, the

land interests and rights which Network Rail have identified, following consultation, as being required for the delivery of the level crossing reduction scheme. Not only would it would be impracticable to rely on securing all of the rights and land needed by agreement the securing of such would compromise Network Rail's obligation to the third party rights users.

6. **HUMAN RIGHTS**

- 6.1. Article 1 of the First Protocol to the European Convention on Human Rights states that “Every natural or legal person is entitled to peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”.
- 6.2. Article 1 is a qualified right in that no one shall be deprived of his possessions “except in the public interest and subject to the conditions provided for by law”.
- 6.3. The compulsory acquisition of land for the railway purposes specified in the TWAO is authorised by, and subject to, the Transport and Works Act 1992 (the 1992 Act). By enacting the 1992 Act the Government has determined that, subject to procedural safeguards, it can be in the public interest for individualsto be deprived of their land for railway purposes. The procedural safeguards are provided by the 1992 Act, The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and the Transport and Works (Inquiries Procedure) Rules 2004 which enable objections to be raised to compulsory acquisition and considered by an independent inspector. In addition, where land is authorised to be compulsorily purchased by the making of an order under the 1992 Act, compensation will be payable under the compensation code, as applied by that order (discussed in Section 4 above). Where disputes as to the amount of compensation arise, these may be referred for independent consideration by the Lands Chamber of the Upper Tribunal.
- 6.4. The TWAO is being pursued in the public interest, as is required by Article 1 of the First Protocol where compulsory acquisition of property is concerned. The public benefits associated with the TWAO are set out in the Proofs of Evidence of Mark Brunnen and Eliane Algaard. For these reasons, the railway purposes for which the TWAO powers are being sought are sufficient to justify interfering with the human rights of the landowners proposed to be affected. The TWAO, including the requirement to pay compensation, strikes a fair and proportionate balance between the private interests of the landowners and the public interest in securing the benefits of the Scheme to the national railway network. Therefore, the interference with Convention rights is justified.

7. LANDOWNERS AFFECTED BY THE USE OF COMPULSORY RIGHTS

- 7.1. There are a significant number of interest holders included in the Book of Reference (**NR08**). Of these, whilst a number of landowners objected to and made representations regarding the Scheme, the majority of interest holders have not sought to object to or make representations in relation to the TWAO.
- 7.2. Network Rail and their contractors and consultants have had discussions with a number of property interest holders prior to the TWAO being made and their views were considered in the development of the TWAO as set out in Section 5 above and detailed more particularly in the Proofs of Evidence of Andrew Kenning and Susan Tilbrook.
- 7.3. Network Rail will continue, where possible, to engage with affected landowners, to ascertain if their concerns can be overcome, and will continue to engage with them during the detailed design stage, if the Order is confirmed, particularly with a view to ensuring that concerns about security of property are addressed, for example, by consideration of appropriate fencing or gate treatments which could be applied.
- 7.4. A number of objections to the Scheme have been received, many of the objectors do not have a legal interest in land affected by the Scheme and therefore I do not consider those objections. I summarise and comment upon objections lodged by landowners and on a crossing by crossing basis.
- 7.5. I set out in section 8 responses to objections by reference to correspondence from Network Rail within the scope of my evidence. In so far as the responses refer to alternative routes or safety issues, these matters are addressed in the proofs of evidence of Susan Tilbrook and Andrew Kenning.

8 CROSSINGS

8.1 E01 Old Lane, E02 Camps, E03 Sadlers

Objector – Paul Camp (E01, E02, E03)

Objector Reference – 164

8.1.1 A summary of the key points of objection is set out below

- Complaints over poor consultation.
- [Closure removes a vehicle crossing to half the farm].
- The proposals reduce safety, only one foot crossing is being closed, pushing foot traffic to the other two crossings, which are not as safe
 - The underpass, east of Sadlers, if refurbished could provide reasonable access.
 - Proposed new path along southern boundary of farm is not acceptable, as longer and less convenient for walkers, invades privacy, and has maintenance implications.
 - Alternative routing is suggested

8.1.2 Response to Objection

8.1.2.1 I have set out in Section 5 of my Proof the consultation carried out with affected landowners. I confirm that Network Rail has met with and discussed the proposals with members of the Camp family who operate agricultural business in the area, and alternative proposals considered.

8.1.2.2 Private vehicular rights over E02 will be retained

8.1.2.3 The use of the underpass east of Sadlers was considered, but not progressed for the reasons explained in the Proofs of Evidence of Andrew Kenning and Susan Tilbrook.

8.1.2.4 Alternative routes have been considered but are not seen as effective as those proposed by Network Rail design team again further details are set out below.

Objector - Christopher Morris Camp (E02 Camps)

Objector Reference– 069

8.1.3 A summary of the main areas of objection is set out below :

- Notices process was legally flawed

- The proposed route is far longer than the existing one and walkers will be unduly inconvenienced; alternative routes proposed by landowners are of similar length to the existing ones, no less direct and no less convenient to users
- Stopping up a section of footpath 75 Harlow will leave an awkward dog leg in the farmyard at Roydon Lea Farm
- The proposed route would run along the middle of floristically enhanced field margins currently in a Higher Level Scheme agri-environmental agreement with Natural England – this is not conducive to the wildlife conservation aims of the scheme
- The inclusion of a 2 metre width footpath within 6 metre field margins would require the width of the field margins to be increased by 2 metres, which would reduce the area available for crops in the adjacent fields

8.1.4 Response to Objection

8.1.4.1 Network Rail has set out a detailed response to Mr Camp by letter of 5th September 2017. I set out below the material sections from that letter in respect of the notice procedure:

"It is noted that certain land was in the ownership of Mrs Trixie Camp, and Mr David Camp, who have passed away. Network Rail's referencing agent were in contact with members of the Camp family trying to ascertain who held the interests in the land after the death of Mr and Mrs Camp. An email was sent on 03.02.17 to Chris Camp asking for details of who the land had passed to but no response was received. Notices were therefore served on the registered freeholders as held by the Land Registry. In response to those notices your objections were received within the statutory representation period and you are able to appear at the inquiry. With regard to the site notices, in accordance with the TWA (Applications and Objections Procedure) (England and Wales) Rules 2006, notices were posted at the points of extinguishment and diversion. These notices provided sufficient information to the user as to the proposed extinguishment and diversion of the PROW and provided details of where the user could inspect the full set of application documents and how to object or make a representation.

[]

The length of diversion depends on the origin and destination of the user. The provision of the new east-west footpath to the south of the railway will shorten walking routes for those approaching from the west and offer alternative circular walking routes in the area. Those approaching from the east will be unaffected, or have a shorter route via the new footpath. Those approaching from the north or south may have a longer route depending on their destination, but again alternative circular routes will be opened up.

The provision of the new east – west footpath opens up new routes and is considered to mitigate the loss of other footpaths in the area.

In accordance with section 5(6) of the Transport and Works Act 1992, Network Rail cannot extinguish a public right of way over land in the Order unless it can satisfy the Secretary of State either that an alternative right of way has been or will be provided, or that the provision of a right of way is not required. Network Rail has therefore considered carefully whether a new public right of way is required or not. A government Guide to TWA Procedures states that “If 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”. Network Rail considers that the proposed diversionary routes are a suitable and convenient replacement for existing users.

The length of public footpath within the golf course is an existing public right of way. The new public footpaths are all located with field margins, and replace existing PRowS which are partially cross field routes – ie, the length of cross field routes will be reduced under the proposals.

The alternative solution proposed does have some merit, however it does represent a significant reduction in the overall PRow network with a loss of approximately 1125m of footpath (including the provision of the Cannons Brook route). This level of loss of PRow and amenity for users is not considered to be desirable and is unlikely to be acceptable to other key stakeholders.

[]

Network Rail seeks to minimize impact on the HLS scheme and we are happy to further discuss this matter with you and Natural England as to the implications of the proposals.”

Objector – Camp family (E02 Camps)

Objector Reference – 133

8.1.5 A summary of the main areas of objection is set out below :

- Objected on the basis that the notices process was legally flawed
- Stopping up of footpath 75 Harlow leaves a dog-leg at southern section
- Not conducive to Natural England's wildlife conservation aims
- Impact on Higher level Agricultural subsidy scheme
- Impact on residents of Roydon le farm Cottage enjoyment

8.1.6 Response

8.1.6.1 I have commented on the notices above.

8.1.6.2 With regard to the other issues noted I have reviewed the objection letter on behalf of the Camp family and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which I set out below:

The length of diversion depends on the origin and destination of the user. The provision of the new east-west footpath to the south of the railway will shorten walking routes for those approaching from the west and offer alternative circular walking routes in the area. Those approaching from the east will be unaffected, or have a shorter route via the new footpath. Those approaching from the north or south may have a longer route depending on their destination, but again alternative circular routes will be opened up.

The provision of the new east – west footpath opens up new routes and is considered to mitigate the loss of other footpaths in the area.

The length of public footpath within the golf course is an existing public right of way. The new public footpaths are all located with field margins, and replace existing PRowS which are partially cross field routes – ie, the length of cross field routes will be reduced under the proposals.

Network Rail seeks to minimize impact on the HLS scheme and we are happy to further discuss this matter with you and Natural England as to the implications of the proposals.

The proposed diversion runs in the field margin to the south of Roydon Lea Farm and is some distance from any buildings. The route requires walkers to cross the access track to the farm. This crossing would be at 90 degrees to the track, with over 100m of visibility in both directions. The track itself is less than 5m in width which equates to a crossing time of less than 5 seconds. This is not considered a hazard to walkers or vehicles on the track.”

8.1.6.3 It should be noted that Network Rail will continue to seek to liaise to resolve any outstanding issues with the affected landowners in the event that the TWAO is approved.

Objector – Mrs Susan Clarke (E02 Camps and E03 Sadlers)

Objector Reference – 094

8.1.7 A summary of the main areas of objection is set out below :

- New route passes house - removing privacy and devaluing property, Walkers have little regard for the environment and residents.
- The route itself is dangerous for walkers.

8.1.8 Response

8.1.8.1 I have reviewed the objection letter on behalf of Mrs Clarke and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which I set out below:

“The existing footpath network runs through the middle of the farmyard, and within 30m of the farmhouse. The public footpath heading north to Camps LX would be extinguished, removing the PRow closest to the farmhouse and cottage. The new footpath to the southern boundary of the farm is over 100m, at its nearest point, to the garden of the cottage, and 200m to the farmhouse. It is considered that the proposals can only improve the privacy of these dwellings.

The proposed diversion route requires walker to cross the access track to the farm. This crossing would be at 90 degrees to the track, with over 100m of visibility in both directions. The track itself is less than 5m in width which equates to a crossing time of less than 5 seconds. This is not considered a hazard to walkers or vehicles on the track. The paddock area is fenced off from the rest of the field and is over 50m from the nearest point of the proposed new footpath.

The proposed new footpath will be unsurfaced resulting in a low construction cost. The footpath will be maintained by Essex County Council, with discussions ongoing in regard to an appropriate level of commuted sums for maintenance across the county.

[]

In terms of the impact on the value of your interest, you may be entitled to compensation in line with the compensation code.”

8.1.8.2 As stated above, Network Rail will continue to liaise with the affected landowners both during the inquiry process and, if the Order is approved, both during and after its implementation to minimise the impact of the works.

8.2 E04 Parndon Mill

Objector – Hollie Howe (on behalf of Kier Living Limited)

Objector Reference – 175

8.2.1 A summary of the main areas of objection is set out below :

- Proposed footpath fails to take account of the residential planning permission at Ram Gorse, which is due to be implemented in summer 2017.
- It will not be possible for a footpath to run along the edge of the whilst the development is constructed.
- The proposed route does not take into account the physical constraints of the site (sloping ground, group of protected trees)

8.2.2 Response

8.2.2.1 I have reviewed the objection letter on behalf of Ms Howe and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which I set out below.

“Network Rail is aware of and have taken into consideration your planning application. We also note that your works are scheduled for July 2017. Plot 1 and plot 37 in your planning application (ref: HW/PL/14/00361) may be impacted by the footpath diversion and scheduled for works in July 2017. This Order, if granted, is expected to be made during 2018 and the Transport Works Act powers shall be effective for 5 years thereafter.

Network Rail would welcome further discussions with Kier to discuss timing of our respective works. This should also remove any concerns you may have with regards to the safety of pedestrians using the footpath whilst works are being undertaken.

We note your comment about protected trees. The proposed footpath diversion runs along the site’s western edge not the northern and it would be helpful to discuss your concerns in more detail when we meet. As you will be aware, Network Rail and Keir Living are proposing to meet in the week beginning 11 September to discuss the various concerns you raise.”

8.2.2.2 Network Rail will continue to liaise with Kier Living Ltd during the inquiry process and, if approved both during and after the implementation of the TWAO to minimise the impact of the works.

8.3 E05 Fullers End

Objector – Sasha Holmes

Objector Reference – 115

8.3.1 A summary of the main areas of objection is set out below :

- The proposed footpath will impact upon the privacy and amenity of the objector family property. The Objector suggests that an underpass is developed to replace the crossing.

8.3.2 Response

8.3.2.1 The impact on the property and the proposed underpass has been considered by Network Rail and the diversionary route considered to be acceptable, as detailed in the Proofs of Evidence of Andrew Kenning and Susan Tilbrook. The issues raised in the objection were also responded to

by Network Rail in a letter to the objector of 31st August 2017 the key points of which are set out below.

“Network Rail is proposing that the diversionary route is created such that it is surfaced, accessible and suitable for all sections of the community. Network Rail’s proposal includes provision of lighting on the new proposed route and existing underpass. The presence of housing close to the underpass will assist the feeling of security and deter anti-social behaviour.

Owing to the increase in risk that invariably follows an increase in usage, Network Rail opposes developments where they will result in increased usage of level crossings. The new developments in Elsenham are not all of a great size individually, such that there will necessarily be a significant effect on average level crossing usage. However, collectively they are having a significant impact on numbers of potential users of the level crossing, their dynamics and desire lines.

The crossing is becoming enclosed with housing and we know that this can lead to future issues as use increases. We would prefer new residents to become familiar with using the underpass rather than the level crossing. Network Rail is proposing that the diversionary route is created such that it is surfaced, accessible and suitable for all sections of the community.

You mention that new housing developments in the area could make a financial contribution to an underpass at Fullers End. However these contributions have not been secured. The cost of providing a subway beneath the railway near the level crossing would be anticipated to cost in the region of £10M (if it could be built at all). It would take a considerable time to deliver and would require closure of the level crossing while it was being built. While cheaper, an accessible footbridge would, if it could be accommodated on site, be expected to have a price tag of £3–4M as a minimum. Network Rail is obliged to have regard to the use of public money in the costs of managing risk at level crossings. Network Rail proposes a suitable and convenient alternative to use of the level crossing.

You recommend installation of interlocking gates at the crossing. Interlocked gates would require protecting signals and some form of observation either by a signaller or an object detection system to ensure people are not trapped on the crossing when a train approaches. The cost of such an installation would exceed £1 million.”

8.3.2.2 I note that Ms Holmes has attached to her letter of objection correspondence between herself and Network Rail regarding the possible dedication of a right of way through, and connecting to, the underpass referred to in her objection letter. I am aware that there have been previous discussions with landowners in the area around a potential dedication of a right of way through this underpass, but understand from Network Rail that it was not possible to secure agreement with all landowners whose land would be affected.

8.3.2.3 Network Rail has noted the concerns over property security. Network Rail remain happy to discuss reasonable mitigation measures that may be suitable, Network Rail are also committed to ongoing dialogue with affected landowner [in the long term] should the TWAO be approved.

8.4 E06 Elsenham Emergency Hut

Objector – C.L. Fogel (You're Furnished Limited)

Objector Reference– 102

8.4.1 A summary of the main areas of objection is set out below :

- The objector seeks clarification on timescales and on the potential impact of the Scheme on future development of his land.

8.4.2 Response

8.4.2.1 I have reviewed the objection letter on behalf of Mr Fogel and consider the issues raised have been dealt with in a letter from Network Rail dated 29th August 2017, the material parts of which I set out below

"Network Rail is seeking to acquire your land temporarily for the creation of a new public right of way. We enclose a copy of the design freeze proposal which shows the proposed diversion of FP15 (EX/25/15) as a 2m footpath in the field margin. This diversion is required to provide an off-road route to the existing Elsenham level crossing or nearby footbridge to cross the railway. Once this right of way is constructed to meet the standards of the highway authority, Essex County Council, it will be adopted and maintained by the council. For further information on public rights of way, please refer to the 'Landowners and Farmers guide to Public Rights of Way' for guidance or contact your local Public Rights of Way Officer, contact details can be found on page 10 of the document.

In your objection you seek confirmation of the timescales for Network Rail's proposal. In terms of the specific duration of the works to create the footpath, as an indicative timescale, this should take around 3 months to complete. However it is not possible to give specific dates at this point in time for when the works will start and end as this will be dependent on a number of factors, including when specifically the Transport Works Act Order powers are granted.

Should you decide to extend your factory in the future, an application to the local planning authority to reroute the proposed new footpath to accommodate the development can be made. This is a common process with new development and in this case would still form a convenient route for users.

Objector – Francis Braeckman

Objector Reference– 123

8.4.3 A summary of the main areas of objection is set out below

- New footpath on the land is unnecessary and the new route does not connect with existing routes; the new route may also encourage trespass onto the M11 motorway.

8.4.4 Response

8.4.4.1 I have reviewed the objection letter on behalf of Mr Braeckman and I consider the issues raised have been dealt with in a letter from Network Rail dated 29th August 2017, the material parts of which are set out below.

In terms of your client's land that is permanently affected by the proposals, Network Rail is seeking temporary acquisition over plots 1, 3 and 14 in the Parish of Henham to create a new public right of way (PROW). Network Rail will maintain the new public right of way for a period of 12 months after completion of construction. Following this, the new PROW will be adopted and maintained by Essex County Council and the land will remain in your client's ownership. Network Rail also requires temporary acquisition of plot 2 in the Parish of Henham for a worksite and plots 1, 2 and 3 in the Parish of Ugley for access for removal of the level crossing and access for creation of public right of way

E06 Elsenham Emergency Hut level crossing has been subject to a temporary closure order for some considerable time due to having insufficient sighting and safety issues with stopping and non-stopping trains at Elsenham station. Network Rail has had detailed discussion with Essex County Council for some time and they are looking at a permanent solution to enable users to access either side of the railway line. The footpath network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. Network Rail is under an obligation under the Transport & Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the footpath network.

The section highlighted on Mr. Braeckman's land is part of a longer link that Essex County Council is keen to see created to link up a cul-de-sac that exists to the north. Therefore the land is included in the Order to be acquired compulsorily to provide an alternative route for users but Network Rail is willing to acquire the necessary access, temporary occupation and rights by agreement. This also responds to bullet point 3.4 in your client's statement of case.

Mr. Braeckman is correct that most of the footpaths are in a broad east/west orientation. Essex County Council was keen to see better links in a north/south

orientation. Our proposal was therefore seen as a suitable replacement for the closure of the level crossing providing connectivity.

EX51/13 does run in a north/south direction, but it involves some on road walking and Essex County Council is keen to keep this to a minimum when linking footpaths. It is also further away from the village of Elsenham.

The level crossing identified in green on Mr. Braeckman's plan (and by the red circle below) was Edges level crossing. Edges level crossing closed in 2014/15. At the time of the closure Network Rail wanted to extinguish all of footpath EX25/7 but Essex County Council would not allow this to happen, leaving cul-de-sacs on either side of the railway. The Order proposals now include extinguishment of EX/25/7.

With the closure of footpath EX/25/7, as mentioned above, Essex County Council have always been keen not to lose the connectivity potential that footpaths EX/25/37 & EX/51/24 could offer and would also not allow EX/25/37 & EX/51/24 to be extinguished.

E07 Ugley Lane is a private level crossing which is proposed to be closed under the Order. There is a public road which crosses the railway line adjacent to it which will remain open.

To address the final point in the objection letter, we note Mr. Braeckman's concerns on risk of trespass on the railway. We shall keep the situation under review, however, we do not believe that the proposal will encourage trespass onto the railway. There are private properties to the east of the railway and it is very unlikely that users would trespass through residences.

Objector – Fairfield Elsenham Ltd

Objector Reference – 130

8.4.5 A summary of the main areas of objection is set out below

- The objector expresses concerns that the scheme will impact on land values in terms of both severance and injurious affection, in addition he notes that there may be a material impact on future development of the retained land.
- The objector suggests that the alternatives proposed are not suitable in terms of amenity and practicality.

8.4.6 Response

8.4.6.1 I have reviewed the objection letter on behalf of Fairfield Elsenham Ltd and consider the issues raised have been dealt with in a letter from Network Rail dated 29th August 2017, the material parts of which are set out below

There is only one level crossing Network Rail is proposing to close that will affect access to land in which you have an interest. This is the Elsenham Emergency Hut level crossing, which is to be extinguished with a new north/south route being created in its stead. This new route will allow avoidance of the 'Toot Toot' bridge by pedestrians, creating off-road walking between Elsenham and Henham. The public desire for this path is borne out by the enthusiasm for its creation, and by the fact that, when Edges level crossing was extinguished 2 years ago, a cul-de-sac of FP7 remained on the west side of the railway. At the time of the closure Network Rail wanted to extinguish all of footpath EX25/7 but Essex County Council would not allow this to happen, leaving cul-de-sacs on either side of the railway. The Order proposals now include extinguishment of EX/25/7 with the provision of a new off road north-south linking footpath.

E07 Ugley Lane is a private level crossing which is proposed to be closed under the Order. There is a public road which crosses the railway line adjacent to it which will remain open.

You will note from previous discussions with Network Rail that owing to the increase in risk that invariably follows an increase in usage, Network Rail opposes developments where they will result in increased usage of level crossings.

The level crossings put forward for closure in the current Order have been selected because we believe it is possible to close them without the provision of new structures crossing the railway, such as footbridges or subways. Network Rail is required to seek the most efficient solution for the management of each level crossing.

We note that part of the land you suggest would be diminished in value already has a public footpath running through it. The new route is provided to reduce the on road walking for those heading north. In this area of the line the crossing point is Elsenham station level crossing. As we are concentrating the users to a single crossing point of the railway we need to ensure they can access the crossing point in the safest possible way.

It is our understanding that there is currently no planning permission for development of your land holdings at Elsenham. Elsenham Station footbridge lands on platform not within highway authority.

There is no reliance on Elsenham station footbridge, as the level crossing is equally suitable for pedestrians to cross the railway. The footbridge is a permissive route through the station and is available at present for members of the public to use if they wish. Our proposal documentation shows that users can use both the level crossing and the footbridge.

Network Rail has considered the suitability of the proposed new footpath routes and considers them to be suitable in the context of their guidelines.

8.4.6.2 As regards compensation (and the concern expressed at to injurious affection to land), I have set out at Section 4 above that there are various routes to claim loss resulting from the exercise of powers conferred by the TWAO (if approved).

Objector – Jim Raey

Objector Reference – 146

8.4.7 A summary of the main areas of objection is set out below

- The Objector is concerned about consultation
- The Objector considers that the new footpath is an entirely unnecessary addition of over approximately 1.5km of rights of way when there are sufficient alternatives within the existing rights of way network
- The Objector does not object to the closure of the crossing but considers that the new route would encourage trespass to the railway.

8.4.8 Response

8.4.8.1 I have reviewed the objection letter on behalf of Mr Raey and consider the issues raised have been dealt with in a letter from Network Rail dated 29th August 2017, the material parts of which I set out below

Although your client raises no objection to the principle of closing level crossings, and understands the safety reasons, we understand that he objects to the creation of a new footpath which he considers unnecessary.

E06 Elsenham Emergency Hut level crossing has been subject to a temporary closure order for some considerable time due to having insufficient sighting and safety issues with stopping and non-stopping trains at Elsenham station. Network Rail has had detailed discussion with Essex County Council for some time and they are looking at a permanent solution to enable users to access either side of the railway line. The footpath network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. 8.55.4 Network Rail is under an obligation under the Transport & Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the footpath network.

The section highlighted on Mr. Raey's land is part of a longer link that Essex County Council is keen to see created to link up a cul-de-sac that exists to the north.

The level crossing identified in green on Mr Raey's plan was Edges level crossing. Edges level crossing closed in 2014/15. At the time of the closure Network Rail wanted to extinguish all of footpath EX25/7 but Essex County Council would not

allow this to happen, leaving cul-de-sacs on either side of the railway. The Order proposals now include extinguishment of EX/25/7 removing this public right of way from your client's land.

Mr Raey is correct that most of the footpaths are in a broad east/west orientation. Essex County Council was keen to see better links in a north/south orientation. Our proposal was therefore seen as a suitable replacement for the closure of the level crossing providing connectivity.

EX51/13 does run in a north/south direction, but it involves some on road walking and Essex County Council are keen to keep this to a minimum when linking footpaths. It is also further away from the village of Elsenham. With the closure of footpath EX/25/7, as mentioned above Essex County Council have always been keen not to lose the connectivity potential that footpaths EX/25/37 & EX/51/24 could offer. Essex Highways Authority would also not allow EX/25/37 & EX/51/24 to be extinguished.

We note Mr Raey's concerns on risk of trespass on the railway. We shall keep the situation under review however, we do not believe that the proposal will encourage trespass onto the railway. There are private properties to the east of the railway and it is very unlikely that users would trespass through residences.

E07 Ugley Lane is a private level crossing which is proposed to be closed under the Order. There is a public road which crosses the railway line adjacent to it which will remain open.

In your final point, your client claims that they have not been consulted by Network Rail or its representatives, however our consultation records show that a meeting was held with Mr Raey on 5 May 2016 when he commented on the proposals. Alternative routes have been considered but are not seen as effective as those proposed by Network Rail design team.

8.4.8.2 As I have indicated above, Network Rail will continue to liaise with Mr Reay regarding any concerns he may have about the impact of the proposal on his land, in particular as detailed design is progressed. .

8.5 E08 Henham

Objector – Charles Martineau

Objector Reference – 083

8.5.1 A summary of the main areas of objection is set out below

- The Objector supports the closure of the crossing but is concerned about the route and seeks further discussion with Network Rail regarding the detail of the proposal

8.5.2 Response

8.5.2.1 I have reviewed the objection letter on behalf of Martineau and Network Rail's response of 5th September 2017. I note that that letter refers to a previous attempt by Mr Martineau to divert the footpath on his land, which was unsuccessful, and addresses the points raised in his letter of objection which were also discussed at a meeting on 22nd May 2017. I set out the material parts of that letter below:

Your concerns that a road needs to be built on your land: Network Rail does not wish to construct a road on your land, however, we will need access over your land in the period of constructing new fencing and removal of level crossing materials. The exact weight of the vehicles is unknown at this time, but they are not likely to be very heavy. We will consult with you further as we develop our detailed design.

You are correct that the level crossing cannot be closed until such time that the diversionary route is agreed to the reasonable satisfaction of Essex County Council, as highway authority.

You were concerned that the trees along the route will be affected. We had discussed this on site and Network Rail is amenable for the proposed route you marked in red in the aerial photograph attached to your email dated 5 June 2017 to Andy Kenning. If you are able to confirm that you own all of the land on which you marked the route in red on that photograph and there are no other landowners involved, and particularly for the land which forms plot 8 on the Order plan where it would connect to the current footpath (EX[55]26(Widdington)) to the crossing is on your land, it should be possible to make a slight adjustment to the Order plans, so that the new footpath is taken around the trees so that they would not need to be removed.

If this is the case, Network Rail would be willing to amend the Order plan to reflect your proposal and submit a revised plan to the forthcoming inquiry, if you would be willing to withdraw your objection in return.

We discussed when we met that some vegetation will need to be removed to accommodate the fencing to be erected on the boundary line, but this was not seen as an issue.

Where the path meets the public road a steel pedestrian gate is to be provided adjacent to the NR boundary. The hinge post is to be adjacent to the boundary with NR. Any gap between the post and pedestrian gate will be filled with another post to prevent vehicle trespassing.

There was also a discussion regarding levelling of ground, and we have not regarded this to be an issue, as long as there was sufficient protection to prevent vehicles entering your land (other than by your locked gate).

Also noted at the meeting about the potential effect the proposed works could have on your crops in the field. We would need to discuss this nearer the time of the proposed works, but we acknowledge that this requires consideration.

In light of our comments above, about possible amendments to the Order plans, our agent will keep you updated as it may be necessary to have a further meeting to confirm the details on the proposed plans.'

8.5.2.2 Network Rail is engaged in discussions with this Objector to resolve his concerns.

Objector – Mr D Hedges

Objector Reference – 138

8.5.3 A summary of the main areas of objection is set out below.

- The Objector supports the closure of the crossing but is concerned about the creation of the proposed new route on his land and seeks further discussion with Network Rail regarding the detail of the proposal
- The Objector does not want to lose the road frontage to his field due to the presence of a footpath. He does not want the financial liability that the proposed footpath would put upon him.

8.5.4 Response

8.5.4.1 I have reviewed the objection letter on behalf of Mr Hedges and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which are set out below.

You state that the existing roadway should be used for the diversion route. Network Rail's did consider a diversion along North Hall Road however this was discounted in the early feasibility stages due to road safety concerns. A traffic assessment was carried out which confirmed that North Hall Road is a fast moving road, with 85th percentile speeds approaching 50mph, without verges that walkers could step into if needed when vehicles were passing.

Network Rail is under an obligation under the Transport & Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the footpath network. The highway authority emphasizes the need to provide off-road walking where possible. As a result Network Rail's proposal provides an off-road footpath in your field.

Following completion of construction the new footpath will be maintained by Network Rail for 12 months, after which it will be maintained by Essex County Council.

In terms of the impact on the value of your interest, you may be entitled to compensation in line with the compensation code.

You mention that you keep livestock in the field. Network Rail would be willing to discuss the provision of a fence as part of the proposals to separate the footpath from the rest of the field. It is suggested that a 1.35m high stock proof fence along the 200m length may be appropriate.

Also, having looked at the existing vehicular access to the field, we consider that a new footpath gate could be provided adjacent to the vehicular gate.

8.5.4.2 As will be seen from the extract set out above, Network Rail is willing to consider additional measures to mitigate the impact of a new footpath on the Objector's property.

8.6 E09 Elephant

Objector – Christian Bunten

Objector Reference – 113

8.6.1 A summary of the main areas of objection is set out below.

- The objector wants to understand details and compensation, and would prefer the path did not run through his 'small' field.

8.6.2 Response

8.6.2.1 I have reviewed the objection letter on behalf of Mr Bunten and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which I set out below.

Careful consideration was taken for a range of key factors such as: diversion length, amenity value, safety, and disruption to farming activity. Throughout the rounds of public and stakeholder engagement, these relevant factors have been considered to provide a solution which minimises adverse impact, and provides the balanced outcome for those affected. In this case, it was deemed to be less disruptive to farming activity and less potential for pedestrian interaction with farm vehicles, to place the footpath away from working, arable land. In the case of your land interest, we are also extinguishing a stretch of existing public footpath EX/41/14 that runs on your land on either side of the railway. [...].

[...]

In terms of your land that is affected by the proposals, Network Rail is seeking temporary acquisition over plot 22 in the Parish of Newport to create a new public right of way (PROW) between points P112 and P115. This footpath will be 2m

wide. Network Rail will maintain the new public right of way for a period of 12 months after completion of construction. Following this, the new PROW will be adopted and maintained by Essex County Council and the land will remain in your ownership. Network Rail also requires temporary acquisition of plot 9 and 22 for access for removal of the level crossing and plots 11, 13, 21 and 23 for a worksite for creation of public right of way

In terms of the specific duration of the works to create the footpath, as an indicative timescale, this should take around 3 months to complete. However it is not possible to give specific dates at this point in time for when the works will start and end, as this will be dependent on a number of factors, including when specifically the Transport Works Act Order powers are granted. The new public right of way must be accepted by the Highway Authority and works to remove the level crossing will be carried out after this, when this can be programmed in line with operational requirements. This may mean that Network Rail will require access and off the land over a period of approximately 9 – 15 months. Network Rail will consult with you as the programme of works is developed to seek to minimise the impact on your land, where possible.

The extent of Plot 22 is drawn to reflect the current vegetation on the ground. The Order plans currently shown the line of the proposed footpath (the dotted line) to run in a straight line between points P 115 and P112. This may require the trees to be removed. Network Rail would be willing to revised the plans to move the proposed line of the footpath to the outer extent of plot 22 which would allow the new footpath to avoid vegetation if appropriate,. We would be grateful if you could confirm whether you would prefer the footpath to go around the trees within that plot. Plot 23 is also drawn widely to reflect the current vegetation, but again Network Rail is willing to discuss with you the extent of that land which is actually required for a working site. It may be possible to amend the Order plans to show a lesser extent of land for each of these two plots, depending on what you would prefer.

The existing footpath that is routed through the SSSI is not relevant to closure of the level crossing, and therefore cannot be extinguished as part of this project.

In terms of the impact on the value of your interest, you may be entitled to compensation in line with the compensation code.

8.6.2.2 I set out in Section 4 above the various compensation provisions provided for under the TWAO. As is clear from the extract above, Network Rail will continue to liaise with the affected landowner to seek to mitigate, as far as practicable, any impacts on his landholding which may result from the exercise of powers conferred by the TWAO, if approved.

Objector Reference– 181

8.6.3 A summary of the main areas of objection is set out below

- The objection is that the route should be shared with the adjacent owner as the route will have an undue impact on her landholding and a potential residential development.
- The objector is concerned about footpath users being diverted onto the public highway.

8.6.4 Response

8.6.4.1 I have reviewed the objection letter on behalf of Ms Newall and consider the issues raised have been dealt with in a letter from Network Rail dated 4th September 2017, the material parts of which I set out below

You suggest that the route should be shared between the adjoining property, The Chestnuts. Network Rail's proposal considered a number of factors including diversion length, amenity value, safety, and disruption to existing activity. The use of The Chestnuts land was not selected as this would have intruded into their back garden. If the path was to be shared between properties this would affect the boundary arrangements resulting in greater ecological impacts, which the project is seeking to limit.

We note your comment that there is alternative footpath connectivity via White Horse Lane. The footpath network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. Network Rail is under an obligation under the Transport & Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the footpath network.

In developing our proposals, we took account of the permission you hold to convert your existing farm build to residential use. From the available documents on the Uttlesford District planning portal (UTT/14/2798/P3MPA) as shown below, the agricultural building in question is situated on the eastern side of your land. When considering the placement of the new footpath, we sought to locate it against the extreme western limits of the site, to help alleviate the impact on possible future development. As a result, Network Rail does not consider that its proposals will preclude the proposed development of your land.

At the first public consultation we did show a diversionary route option via the railway station. However in our final proposal we are providing traffic lights to enable safe passage for pedestrians over the Debden Road railway bridge. The proposal will improve pedestrian safety on the bridge with single direction traffic movement, addressing an existing highway issue. We note that a number of railway passengers walk to the railway station via this bridge, so our proposal would benefit

them too. You will have recently received a copy of our statement of case and a copy of the current proposed diversionary route is included in Appendix NR26.

8.6.4.2 Network Rail will continue to liaise with the affected landowners to minimise any impact of the works.

8.7 E12 Wallaces & E13 Littlebury Gate House

Objector – Audley End Estate

Objector Reference– 066

8.7.1 A summary of the main areas of objection is set out below

- The objector has a number of issues with the design of the route and seeks it to be rerouted (E13).
- The objector is concerned about increased vandalism and anti-social behaviour as walkers are rerouted (E13)
- The Objector is concerned about the diverted route and impact on shooting rights (E12)

8.7.2 Response

8.7.2.1 I have reviewed the objection letter on behalf of the Estate and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which I set out below

E12 Wallaces - You had noted that the private crossing was not a safety issue. As you will see from our strategic case set out above, safety is not the only reason for the proposed closure of this crossing.

Network Rail has noted your concerns that the closure would result in loss of amenity and that your preference would be for the current private crossing to remain open with locks provided at gates to be managed by the Estate; that the positioning of beaters during a shoot requires precision and the drive to the crossing is one of the most sought after on Audley End, and that closure of this crossing could also disrupt property estate management of land on either side of railway and landowner's quiet enjoyment.

Your position is that the alternative proposed routes are not suitable and will disrupt estate staff during a shoot and other estate management activities and could result in financial losses.

These concerns were discussed at the meeting of 11th August and you had agreed to provide Network Rail with the calculations on current usage and an estimate for the financial cost of the disruption to the business of the Estate. We shall await this information for our evaluation.

Network Rail has noted your concern that Chestnut Avenue is hazardous to pedestrians as it is well used and subject to only the national speed limit. There were also recorded fatalities on the road in recent years.

This was discussed at the meeting of 11th August and you agreed to provide appropriate health and safety training to all staff to use this road. It is understood that there would be cost to the Estate in providing this training and that this will be reflected when you come to estimate the financial implications of the proposal.

In terms of the impact on the value of your interest, you may be entitled to compensation in line with the compensation code.

E13 Littlebury Gate House - You had noted that this route is used to link users between the outskirts of Littlebury village to the village centre, however, you had assumed that the Network Rail proposed diversion links the wider public rights of way network away from the village centre to the open countryside. You consider this to be inconvenient replacement of the facility lost.

There had been consideration of providing a link on the eastern side of the railway from the level crossing to the overbridge to the north within Network Rail land. This however would have required steps and movement of Network Rail infrastructure, this was not considered as practical.

The use of Network Rail land has been considered and discounted due to the sloping topography of the Network Rail land which is not considered to be suitable for use as a proposed footpath. The current route still provides equivalent connectivity for those living in Peggys Walk although it is a longer route.

Current byway to the level crossing is used as illegal hare coursing, fly tipping and drug use. A ditch and bund around the perimeter of owned land constructed to prevent illegal hare coursing and the proposed footpath would breach measures by 350m. Further discussions and consideration that a palisade fence may be erected to deter trespassing or the possibility of a flint wall at the height of 6 feet may prevent the illegal hare coursing and vehicle trespass.

The risk of trespass as a result of the new footpath is not considered to be greater than the existing risk and it is not assessed that any additional measures are required.

In the event there is causal link between the exercise of powers and loss of entitlement, the Estate or the tenants of the Estate would have an opportunity to claim for compensation in accordance with the compensation code.

Network Rail has noted your comments to use Network Rail boundary for footpath. This was initially considered, however, due to engineering reasons, this was not possible.

The use of Network Rail land has been considered and discounted due to the sloping topography of the Network Rail land which is not considered to be suitable for use as a proposed footpath.

It is recognised that any loss of agricultural land resulting from the grant and exercise of compulsory powers may incur a compensation payment and as such you may be entitled to compensation in line with the compensation code.'

8.7.2.2 Network Rail will continue to liaise with the landowners regarding the matters set out above, in particular, to examine how any disruption to the estate which would be caused by closure of E12 (on which further information is awaited) could be mitigated, and any reasonable measures which could be included at the detail design stage to address concerns regarding the diversionary route proposed in respect of E13.

8.8 E16 Maldon Road

Objector – Nick Marshall

Objector Reference – 018

8.8.1 A summary of the main areas of objection is set out below

- The objector has a number of issues with the design of the route and seeks it to be rerouted.
- The objector is concerned about increased vandalism and anti-social behaviour as walkers are rerouted.
- The objector is concerned about Network Rail's approach to consultation.

8.8.2 Response

8.8.2.1 I have reviewed the objection letter on behalf of Mr Marshall and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which I set out below:

Bridleway EX/226/22 comes up from the south to cross Maldon Road. Historically this path would have continued north across the railway as a footpath. The provision of the new bridleway allows users to connect with onward public rights of way and provides an off road walking route before joining Maldon Road to cross the railway. A bridleway has been provided at the request of users and is considered reasonable as the new public right links directly to an existing bridleway.

We note your concerns over property security. It was noted at a site inspection, that there is a landscape buffer around the majority of the property boundaries. However we would be happy to discuss with you any reasonable mitigation measures, such as fencing or planting.

The public right of way network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. Network Rail is under an obligation under the Transport and Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the public right of way network. A bridleway has been provided at the request of users and Essex County Council and is considered reasonable as the new public right links directly to an existing bridleway.

Agricultural land would be lost to the bridleway with proposals to fence off a 3m wide strip around the field boundary. The landowner would be compensated for loss under provisions within the Compensation Code.

Network Rail does not consider this should be an issue. P155 on the TWA Order Plans is not within a flood zone and appears to be associated with the existing public right of way Bridleway 22. The proposed diversionary route will be completed to the reasonable satisfaction of Essex County Council before being brought into use.

Transport Works Act Order Notices were erected at the level crossing and local residents were leafleted before each formal consultation stage. Upon submission of the Transport and Works Act Order, directly affected parties were notified by statutory notices. In addition, these notices were also placed at the crossings and locally advertised.

In June 2016, various local newspapers had published the location for the round 1 consultation events.

Round 2 consultation events were published in September 2016. At round 2, the parish council had supported the proposals as the footpath does not have an onward connection to the north of the crossing. Also mentioned that the train whistles were a constant irritation to local residents.

It was also raised that Maldon Road was not suitable for walking and suggested a new route to the south of Maldon Road to link existing public rights of way. This alternative option was taken forward. The proposal was discussed with the landowners directly affected and as a result of the consultation the full length of the bridleway is now proposed to be fenced off from the field.

This option [using existing footpath and follow the railway to the corner of Nuns Crossing then walk down the straight road, with a footpath on the verge if required] was carefully considered when suggested at the Round 1 consultation stage.

Network Rail land to the side of the railway is heavily vegetated and partly within an embankment and unsuitable for a new public right of way. There was also the

option to use third party land, but as per the southern side of Maldon Road, it would require the loss of agricultural land and also pass through an area used for storage purposes.

This option would also require users to cross Maldon Road twice passing a vehicular access point to the railway with the potential for additional risk. Also the footpath running in front of the cottages instead of behind them would expose users to road traffic and resulting in a longer and less convenient route than the one proposed within the Order.

8.8.2.2 I have set out in Section 5 of my Proof the consultation carried out with affected landowners and members of the public generally. Further details are provided in the Statement of Consultation (**NR/5**), and in the Proof of Evidence of Andrew Kenning.

8.8.2.3 I understand that the objector lives in close proximity to the proposed diversionary route, and would prefer it to be rerouted. The basis on which this route was identified and included in the Order is addressed in the evidence of Susan Tilbrook, and I understand she also addresses the alternative route suggested by Mr Marshall.

Objector – Mr. A.R. Smith

Objector Reference – 139

8.8.3 A summary of the main areas of objection is set out below

- The objector is concerned about Network Rail's approach to consultation.
- The objector has a number of issues with the design of the route and seeks it to be rerouted.
- The objector is concerned about privacy issues if a new footpath is created

8.8.4 Response

8.8.4.1 I have reviewed the objection letter sent on behalf of Mr Smith and consider the issues raised have been dealt with in a letter to Mr Smith's agent from Network Rail dated 6th September 2017, material parts of which are set out below.

We acknowledge that, notwithstanding previous discussions, your clients were not named as landowners in the Book of Reference. However, as the land is not registered with the Land Registry, 'unknown' notices were erected on the land to notify the landowner of the proposals in the Order. Your letter of objection dated 8 May 2017 was received after you had seen the notices erected on your land. Following this, you have also submitted a statement of case and you are entitled to appear at the public inquiry.

Transport Works Act Order Notices were erected at the level crossing and local residents were leafleted before each formal consultation stage. Feedback from Round 2 consultation indicated that Maldon Road was not suitable for walking and suggested a new route to the south of Maldon Road to link existing public rights of way. This alternative option was taken forward. The proposal was discussed with the landowners directly affected and as a result of this consultation, the full length of the bridleway is now proposed to be fenced off from the field.

Upon submission of the Transport and Works Act Order, directly affected parties were notified by statutory notices. In addition, these notices were also placed at the crossings and locally advertised and Network Rail has complied with the statutory procedures for publicizing the Transport and Works Act Order.

Network Rail is under an obligation under the Transport and Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. The footpath network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. This has resulted in finding a solution to continue to offer connectivity for the public right of way network. A bridleway has been provided at the request of users and Essex County Council and is considered reasonable as the new public right of way links directly to an existing bridleway.

The alternative routes your client had proposed for the diversion were found unsuitable due to on road walking. Further clarification can be found below.

Bridleway EX/226/22 comes up from the south to cross Maldon Road. Historically this path would have continued north across the railway as a footpath. The provision of the new bridleway allows users to connect with onward public rights of way and provides an off road walking route before joining Maldon Road to cross the railway. A bridleway has been provided at the request of users and is considered reasonable as the new public right links directly to an existing bridleway.

We note your client's concerns over property security. It was noted at a site inspection, that there is a landscape buffer around the majority of the property boundaries. However Network Rail has confirmed to those residents who have objected to confirm that it would be happy to discuss reasonable mitigation measures such as fencing or planting.

Network Rail has included provision in the Order proposals to erect a fence along the length of the proposed bridleway.

In terms of the impact on the value of your interest, you may be entitled to compensation in line with the compensation code.

This option [original footpath following railway to corner of Nunn's crossing down straight road] was carefully considered when suggested at the Round 1 consultation stage.

Network Rail land to the side of the railway is heavily vegetated and partly within an embankment and unsuitable for a new public right of way. The option could use third party land, but as per the southern side of the Maldon Road it would require the loss of agricultural land and also pass through an area used for storage purposes.

This option would also require users to cross Maldon Road twice passing a vehicular access point to the railway with the potential for additional risk. Also the footpath running in front of the cottages instead of behind them would expose users to road traffic and resulting in a longer and less convenient route than the one proposed within the Order.

The level crossing, and so the footpath, is temporarily closed for safety reasons, owing to the absence of steps to facilitate ascent and descent of the cutting slope.

8.8.4.2 Network Rail will continue to liaise with the affected landowners, particularly during detailed design, to seek to minimise the impact of the works, or exercise of powers, authorised by the TWAO if approved.

8.9 E19 Potters

Objector – Mr H Siggers & Family

Objector Reference – 173

8.9.1 A summary of the main areas of objection is set out below

- The objector is concerned about Network Rail's approach to consultation.
- The objector is concerned with trespass.

8.9.2 Response

8.9.2.1 I have reviewed the objection letter on behalf of the Siggers family and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which are set out below.

Our records did show that we had consulted with Mr Siggers in October 2015 and that he did not object to the closure. Also, subsequent consultation was held in May 2016 where he expressed no objections to new footpath being created along his new farm track provided that the existing footpath across his field to the level crossing is closed.

Network Rail acknowledges the error [notices served on plots 19 and 20 refer to land north east of Potters Crossing, plan indicates land southwest] in the plot description served and have noted the correction in the Book of Reference.

Network Rail has noted your client's concerns of the effect of trespass and have requested for continued maintenance of Plots 19 and 20. Your client may have misunderstood the intention for powers sought on Plots 19 and 20. The notices are merely to seek rights for access to use the existing track by Network Rail and its contractors, a right to pass and repass along the track with vehicles for a limited duration. This is to enable Network Rail to remove level crossing infrastructure at Potters level crossing, erect 1.8m high chain link fence of 100m on each side of the railway to prevent trespass and gain access to construct the new right of way between points P199 and P192.

Once the Order has been made, a programme of works will be drafted and your client will be consulted of the timescale of works. Network Rail will work with the current gate arrangements your client has and given the limited duration of the works and the access required over plots 19 and 20, it is unlikely that trespass will occur as a result of the works.

In terms of the impact on the value of your interest, you may be entitled to compensation in line with the compensation code.

8.9.2.2 I address compensation which may be available to affected landowners in Section 4 above. Network Rail will continue to liaise with the affected landowners, particularly during detailed design, to seek to minimise the impact of the works, or exercise of powers, authorised by the TWAO if approved.

8.10 E21 Hill House 1

Objector – Robert Crayston, JR Crayston & Sons Ltd

Objector Reference – 119

8.10.1 A summary of the main areas of objection is set out below

- The objector considers there is no need for a diverted footpath.
- Footpaths would be on 3 sides of field and road on one

8.10.2 Response

8.10.2.1 I have reviewed the objection letter of Messrs Crayston and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which I set out below.

We have assumed that where you referred to point 201 in your letter you are referring to point 210 and that this footpath is seldom used. Network Rail's 9-day census confirms your point, however Network Rail is under an obligation under the Transport and Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. The footpath network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. This has resulted in finding a solution to continue to offer connectivity for the public right of way network.

Network Rail therefore considers that the proposed new footpath is required, and a suitable and convenient diversion. A number of options were considered and this current proposed solution was considered to be the most appropriate.

Network Rail originally proposed to extinguish EX/78/7 and close the level crossing at Hill House 1, which would send users from Little Tey Road along EX/78/24 and over Hill House 2 level crossing. However, this option was discounted following objections and lack of support from Essex County Council during Phase 1 of the consultation.

If the usage of EX78/7 remains at its current level there will be very little impact on your business due to the very low usage.

The Secretary of State has confirmed that the project is unlikely to have significant adverse effects on the environment – see Network Rail's application document NR11. Ecology surveys were undertaken as part of the Order and where appropriate, mitigation methods have been propose

EX78/7 is a definitive footpath, however, the route is not followed by users. As such, there are two routes, one shown on the definitive map and one informally walked on the ground. The TWAO plan shows both the definitive and 'non definitive' routes as the Order proposes to extinguish both of these.'

8.10.2.2 I address compensation which may be available to affected landowners in Section 4 above.

8.11 E22 Great Domsey

Objector – Mrs Janet Lilius Cock and Mr Robert John Cock

Objector Reference – 126

8.11.1 A summary of the main areas of objection is set out below

- The objector considers that the current footpath should remain open
- The objector suggests use of land is unnecessary

- The objector considers there will be losses associated with the new footpath if it is approved.

8.11.2 Response

8.11.2.1 I have reviewed the objection letter and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which I set out below:

We note your objection to the perpetuation of footpath EX/78/3. We also note your comment about the minimal use of the footpath currently. The level crossing is located on a 100mph section of railway, and as the statutory railway undertaker for this section of line we are duty bound to ensure that the safest method of crossing the railway is provided. In our previous discussions with the highway authority, Essex County Council (who's asset the footpath is) they were not prepared to allow the footpath to be simply extinguished. It is for this reason that we have provided a diversionary route for the level crossing closure.

As part of the scheme, Network Rail is obliged to provide a diversion to maintain connectivity for the public footpath network that is suitable and convenient. Although, this footpath ceases at A12, this was found to be required at the consultation stages.

Plot 9 is to be acquired temporarily for the creation of the new footpath, which being an unsurfaced field edge path. Plots 10, 11, and 15 are required temporarily for access to enable the removal of the level crossing. The reason these were selected instead of using plot 9 was as follows:

- a) We need to create the new footpath before we can close (remove) the level crossing. We also need to undertake lineside boundary fencing.*
- b) The level crossing may not be recovered at the same time as the new footpath opening.*
- c) We did not want to risk damaging the new footpath when access is taken to remove the level crossing.*
- d) Due to the nature of the land (ground height changes) where the footpath (and plot 9) meets the railway overbridge, it was not considered appropriate to turn vehicles from the access track into the field at that point.*

Network Rail Level Crossing Reduction team will liaise with you directly in advance of the works to ensure that a suitable working arrangement can be reached.

In terms of the impact on the value of your client's interest, you may be entitled to compensation in line with the provisions in the Order and the compensation code.

8.11.2.2 The need for a diverted footpath, and reasons behind the route selected, as discussed in the Proof of Evidence of Susan Tilbrook.

8.11.2.3 I set out in Section 4 the various compensation provisions contained within the TWAO. Any concerns as to loss of value would need to be considered against these provisions, at the time when a claim for compensation is made. Quantification of any such claim is not a matter for this inquiry.

8.12 E28 Whipps Farmers

Objector – Christopher Padfield S & J Padfield and Partners

Objector Reference – 155

8.12.1. A summary of the main areas of objection is set out below

- The objector objects to a new footpath across his land and considers that there is a simple alternative
- The objector is concerned about Network Rail's approach to consultation.

8.12.2 Response

8.12.2.1 I have reviewed the objection letter on behalf of Messrs Padfield and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which I set out below

It was noted that on the 9th December 2016, our agent had met with Mr Padfield where he had mentioned that he would prefer the diversion route to be alongside the field north of E27 level crossing. He had also mentioned that he would have preferred footpath 180 extinguished and using the existing walk through Franks Wood would be sensible.

The section of proposed footpath adjacent and parallel to Warley Street along Mr Padfield's field margin to footpath 180 is to provide the most direct link back to St. Marys Lane, in replacement of the current footpath 178 route. The section you had highlighted in orange was initially designed on the plans when the footpath 180 level crossing was planned to be closed. It is considered that the additional length of the diversion to the west of the level crossing would mitigate public concerns which are generally raised regarding the diversion lengths. The new section of footpaths reduces the walking distance and again removes the potential for trespass as walkers seek to take the most direct route to the E27 level crossing. This length of footpath to the west of E27 assists in replacing the loss of public rights of way assets for users due to the closure of E28 and Essex County Council look to retain PROW assists wherever possible. The length of the diversion varies on the users origin and destination with some users undertaking longer diversions than others.

Network Rail has noted that your client suggested the use of the existing footpath 179 to continue east across Warley Street and field to join footpath 178. Wherever possible we have opted to use field boundary paths as these are less disruptive to a land owner. Your proposed link creates a cross field path. As your client may be aware Warley Street (B186) is a fast moving road with various hazards along its route. One being the railway over bridge and another being a blind cross towards the A127. We have had to work with these hazards as the project would not be able to solve all of these. In doing so we have had to find a suitable crossing point of Warley Street. Where your suggested alternative (blue route) crosses Warley Street

to meet public footpath 179 is near the crest in the road. At this point we felt that this was not a good place to cross the road as visibility of vehicles travelling from the A127 was very poor. Where our proposal is planned to cross Warley Street we believe there is good sighting in all directions, traffic would be wary of the industrial estate entrance, and therefore prepared to slow if required. We also felt that the pedestrian crossing point would be of assistance to any users of the bus stop as they would need to cross the road for one of their journeys. Therefore there were wider benefits to our proposals.

Where Mr Padfield's land is impacted by the proposed footpath, he may be entitled to compensation in line with the compensation code.

8.12.2.2 I understand that the alternative proposal is addressed in the Proof of Evidence of Susan Tilbrook. Network Rail will continue to liaise with the objectors during the period prior to the outcome of the TWAO inquiry and, if approved both during and after the implementation of the TWAO, to seek to minimise the impact of works, or exercise of powers, authorised by the TWAO.

8.13 E29 Brown & Tawse

Objector – Alan Bird

Objector Reference – 057

8.13.1 A summary of the main areas of objection is set out below

- The objector has a number of issues with the design of the route and objects in principle to new footpath being placed over his land.

8.13.2 Response

8.13.2.1 I have reviewed the objection letter on behalf of Mr Bird and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which are set out below.

Network Rail has noted that you do not recall any incidents at this crossing over 3 generations and you also noted that our 9 day camera census undertaken at E29 Brown & Tawse between 9th July 2016 and 17th July 2016 recorded no users.

Network Rail addresses the safety risk inherent at E29 Brown & Tawse crossing above [strategic case set out at the beginning of the letter].

Whilst there is no record of users during the 9 day census, the legal right for people to use the crossing still exists, and Network Rail must maintain the crossing in a suitable condition so long as this right remains. No usage in 9 days is not conclusive

evidence that the level crossing is never used. Additionally, the consultation undertaken was not in favour of an extinguishment of the right of way without providing a diversionary route. [...]. To reduce risk in line with our policy, Network Rail is diverting pedestrians over an existing road bridge to cross the railway where there is no direct interface with trains

Network Rail has noted your concerns over Childerditch Lane road bridge and that this alternative is dangerous. A Road Safety Audit was undertaken by a team independent of the design team, on Childerditch Road in August 2016 and this did not identify any issues with the use of Childerditch Road. However, following assessment of feedback from consultations that were undertaken it was considered that measures should be considered to mitigate the length of the diversion along Childerditch Road to remove the use of road walking as far as practicable. The proposals to the south of the railway were therefore amended to that shown in the Transport and Works Act Order submission and the proposed route was amended to lie within your field margins alongside Childerditch Road. An Automatic Traffic Count (ATC) was also commissioned on Childerditch Lane on the bridge over the rail line to the west of E29 Brown & Tawse level crossing. The ATC took place for a period of nine-days between Saturday 10th and Sunday 18th December 2016. It was concluded that the low vehicle numbers (maximum of approximately 300/day in each direction) would present a reduced risk to pedestrians and allow for safe crossing of the road bridge. This was noted and the design was amended to factor into the design; the location for the access points and steps included on the road embankment to improve visibility for pedestrians to see over the bridge. Vegetation clearance will be required to install the steps and footpath in this location. No additional highway improvements measures were therefore considered necessary although further vegetation clearance across the bridge would be beneficial.

The additional 250m of footpath on your land would be compensated in line with the compensation code.

8.13.2.2 I address compensation in Section 4 of my Proof above. Network Rail will continue to liaise with the affected landowners to seek to minimise, as far as practicable, the impacts of works or exercise of powers authorised by the TWAO, if approved.

8.14 E33 Motorbike

Objector – Uniserve (on behalf of Mr Iain Liddell and Cromwell Manor Functions)

Objector Reference – 129

8.14.1 A summary of the main areas of objection is set out below

- The objectors are concerned regarding the privacy of their land and impact on value.

8.14.2 Response

8.14.2.1 I have reviewed the objection letter on behalf of Uniserve and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which I set out below. Issues of value can be dealt with through the compensation provisions in the TWAO and there are many footpaths across the country that impact on the privacy of land which they cross with minimal impact on the landowners.

[...]

You raise concerns on the impact of the proposed diversionary route on the operation of your clients' business. Network Rail sought to meet with your clients or their representative to discuss current operations on the site and potential mitigation where reasonable, but your clients declined and we understand that your clients do not want to meet with us, which is disappointing.

In the original proposal at round 1 consultation, the diversionary route ran through the car park of your clients' venue. In light of consultation responses, to minimise the impact on the property, the route has been moved 23 m to the current position which is to the south of the entrance drive and a stretch of mature vegetation. Network Rail would be willing to discuss with your clients the potential of providing a method of screening to minimise effects on the venue.

Your clients are concerned about the use of the main entrance and part of the site for temporary access and storage during construction of the proposed footpath. You say that events and functions will not be able to be held with third party workers and vehicles using the site. In terms of the specific duration of the works to create the footpath, as an indicative timescale, this should take around 3 months to complete. However it is not possible to give specific dates at this point in time for when the works will start and end as this will be dependent on a number of factors, including when specifically the Transport Works Act Order powers are granted.

You say that the proposed route is through marshland and adjacent to a creek, making construction difficult and providing potential hazards for users. A raised 2m wide boardwalk is proposed in the design to mitigate the area of waterlogged ground. The detail of this design will be agreed in advance with the highway authority, Essex County Council.

Your clients propose a number of alternative options which we respond to below.

It is suggested that Network Rail should build a footbridge to avoid impacts on third parties. However, Network Rail is obliged to have regard to the use of public money in the ongoing costs of managing all level crossings. A footbridge at one site would be likely to cost between £1.5m and £4m, depending upon the available land, site conditions and the likely usage. Where a level crossing is located close to an existing controlled crossing of the railway, in this case Pitsea Hall Lane level crossing to the east, diversion of users to that crossing point represents a much more efficient use of public money.

The purpose of this project was to identify level crossings that could be closed without provision of new infrastructure across the railway, regardless of the level of usage. In the vast majority of cases, diversions rather than extinguishments are being proposed.

Alternatively, it is proposed that Network Rail amend the location of the new footpath to divert around the two land holdings that comprise Cromwell Manor and relocate the footpath for the majority of its length through the RSPB reserve. Network Rail has carefully considered the selection of the proposed diversionary route to ensure it is convenient and suitable to all users. The suggested diversion around the two land holdings would make the route unacceptably long.

Finally it is proposed that the existing footpath is extinguished with no replacement provided. The footpath network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. Network Rail is under an obligation under the Transport & Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the footpath network.

In terms of the impact of Network Rail's proposals your clients may be entitled to compensation in accordance with the compensation code.

8.14.2.2 I set out in Section 4 above the compensation provisions which would apply if the TWAO is approved. Although the landowners have not wished to meet to discuss the proposals to date, Network Rail remains keen to discuss the works and powers proposed by the TWAO, having regard in particular to considering how any impacts arising from the same could be minimised and/or mitigated.

8.15 E37 Essex Way

Objector – Stuart Philpot, SJR Farming Ltd

Objector Reference – 053

8.15.1 A summary of the main areas of objection is set out below

- The objector is concerned about the impact that the proposed diverted footpath will have on his farming activity and queries the need for the new footpath. In addition he queries the consultation exercise.

8.15.2 Response

8.15.2.1 I have reviewed the objection letter on behalf of Mr Philpot and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which I set out below

We note the alternative route you propose and wherever possible we have tried to route footpaths around field edges. We did consider options to divert the footpath alongside the railway to keep to the field edge, however, this meant that pedestrians would be directed towards your private vehicular level crossing (Philpot level crossing) which could be used by passing walkers and lead to trespass on the railway and your land. The proposals were consulted with Essex County Council as highway authority who sought to move the proposed footpath away from the railway line for amenity value and trespass issues. We understand your concerns over any potential disruption to your business, however a cross field path should not prevent the field from being cultivated in the way it is done today. Once cultivated the path is marked out, and as it does not have a surface, other than the field itself, harvesting is carried out as if the path were not there.

Network Rail will be responsible for the creation of the new proposed public right of way. Following completion of construction of the new proposed field edge path to the north of the railway, this will be maintained by Network Rail for a period of 12 months before becoming the responsibility of the highway authority to maintain. The landowner is responsible for keeping cross field paths clear of obstruction and, where relevant, reinstating the path within 14 days of farming activities. For further information on public rights of way, please refer to the 'Landowners and Farmers guide to Public Rights of Way' for guidance or contact your local Public Rights of Way Officer.

In your statement of case, you state that you were never consulted about this footpath properly. Our consultation summary records various communications with you in 2016 and 2017 however our proposed route did change during development as we consulted with the highway authority. We note that in previous discussions in February 2017 you requested fencing as the land directly to the north and south of the underpass was let as a pony paddock. Please can you confirm if this is still the case.

...in terms of the impact on the value of your interest, you may be entitled to compensation in line with the compensation code.

8.15.2.2 I set out in Section 4 above the compensation provisions which would apply if the TWAO is approved. Network Rail will continue to liaise with the landowner, particularly during detailed design, to discuss measures which could be included to address the landowner's concerns, particularly, for example, in respect of fencing.

8.16 E41 Paget

Objector – Robert Button

Objector Reference – 106

8.16.1 A summary of the main areas of objection is set out below

- The objector expresses concern about the impact of the Scheme on his business.
- The objector expresses concern regarding the consultation process.

8.16.2 Response

8.16.2.1 I have reviewed the objection letter on behalf of Mr Button and consider the issues raised have been dealt with in a letter from Network Rail dated 29th August 2017, the material parts of which I set out below

Network Rail has noted that you do not object to the closure of Paget Road level crossing. You are, however, concerned with the works that shall be carried out on High Street. The Essex and Others Level Crossing Reduction Order will be implemented in stages. Network Rail is in the process of securing powers necessary to implement these proposals. If powers are granted by the Secretary of State for Transport, Network Rail will be required to implement our works within 5 years. The primary reason for the temporary stopping up is for traffic management whilst the footway on High Street bridge (east side) is widened. This is not expected to prevent access to properties or businesses. Our Level Crossing Reduction team will liaise with you, neighbouring businesses and residents directly in advance of the works so that that a suitable working arrangement can be reached.

8.16.2.2 Mr Kenning explains in his Proof of Evidence how Network Rail would expect to manage works requiring temporary road closures or stopping up. As set out in the letter of 29th August 2017, Network Rail would seek to liaise with local businesses prior to the works, to ensure that a suitable working arrangement could be put in place, and this should, in my view, be sufficient to mitigate the impact of such works on local businesses.

8.17 E42 Sand Pit

Objector – SLA Property Company

Objector Reference – 189

8.17.1 Network Rail have withdrawn this crossing from the Order

8.18 E43 High Elm

Objector – Terry & Nina Murton

Objector Reference – 099

8.18.1 A summary of the main areas of objection is set out below

- The objectors are seeking additional information regarding the impact of the Scheme on their land and the compensation provisions.

8.18.2 Response

8.18.2.1 I have reviewed the objection letter on behalf of Mr & Mrs Murton and consider the issues raised have been dealt with in a letter from Network Rail dated 4th September 2017, the material parts of which I set out below

Network Rail requires access to your land for works to remove the level crossing and secure the railway with fencing. We have identified a vehicular track that leads almost to the level crossing to enable delivery & removal of material from site. We believe that for the purpose of access to the railway, we would not require the removal of any plants/shrubs/trees on your land. Once the level crossing is closed, we would need to secure the railway from trespass. To do this, we plan to install a 2m high chain link fence. Lineside fencing is an item of work that is undertaken daily on the railway and whilst there is a small amount of vegetation removal (for erection of posts, and to ensure the fence is effective to ground level) we do not intend to remove whole plants/shrubs/trees from your garden. The vast majority of work would be undertaken from the railway side of the boundary. However, we may occasionally need to stand/work on your side of the boundary. Plants/shrubs/trees that overhang the railway boundary will be cut back so that the fence can be erected, so far as is reasonably necessary. Network Rail, like all landowners, is entitled to cut overhanging vegetation back to its boundary in any case. Network Rail would consult with you further during detailed design to minimise any impact. We do consider that vegetation removal will be minor so privacy and noise should not be affected.

If there is any impact on the value of your interest, you may be entitled to compensation in line with the compensation code.

8.18.2.2 I address compensation in Section 4 of my Proof above. Network Rail will continue to liaise with the affected landowners to seek to minimise, as far as practicable, the impacts of works or exercise of powers authorised by the TWAO, if approved.

8.19 E47 Bluehouse

Objector – Valerie & Douglas Roberts

Objector Reference – 101

8.19.1 A summary of the main areas of objection is set out below

- The objectors has a number of issues with the design of the route and objects in principle to new footpath being placed over their land, including safety issues.
- The objector expresses concern about the impact of the Scheme on their farming business

8.19.2 Response

8.19.2.1 I have reviewed the objection letter on behalf of Mr & Mrs Roberts and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which I set out below

A Road Safety Audit was carried out in December 2015 by a team independent of the design team which did not raise any safety issues.

It is considered that the existing footpath 16 makes use of Pork Lane at present and that the alignment and highway verges of the road north of existing footpath the level crossing (on the diversion route) is of the same character as that currently deemed acceptable for use by Essex County Council to provide connectivity between existing public rights of the way in the area.

In the vicinity of the level crossing it is considered that the area where the proposed footpath joins Pork Lane is free of vegetation and obstructions and will provide a safe waiting area for users. There is a marked pedestrian refuge (footway) area at the road level crossing which is on the same side (east) as the proposed footpath diversion. This will allow users to be separated from the carriageway once they exit the proposed footpath. This separation away from the carriageway running line continues to be provided south of the road level through the use of verges and off carriageway areas. There are double white lines in the vicinity of the road level crossing which make overtaking illegal which assists in the safe management of vehicles through this interface zone around the level crossing.

To the north of the road level crossing there are warning signs to tell drivers to be aware of the approaching level crossing and these, coupled with the narrow roads widths and bends, are measures that are used when it to advantageous to reduce vehicle speeds.

Publicly available accident data shows that there have only been two road traffic accidents on Pork Lane between 1999 and 2016 in the vicinity of the footpath diversion which includes the current access/egress onto Pork Lane by the existing footpath 16. These accidents did not involve pedestrians.

It is considered that Pork Lane will be continued to be used as it is at present, that there are sufficient measures at the road level crossing to segregate pedestrians from vehicles, that there are features north of the level crossing to manage and reduce vehicles speeds and that Park Lane has a very low accident record which does not involve pedestrians.

It is also our understanding that walkers will be travelling in a southerly direction to Great Holland and the footpath networks from there avoiding the blind bend.

The road safety audits are contained as an appendix, NR16, to Network Rail's Statement of Case, details of which are given above.

You had noted that you rely financially on the 230h dairy and arable farm output and do not wish to lose land. Furthermore, the public rights of way through your Dairy farm is a health risk to your cattle. Neospora can be transferred to cattle and cause abortion. You also mention potential damage to crops, well head on proposed footpath used by nearby property and areas kept uncultivated for wildlife, Land is also used to rotate as forage use. This land may also be used in the future for grazing.

We discussed reasonable measures to address these concerns whilst providing the footpath at our meeting on the 6th September.

You say that the fence may address the issue of trespassing and contain the damage to your crops. Network Rail will engage with you once the Order is made, we will discuss the type of fence you require in detailed design stage.

However, you remain concerned with the potential housing development to the north which may increase footfall to the proposed footpath

If the housing development is successful in the future and does cause an issue with higher footfall, you could discuss your concerns with the highways authority, Essex County Council, which has the power to make a Public Path Diversion Order under Section 119 of the Highways Act 1980.

The Highways Act 1980 makes provision for the diversion of footpaths, bridleways and restricted byways (but not byways) where the proposals are in the interests of the owner, occupier or lessee of the land over which the existing and proposed routes are aligned, with or without an interest to the public at large.

Network Rail will cut back the vegetation along the proposed route to create the footpath. Under the provisions in the proposed Order we will continue to maintain the vegetation clearance in the first year after the footpath has been created and Essex highways will assume responsibility thereafter.

Network Rail will in general terms, cut back vegetation on our land as required to enable trains to run safely throughout the year, details on vegetation management can be found in the following link: []

In terms of loss of agricultural land, you may be entitled to compensation in line with the compensation code.

We note in your letter of objection and discussed further at the site meeting that a 1ft. high raised covered chamber (well) is situated on the proposed route. Network

Rail does not believe this to be a safety issue and if the Order is successful, we will engage with your neighbour and incorporate mitigation measures in the detailed design stage.

8.19.2.2 The need for the diversionary route, and its design, is addressed in the Proof of Evidence of Susan Tilbrook. Network Rail will continue to liaise with the objectors to seek to mitigate their concerns.

8.20 E48 Wheatsheaf

Objector –Robert Hutley

Objector Reference – 085

8.20.1 A summary of the main areas of objection is set out below

- The objector expresses concern regarding the consultation process.
- The objectors are concerned regarding the privacy of their land and impact on value.

8.20.2 Response

8.20.2.1 I have reviewed the objection letter on behalf of Mr Hutley and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the substantive response is set out below

Network Rail note that you were consulted in person by our agent, Sam Blaize on Thursday 07 July 2016. Sam noted that you were not supportive of the proposal for the new footpath running up behind Maypole House and Wrabness Old School, and that you also considered the diversion across the road bridge and along the narrow country lane to be very dangerous. It is also noted in your further objection letter dated 5 May 2017 that you no longer object to the retention of the public footpath between points P01 (we believe this to be T005) and P276 on Sheet 40 of the Order Plan. Although you had previously suggested, running from north to south, to extinguish footpath EX184/19 where it crossed your land from the road to the railway crossing diverting the path along the road from Lower Farm, where the road is much wider, under the road underbridge and then along the northern edge of the arable field before running through Brakey Grove to re-join the footpath. Network Rail also further consulted on the final design freeze proposals via letter sent to you through Network Rail's agents Bruton Knowles dated Friday 10 February 2017. However, it appears that we have not received your reply to date.

We acknowledge that, notwithstanding previous discussions, you were not named as the landowner in the Book of Reference. However, as your land is not registered with the Land Registry, 'unknown' notices were erected on the land to notify the landowner of the proposals in the Order. We note your initial letter of objection

dated 3 May 2017 after you had seen the notices erected on your land. Following this, Network Rail formally served notices on you on 8 May 2017 as landowner and you sent further correspondence dated 17 and 19 May 2017 and you intend to appear at the public inquiry.

The footpath network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. Network Rail is under an obligation under the Transport & Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the footpath network. Our proposal facilitates walks to and from Wrabness village and the station. We are reducing the amount of on-road walking for users heading east-west, and the proposed alternative footpath still allows circular and recreational walking in and around Wrabness. Network Rail had conducted a 9-day census survey in the month of July which shows regular use of the footpath. It is, therefore, not reasonable to shut the level crossing without providing an alternative route. Footpath is 5m from field margin when it could run in field periphery. A 5m wide corridor has been used for all proposed new PRow to allow for the actual route and also to provide adequate width for all construction activities. The actual width of the footpath in this case would be 2m.

We note your concerns with the safety of pedestrians as your land is frequented by equestrian use with your permission. Network Rail perceives that this is common with any bridleway and there is no reason why equestrian use and pedestrian use can't be combined. Also, the existing footpath already runs through part of this same field. We also note that local authorities are not keen on fencing off footpaths. However, the footpath is required to be appropriately demarcated for users. If you are still concerned, please refer to the 'Landowners and Farmers guide to Public Rights of Way' for guidance or contact your local Public Rights of Way Officer.

We note your concerns over property security. We would be happy to discuss reasonable improvements to the security of your land arising from the creation of the footpath.

Network Rail shall respond directly to your neighbours who have raised these objections.'

8.20.2.2 Network Rail will continue to liaise with the affected landowners during to discuss how concerns regarding the exercise of powers under the TWA0, if approved, could be addressed, particularly, where possible, through the detailed design process.

Objector – Robin Cole

Objector Reference – 158

8.20.3 A summary of the main areas of objection is set out below

- The objector is concerned about the route of the proposed footpath.
- The objector is concerned about privacy and security of his property.

8.20.4 Response

8.20.4.1 I have reviewed the objection letter on behalf of Mr Cole and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which I set out below

With respect to your comments on the proposed footpath our agent, Patrick Hackett from Bruton Knowles has contacted you by email on 30 August 2017 to seek more detail on your proposals to extend your garden and the location of the drain. Subject to future discussions and any further information you can provide, we respond to each of your points as follows:

- 1. If you were successful in extending your garden, you would still have the option to apply for a public footpath diversion, such that the path is routed around your extended garden*
- 2. As the public footpath to be created will be unsurfaced, there should be little in terms of physical impact on your drain. If it were required to dig up your drain for renewal, it would be necessary to seek a temporary closure of the public footpath during the works, and to reinstate the footpath once works were complete. A temporary closure does require payment of a fee to the highway authority in respect of administrative time and advertising the Order. In cases of emergency, a short-term closure by notice can be agreed.*
- 3. We note your concerns over property security. We would be happy to discuss reasonable improvements to the security of your land.*
- 4. Essex County Council as highway authority is not in favour of road walking so this is why we offer this link to footpaths to the west of the railway station. Church Road will, of course, remain available to the public, and the footpath should be passable at drier times of year. The footpath network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. Network Rail is under an obligation under the Transport & Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the footpath network.*

[...]"

8.20.4.2 Network Rail will continue to liaise with the affected landowners regarding the matters raised in their objection.

8.21 E56 Abbotts

Objector – Peter Harris & Co Trustees

Objector Reference – 103

8.21.1 A summary of the main areas of objection is set out below

- The objectors expresses concern about the location of a new footpath and the effect on their poplar trees

8.21.2 Response

8.21.2.1 I have reviewed the objection letter on behalf of Harris & Co and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material part of which is set out below

We note your concern that the proposed diversion route would add liability to you as the natural felling process of your Poplar Trees may cause harm to users. Network Rail cannot fell the trees as this would change the ecological impact of this proposal which would be a significant change to the Ecological impact screening statement that the DfT have issued. The likelihood of trees being blown over onto the proposed footpath is very unlikely given that the prevailing wind direction in the UK is from the west or south west. As the railway is orientated southwest to northeast, trees are most likely to be blown onto the railway rather than into the field. However, it is an inherent risk if you feel that your trees may fall onto the railway. It is your responsibility to ensure that this does not happen. Network Rail has noted your concerns that there are rabbit burrows along Network Rail's boundary. We will notify Network Rail Community Relations and appropriate measures of control will be applied.'

8.21.2.2 Network Rail will continue to liaise with the affected landowners regarding the matters raised in their objection.

8.22 E57 Wivenhoe Park

Objector – Charles Gooch

Objector Reference – 157

8.22.1 A summary of the main areas of objection is set out below

- The objector objects to the closure of the vehicular crossing and to the proposed new vehicular right of way

8.22.2 Response

8.22.2.1 I have reviewed the objection letter on behalf of Mr Gooch and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material part of which is set out below

As you are aware, Network Rail is proposing to close your private (occupation) crossing used to access your land on the west of the railway, which is maintained as an environmental stewardship area. You have confirmed that the use of plant and other vehicles over the crossing is infrequent. The current usage of the culvert above Salary Brook by Environment Agency vehicles, pedestrians and cyclists does not in practice seem to cause any problems, and Network Rail's proposal will not be diverting significant additional traffic onto this route. Network Rail's current position remains that the proposals in the Order are a necessary, suitable and convenient access route for the current user. It will keep the position under review as the various meetings progress.'

8.22.2.2 Network Rail will continue to liaise with the landowners affected by the proposals in respect of E57, including this landowner, and will provide an update as to any developments at the inquiry, or before it opens if possible.

Objector –University of Essex

Objector Reference – 177

8.22.3 A summary of the main areas of objection is set out below

- The Objector does not object to the Scheme in principle, but seeks additional information from Network Rail regarding the Scheme and its impact upon their activities.

8.22.4 Response

8.22.4.1 I have reviewed the objection letter on behalf of the University and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which I set out below

We note that you have particular concerns over the closure of the vehicular crossing and redirection of farm traffic across your client's property. You also question the suitability of the proposed replacement crossing for pedestrian and cyclist access, together with the impact on your client's future growth and development plans. We appreciate that your colleague, John Fawcett approached our solicitor at the Pre-inquiry meeting to propose a joint meeting with all the parties objecting to this level crossing closure proposal . Unfortunately, it has not been possible to arrange such a meeting thus far, although a number of individual meetings have now been held including with the private crossing user, the Environment Agency and Colchester Borough Council. Network Rail looks forward to settling with you as a matter of urgency a meeting to discuss your concerns further.

Network Rail's proposal is to close the private (occupation) crossing used by the farmer to access his land on the west of the railway, which is maintained as an environmental stewardship area. The use of plant and other vehicles over the crossing is infrequent. The current usage of the culvert above Salary Brook by Environment Agency vehicles, pedestrians and cyclists does not in practice cause any problems, and Network Rail's proposal will not divert significant additional traffic onto this route. For the same reason, Network Rail does not agree that the infrequent right of access sought over your client's land by the private user will pose a significant danger to those associated with the University or the general public or that future development plans for the University are affected.

Network Rail's current position remains that the proposals in the Order are a necessary, suitable and convenient access route for the current user. It will however keep the position under review as the various meetings with objectors to this crossing proposal progress.

In relation to your particular concerns regarding plot 02 in the Borough of Colchester part of Lightship Way, a private access road, the land was originally held by Europe (OB) Limited (now dissolved) under title EX624829. When looking at the title plan for EX624829 and reading the register, the land that forms plot 02, seems to have been transferred to title EX714523, owned by BDW Trading Limited. When interrogating the register and plan for EX714523, the land has not in fact been transferred into this title. It therefore seems as if this land has an unknown owner. We're currently investigating this with land registry and will be in touch once we have further information.

8.22.4.2 Network Rail will continue to liaise with the landowners affected by the proposals in respect of E57, including this landowner, and will provide an update as to any developments at the inquiry, or before it opens if possible.

Colchester Borough Council

Objector Reference - 141

8.22.5 A summary of the main areas of objection is set out below

- The objector is concerned about the form of the private vehicular right to be granted over its land and minimising damage to the land.

8.22.6 Response

8.22.6.1 I have reviewed the objection letter on behalf of the Council and consider the issues raised have been dealt with in a letter from Network Rail dated 7th September 2017, the material parts of which I set out below

We note you do not object to closure of this crossing subject to conditions being met.

Network Rail's proposal is to close the private (occupation) crossing used by the farmer to access his land on the west of the railway, which is maintained as an environmental stewardship area. The use of plant and other vehicles over the crossing is infrequent. The current usage of the culvert above Salary Brook by Environment Agency vehicles, pedestrians and cyclists does not in practice seem to cause any problems, and Network Rail's proposal will not be diverting significant additional traffic onto this route. We discussed this in our meeting today and, as discussed, Network Rail will provide further information shortly.

Network Rail has already replaced the stiles at the level crossing with wicket gates, to facilitate access for people with reduced mobility, and accommodate the current permissive use by cyclists.

8.22.6.2 Network Rail will continue to liaise with the landowners affected by the proposals in respect of E57, including this landowner, and will provide an update as to any developments at the inquiry, or before it opens if possible.

8.23 H04 Tednambury

Objector – D.G. Edmonston Esq.

Objector Reference – 128

8.23.1 A summary of the main areas of objection is set out below

- The objector suggests the need for rights through his land is unnecessary
- The objector objects to lack of effective consultation
- The objector has concerns on the privacy of his retained land
- The objector suggests an alternative route

8.23.2 Response

8.23.2.1 I have reviewed the objection letter on behalf of Mr Edmonston and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which I set out below.

Network Rail carried out 2 rounds of consultation on the proposed diversionary route and we noted your client's concerns expressed in May 2016 that the proposed crossing will pass close to his home and garden. At Round 1 of consultation, four route options were presented, with one of these being the route which subsequently became the currently proposed diversionary route. Mrs Edmonston was consulted on these and noted her objections. However, this route was objected to the least, and was therefore, taken forward in the design freeze plan.

Your client is concerned that the new route will have an impact his quiet enjoyment and security of his property. Network Rail would be happy to discuss these

concerns further with your client and consider if any reasonable mitigation measures to address the impact on your client's property, such as fencing or planting, may be suitable.

In accordance with section 5(1) of the Transport and Works Act 1992, Network Rail cannot extinguish a public right of way over land in the Order unless it can satisfy the Secretary of State either that an alternative right of way has been or will be provided, or that the provision of a right of way is not required. Network Rail has therefore considered carefully whether a new public right of way is necessary or not. Furthermore, as mentioned above, Network Rail's proposals for diversionary routes in substitution for rights of way extinguished by the Order have been the subject of extensive consultation with stakeholders, including local highway authority officers, landowners and the public. Network Rail is well aware that various stakeholders have different and potentially competing interests. For example, where it is necessary to provide a diversionary route, Network Rail has kept new rights of way off productive land, where reasonably practicable to do so, in order to reduce potential impacts on agricultural businesses.

In deciding the form and extent of diversionary routes, Network Rail has also had regard to Government Guidance on Compulsory purchase process and the general principle that acquisition of land or rights in land should only be used where there is a compelling case in the public interest and that the purposes justify interfering with the rights of those whose land is affected. Your client states in his Statement of Case that the draft order proposes permanent rights of way over plots 04, 18 and 20 as shown on Sheet 08, which is currently a private lane. Network Rail does not seek permanent rights over these plots of land. It is seeking to acquire rights for the purpose of access for creation of new footpath, access for removal of level crossing and access for construction of the authorised works (Work No 1 – footbridge) (plot 04); and access for removal of level crossing (plots 18 and 20).

In terms of the impact of Network Rail's proposals your client may be entitled to compensation in line with the compensation code.

Your proposal – continue on fp41 northward where there is a controlled crossing or south towards Kecksys Farm where there is an existing bridge to cross the railway both to access A1184. Network Rail has put forward a diversionary route which is suitable and convenient to all users and utilises an existing bridge to ensure safe crossing of the railway.'

8.23.2.2 The proposed diversionary route, and alternative proposed by the objector, are considered in the Proof of Evidence of Susan Tilbrook. Network Rail will continue to liaise with the objectors during the period prior to the outcome of the TWAO inquiry and, if approved both during and after the implementation of the TWAO to minimise the impact of the works.

8.24 H05 Pattens, H06 Gilston, H09 Fowlers

Objector – Ronald Carpenter and Dorothy Carpenter.

Objector Reference – 162

8.24.1 A summary of the main areas of objection is set out below

- The objectors object to a new footpath on their land and that this will increase footpath usage leading to an increased financial burden as they maintain a footbridge used by the Scheme.

38.24.2 Response

8.24.2.1 I have reviewed the objection letter on behalf of Mr & Mrs Carpenter and consider the issues raised have been dealt with in a letter from Network Rail dated 5th September 2017, the material parts of which I set out below.

Network Rail has noted your concerns in relation to statutory notices served on your client, in their letter of 5th September the requirements for each plot were stated in a table. Network Rail has noted your concerns in relation to statutory notices served on your client. However, in relation to your objections that the notices do not refer to the dedication of a public right of way over the land, this is normal practice for a TWAO application. The Notice puts your client 'on notice' and allows them the opportunity to inspect the Order and its associated documents. The temporary possession of these plots will allow NR to carry out any temporary works to create the new PROW. Article 5 and in relation to that Schedule 2 within the Order give Network Rail the power to dedicate the new PROW. The Order also sets out in article 22 the terms on which land will be temporarily occupied and the basis on which compensation will be payable. Network Rail is satisfied that the notices are justified, necessary and reasonable.

Network Rail has however noted that your client did not receive notices for Plots 8 & 11 until 10 May 2017. Owners of these plots could not be identified at the time as these plots were not registered with Land Registry. Network Rail followed legal requirements to post Unknown Notices with all relevant information and details displayed. A map of the proposed diversion route for each crossing was also displayed. These were posted on the 31st March 2017 in accordance with the Transport Works Act Order (TWAO) and noted in the Book of Reference (BoR). Whiskers LLP later contacted Network Rail's agent on the 9th May 2017 and notices were served on your client the following day.

Network Rail has noted that it was not clear to your client what type of footpath proposed to be created on your client's land. Network Rail is under an obligation under the Transport & Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. This has resulted in finding a solution to continue to offer connectivity for the footpath network including through discussion with the local highway authority. Network Rail

therefore considers that the proposals for creation of new public rights over your client's land is required, suitable and convenient. The Essex and Others Design Guide submitted with the TWAO application (NR12) contains indicative descriptions of the footpath types, fencing. Plans indicate the footpath is to be unsurfaced as it is at present. The Order requires that the new footpaths be completed to the reasonable satisfaction of the Highway authority and therefore the details of the surfacing and other details, including signage requirements will be agreed with Hertfordshire County Council as part of the detailed design.

Landowners equipment through underbridge - This has been the subject of much discussion. We believe grass cutting equipment can be taken under the underbridge without issue. As the rights to use the underbridge for the benefit of the lands on either side were released in 1962, new rights are being granted through the Order in partial substitution for the existing rights at level crossing.

Network Rail has also noted that the footbridge at P054 of the Order plan is maintained by your client and they do not wish to be encumbered with maintaining the footbridge with higher footfall. The bridge is a remnant of the old licence for access to the land over Fowlers level crossing. If the new PROW is, as proposed, routed over the bridge, Network Rail is required by the provisions in the Order to maintain the bridge for the first 12 months of the PROW coming into public use, after which it will be for the highway authority to maintain to carry the public footpath over the ditch. An assessment of the footbridge at detailed design stage will be conducted and may require remedial works to bring the bridge in line with local authority standard. Detailed design stage will only be considered if the TWAO powers are granted.

In your objection you seek confirmation of the timescales for Network Rail's proposal. In terms of the specific duration of the works to create the footpath, as an indicative timescale, this should take around 3 months to complete. However it is not possible to give specific dates at this point in time for when the works will start and end as this will be dependent on a number of factors, including when specifically the TWAO powers are granted.

PRoW to be diverted to public highway as in previous design - Network Rail has noted your client's suggestion to re-route PRoW to the use of Thorley Street. Under the Order, Network Rail will not close the level crossing until the new diversion route is approved to the reasonable satisfaction of the Highway Authority and brought into public use. Initial designs to divert the footpath to pavement walking along B1383 Thorley Street was considered. However, following consultation the use of the highway was noted to be of concern to local users groups and the general public. This element of the diversion was discussed with Hertfordshire County Council and replaced with the off road footpath to mitigate the concerns and to address loss of amenity. The current proposal is found to be required, suitable and convenient.

It is noted that your client raises privacy concerns in relation to Plot 9. The location of the proposed footpath is located at the distance (approximately 100m) from the private property that is shown on the design plans. We note your concerns over property security. We would be happy to discuss with you reasonable mitigation measures such as fencing or planting. However, Network Rail believes that your client intends for plot 9 and his surrounding land to be promoted for residential development. If the scheme is successful, it is possible for your client to re-route the footpath with Hertfordshire highway authority at a later date.

Compensation - Network Rail has noted your client's concerns with the use of their land as part of the diversion proposal. In terms of the impact on the value of your interest, you may be entitled to compensation in line with the compensation code.'

8.24.2.2 Network Rail will continue to liaise with the objectors during the period prior to the outcome of the TWAO inquiry and, if approved both during and after the implementation of the TWAO to minimise the impact of the works.

8.25 HA3 Manor Farm & HA4 Eves

Objector – Stuart D Mee

Objector Reference – 013

8.25.1 A summary of the main areas of objection is set out below

- The objector expresses concerns regarding the safety of the alternative route.
- The objector is concerned about security and privacy of his property

8.25.2 Response

8.25.2.1 I have reviewed the objection letter on behalf of Mr Mee and consider the issues raised have been dealt with in a letter from Network Rail dated 4th September 2017, the material parts of which I set out below

You said at consultation events and in your objection letter that you are concerned with the safety of pedestrians using the Ockendon Road bridge as part of Network Rail's proposed diversion route. Network Rail commissioned an independent Road Safety Audit in developing its proposal, hence we are providing off-road walking where possible along Pea Lane and Ockendon Road. The level crossing, HA03 Manor Farm, has not been available for public use since the M25 was constructed and severed the footpath. Therefore any walkers in the area are already using Ockendon Road bridge to cross the railway at present. Our proposed diversion along field edge paths is therefore a replacement of the existing cul-de-sac footpath to the east of Pea Lane. Network Rail is under an obligation under the Transport & Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. The need to cross Pea Lane at Manor

Farm is not changed from the current route. The accommodation, diversion or extinguishment of existing roads and public rights of way necessitated by the Lower Thames Crossing Project will be dealt with as part of that Project's development process, which is in the early stages. We note that as landowner you object to the route of the proposed footpath. In response to your specific security and privacy concerns, we note that there is an existing public footpath and road adjoining your property, and Network Rail's proposals for an additional footpath should not adversely impact the security and privacy of your property. In relation to your objection to the closure of HA04 level crossing, we are providing a suitable and convenient diversion to the west of the railway and to the eastern side the existing rights of way network already provides a suitable and convenient diversion.

8.25 2.2 The RSA, and details of the proposed diversionary route, are discussed in the Proof of Evidence of Susan Tilbrook. Network Rail will continue to liaise with the objectors during the period prior to the outcome of the TWAO inquiry and, if approved both during and after the implementation of the TWAO to seek to minimise the impact of the works and/or exercise of powers authorised by the Order if approved.

8.26 T01

Objector – Aveley Properties

Objector Reference – 015

8.26.1 A summary of the main areas of objection is set out below

- The objector suggests an alternative for part of the diversionary route

8.26.2 Response

8.26.2.1 Network Rail have considered the objection and set out a response in their letter of 7th September key points of which are set out below.

We are grateful for your confirmation that you accept the principle of the diversion of the footpath on your land. You propose an amendment to the proposed diversionary route to extend from the end of the bund to the A1306, specifically to remove the proposed footpath from plot 21 (sheet 52 of the Order plans). As you discussed with our agent, Bruton Knowles, on 24 August 2017, Network Rail is amenable to the route proposed above and has discussed this with your tenant, Mr R J Burnley, and Thurrock Unitary Authority, both of which support the proposed amendment.'

If this change is wholly within land interests held by yourself and Mr Burnley and adopted highway, it should be possible to make a slight adjustment to the Order plans, so the new footpath extends from the bund to the A1306. Initial analysis indicates that there is sufficient space to accommodate a steel double field gate,

along with a pedestrian footpath and gate to the side, without any works being required on the culvert.'

If this is the case, Network Rail would be willing to amend the Order plan to reflect your proposal and submit a revised plan to the forthcoming inquiry'

8.26.2.2 Network Rail therefore is seeking a resolution to the objection by amending the route on the objector's land, subject to confirmation of the ownership position.

Objector –Mr Burnley

Objector Reference – 74

8.26.3 A summary of the main areas of objection is set out below

- The objector suggests an alternative for part of the diversionary route

8.26.4 Response

8.26.4.1 I have reviewed the objection letter on behalf of Mr Burnley and consider the issues raised have been dealt with in a letter from Network Rail dated 6th September 2017, the material parts of which are set out below.

We note you object to the dog leg of the footpath, shown in plot 21 (sheet 52 of the Order Plans) and propose an amendment to the proposed diversionary route to extend from the end of the bund to the A1306 with a new access. As you discussed with our agent, Bruton Knowles, today, Network Rail is amenable to the route proposed above and has discussed this with your landlord, Aveley Properties and Thurrock Unitary Authority, both of which support the proposed amendment.

If this change is wholly within land interests held by yourself and Aveley Properties and adopted highway, it should be possible to make a slight adjustment to the Order plans, so the new footpath extends from the bund to the A1306. Initial analysis indicates that there is sufficient space to accommodate a steel double field gate, along with a pedestrian footpath and gate to the side, without any works being required on the culvert. If this is the case, Network Rail would be willing to amend the Order plan to reflect your proposal and submit a revised plan to the forthcoming inquiry, if in return you would be willing to withdraw your objection.'

8.26.4.2 Network Rail therefore is considering whether this objection could be resolved by way of a minor amendment to the proposed diversionary route within the objector's landholding. Network Rail will provide an update on the position as soon as the outstanding matters have been addressed.

8.27 T04 Jefferies

Objector – E&K Benton Limited

Objector Reference – 030

8.27.1 A summary of the main areas of objection is set out below

- The objector suggests there is a suitable existing route and objects to the proposed footpath on his land.
- The objector is concerned about the increased public access to its land and additional liability to third parties

8.27.2 Response

8.27.2.1 I have reviewed the objection letter on behalf of E&K Benton Ltd and consider the issues raised have been dealt with in a letter from Network Rail dated 29th August 2017, the material part of which is set out below

We enclose a copy of the latest design freeze proposal; we note that the plan you sent with your objection letter relates to an earlier proposal, which has been altered as a result of the land southeast of the Manorway currently being developed. Network Rail considers that a pedestrian link is required between the railway and the A13, to allow continued access to the Northlands Farm Chase bridge, being the nearest grade separated crossing of the A13. In relation to your concerns on flytipping and access by motorbikes, the proposal does not include any vehicular access.

8.27.2.2 Network Rail will continue to liaise with the objectors during the period prior to the outcome of the TWAO inquiry and, if approved, both during and after the implementation of the TWAO to minimise the impact of the works.

8.28 T05 Howells Farm

Objector – Mr. David Frederick Thomas Keeling

Objector Reference – 194

8.28.1 A summary of the main areas of objection is set out below

- The Objector has expressed concerns regarding the impact of trespass on his landholding as a result of the Scheme, and the impact on his farming operation more generally.
- The Objector has raised issues regarding compensation for loss

8.28.2 Response

8.28.2.1 I have reviewed the objection letter on behalf of Mr Keeling and consider the issues raised have been dealt with in a letter from Network Rail dated 4th September 2017, the material parts of which are set out below

It is considered that the crossing closure and footpath diversion works are separate from any future developments and are suitable to facilitate the level crossing to be closed within the current phase of work submitted as part of the current TWAO. The diversion proposals do not preclude future development proposals. In future, if you wish to divert the footpath, you may do so through Essex Highways who has the power to make a Public Path Diversion Order under Section 119 of the Highways Act 1980.

Network Rail has noted that you may be required to leave farm machinery in your field overnight partway through cultivation. You had experienced pedestrians and vehicles trespassing on your land which had resulted in the damage and loss of crops. In a particular instance, vehicles were found burnt and you had to decontaminate your land to enable crops to grow again. You have since put security measures in place.

In discussion with the highway authority, to whose reasonable satisfaction the new public right of way must be completed, Network Rail would be willing to discuss provision of measures providing clear demarcation to discourage trespassing and prevent future public misuse such as gates or fencing, if that would allay your concerns.

In terms of carrying out shooting activities as part of maintaining your land, Network Rail trusts that you are currently carrying this out at a safe distance away from the railway to prevent any mishap with passing trains.

Network Rail has noted that your land is subject to an extensive and complex land drainage scheme where frequent use would cause compacting and additional subsoiling and moling required to maintain efficiency of drainage. We consider that the relatively low usage numbers (17 users over a 9-day period at the current level crossing according to census data) would not induce a significant loading along the new footpath and we anticipate this would be less than that of agricultural machinery used at present. Therefore, it would be safe to assume that the new footpath would have a negligible effect on the drainage system mentioned, as it is likely that such a system is buried at a sufficient level, to avoid damage from the loading associated with agricultural machinery.

We note your concerns regarding maintenance of the footpath. Network Rail will maintain the path in the first year after creation. Subsequent maintenance will be the responsibility of highway authority. As noted above, the new footpath must be completed to the reasonable satisfaction of the highway authority before it can be brought into public use.

We note your concerns with possible fly-tipping. Please see our earlier comments in relation to trespass.

In terms of the impact on the value of your interest including the hides that are within the proposed footpath route, you may be entitled to compensation in line with the compensation code if order powers are granted and exercised. Issues of value can be dealt with through the compensation provisions in the TWAO.

8.28.2.2 I address compensation at Section 4 of my Proof above. Network Rail will continue to liaise with the objector during the period prior to the outcome of the TWAO inquiry and, if approved both during and after the implementation of the TWAO to minimise the impact of the works.

9. DECLARATIONS

9.1 I hereby declare as follows:

9.2 This proof of evidence includes all facts which I regard as being relevant to the professional opinion which I have expressed and I have drawn the inquiry's attention to any matter which would affect the validity of that opinion

9.3 I believe the facts which I have stated in this proof of evidence are true and that the opinions are correct.



Nigel Billingsley BSc MRICS PgDip MCIWM

Date 15th September 2017