

DOCUMENT OBJ/029 – W1 – 5

Peter Kay / Wivenhoe Town Council

Response to NR Rebuttal Evidence (Brunnen / Fisk / Tilbrook)

BRUNNEN

1.1 – 2.3 (especially 2.3) seemingly merely reiterate the previously-expressed NR view that it is not obliged to present an individual case for closing each crossing.

On this front we are (as communicated separately) in need of definitive rulings from the Inspector *and the SoS* to confirm that considering the case for and against each crossing closure individually is (or is not) the principal function of the inquiry.

2.4 This response seems to be based on the strange ‘logic’ that things cannot be said to be being used as a reason for doing something unless they are the *sole* reason for doing it!

3.1 – 3.4 This is a complete twisting of what was said in my proof, where it was made clear that the Law Commissioners’ views were being cited as an *exemplum* of how rational intelligent people would consider any level crossing case. Brunnen in contrast tries to claim that I was citing it as if it were a piece of current legislation which the SoS was obliged to follow – and then purports to have knocked down my argument by pointing out that it isn’t!

4.1 – 4.7 There is no purpose in going over this ground again. The fact that the NR system can conclude that a crossing with 0.0 ‘fatalities and weighted injuries’ in 150 years is ‘especially dangerous’ says enough.

5.1 – 5.5 Ditto. 5.2 really just seeks to cover up the fact that NR’s own approach to ‘safety’ is at the extreme end of the spectrum. Observation of the behaviour of ordinary citizens on the road system shows clearly enough where society at large stands on the ‘safety versus convenience’ spectrum in ‘transport’ activity!

6.2 The point about NR being little concerned about the safety of diverted LC users on the public road system has been made both nationally and by many other objectors here, including very vigorously by ECC as Highway Authority. It is true that NR has carried out road safety audits, but these have been done by people who seem blind to the obvious in many cases (see further under Tilbrook).

6.5 This appears to be an attempt to cover up the point that they had to give up the E42 scheme because it became obvious (except to the NR road safety audit team!) that the alternative route was highly dangerous.

The 'alternative route', so far as the east-west rack north of the railway is concerned, already exists, and is known to some extent and used, being a route between Wivenhoe (via Alresford Rd *north* of the railway) and the woods, without having to pass over the dangerous railway bridge. It is not evident how the fact that *more* people might use it in future (because it would be an advertised public footpath, presumably?) could be a reason for withdrawing the crossing closure!

7.1 – 7.2 I explained in my first proof (and have elaborated further in my revised proof) on the need for the speed limit through Wivenhoe station to be reduced to improve station safety / accessibility. Brunnan's argument is effectively that station safety / equality issues are less important than saving a few seconds in the running time of a few empty trains.

7.2 is a clear *reductio ad absurdum*. There can be very few other places where the same combination of circumstances exists as here.

POINTS NOT CHALLENGED BY NR:

That the crossings included in the current Order do not fulfil the advertised NR policy of dealing with the most risky level crossings as a priority.

FISK:

1. (Now obsolete as my revised proof covers the issue fully, following the information revealed in the NR proofs).
2. There is no need to discuss further the small 10-20m differences between NR's figures and my figures, which are purely due to different interpretations of when a train becomes visible. The whole question is in any case only relevant to those few down trains previously travelling at 50mph.
3. (Fisk confirms here for us what I had surmised to be the case at p.7 bottom of my revised proof).
4. As to Fisk's claim that the current down temporary speed limit was *not* actually meant to be 25mph when calculated and ordered to be carried out, either he does not know the true facts or his colleague Steve Day does not know the true facts. See Day's 2014 emails at [attachment A](#). It is not normal for official persons to *invent* such embarrassing excuses for having done things wrong! As Fisk has only been in his present post since 2015 whereas Day has been involved with the details of this crossing since the early days of the work, it would again seem likely that Day is correct.

The most significant aspect of all this is probably that it proves that the evidence given to the inquiry by NR cannot be assumed to be factually correct!

4. It is impossible to understand Fisk's argument here on why the temporary speed restriction has to be as low as 20mph. His own evidence (table p.167) gives the sighting distance needed for 20mph as only 103m, even with the false addition of the 50% for a large number of vulnerable users who do not actually exist, which = 68m

without the addition. On NR's own methodology, the available sighting distance of 160m here permits a speed of 31mph (with the addition) or 47mph (without). Yet somehow Fisk now manages to claim that 160m is only just enough for 20mph.

(It is evident from the above figures why NR did *not* choose so low a figure 20mph as the temporary limit; calculating as they would have been with the 50% added, they should actually have chosen 30mph, but for some reason settled on 25).

5. I believe (but lack photographic proof) that the down whistle board was already in its current position in the 50mph period? *If* that is true, the logic here is odd.

(In any case, NR now agrees that no down whistle board is actually needed *per se* anyway; it is only provided because of the 'two or nothing' rule).

6. Fisk's claim that the decision by the TOC to impose the 3-second blast was nothing to do with NR is false. This has already pointed out in my proof, however as it has been challenged it is now appropriate to submit the original evidence – see **attachments B1 and B2** clearly stating that the change was made on NR instructions.

Fisk is also incorrect on stating that the change to the 3-second blast was made at the time of the rule change to an 0000-0600 quiet period, which was in December 2016. The TOC letters / emails predate that! (although one goes too far the other way in saying that the change was 'early in the year'). The actual change was around July – see **attachment C** with the first complaints being made about it in the Wivenhoe Forum Paget Rd thread in August. This is a thread that has run continuously from 2014 to the present.

Again, the principal point here is really the unreliability of NR's 'facts'.

POINTS NOT CHALLENGED BY NR:

That the actual distance visible looking east from the south side is around 250m and not 80m as claimed by NR, and that in consequence views to the east are compliant or all but so even with the false 50% added.

That the speed limit through Wivenhoe station could not be increased above 50mph because of the curvature, so the whole NR argument about line speed increases being needed here is unreal.

That trains have been delayed a lot more than necessary since 2014 by the unjustified 20mph limit and by its extension *beyond* the crossing.

TILBROOK:

[All this relates to High St]

2.7. No progress has been made on this issue since it was pointed out at the PIM that no actual NR plan exists that people can object to / comment on. It remains the case that all that NR has produced is the 'design freeze' map showing a short line of red triangles indicating footway widening, plus what ECC describe as a 'rough sketch' which itself has only been shown to them and CBC. Contrary to Tilbrook evidence

1.7.1, we have no ‘good representation’ of anything. The emails in Tilbrook appendix also now show that schemes are or have been under consideration for extending one-way working as far as the Post Office. We cannot say that it is a bad plan or a good plan, but deliberately depriving local people and adjacent commercial premises of any chance to contribute their local knowledge to the design is certainly not going to make it a *better* plan! – all the more so given the sensitivity of the location.

It may well not be within the remit of the Level Crossings work to ‘facilitate overall improvements to traffic management’, but that does not alter the fact that their work has to be *compatible* with other intended work, and in particular with the bridge protection work designed by ECC for NR’s own benefit.

2.8 – 2.13 We are left to assume that the ‘road safety audits’ referred to here are merely the one-sentence statements in the Appendix ‘No road safety issues were identified by the audit team associated with the proposed diversionary route’. Although not stated with full clarity, it also appears to be the case that the team were supposed to be auditing the situation as it would be *after NR’s works were carried out?* – but that is impossible, given that no drawn up scheme exists! (indeed it is stated in the Appendix that the only thing the team had with them was the design freeze map).

Similarly it is impossible for Tilbrook to be ‘satisfied that the works proposed on the High St are appropriate to mitigate the crossing closure’, because even she does not know exactly what the proposed works are!

For the same reason, it is impossible as things stand for the Inspector or the SoS to be satisfied that the High St will be a sufficiently safe diversionary route, and thus impossible for them to conclude that the crossing can safely be closed.

It is extraordinary that anyone could visit the High St and find not a single thing to comment on regarding the ‘road safety’ situation! (Compare the road safety audits carried out by ECC’s specialist team for proposed minor highways works, which are of several dozen pages length with photographs, and go into all issues).

However, these audit ‘reports’ do assist in explaining one mystery which has been puzzling all since 2014, *viz* how NR’s road safety audit people can manage to not notice things that are blatantly obvious to everybody else! It is revealed that the audit team were in Bures at 1140 and already in Great Bentley at 1230, yet *en route* they claim to have carried out an ‘audit’ of at least eight streets on the diversionary routes in Wivenhoe! Even with a helicopter this would be a marvellous achievement. Anyone carrying out a credible audit in a place previously unknown to them would need to stay for a considerable period to watch the actual movements of vehicle traffic, cyclists, and pedestrians (which may themselves vary considerably at different times of the day/week, all the more so in a village centre location). NR’s ‘audits’ are revealed to be nothing more than a quick glance.

It is not disputed that *most* of the lengths of the side roads east of the High St work acceptably as ‘shared space’. The most dangerous point (had the road safety team stood still long enough to notice it) is the Alma St / High St junction, where pedestrians in Alma St nearing the junction are liable to be suddenly faced by a cyclist or car whipping round the corner at excessive speed on the charming assumption that nothing will be coming the other way. The driver’s-eye (lack of) view of Alma St is shown in the googlecar view at **attachment D**. There are often families with small children walking here, and there is no ‘refuge’ if such a vehicle appears at the wrong

moment. The adjacent garden wall has many times been hit by vehicles, probably taking evasive action in emergency.

2.11 This illustrates beautifully the two-faced nature of NR's arguments. They happily claim here that 'no casualties since 1999' proves that a road is safe, despite their insistence that 'no incidents since 1863' does *not* prove that a level crossing is safe!

2.15 It appears from this that the NR level crossings team do now at last have *some* knowledge of the ECC scheme drawn up in 2008 for carriageway narrowing for NR's benefit, however they do not appear to actually have a copy of it, or a full understanding of the circumstances, or the problems that continue to this day. Accordingly **attachments E1-E6** are provided to give a suitable summary of the actual facts. **E1** shows the plastic bollards as existing 2006-8, and **E2** the situation in 2009 with the bollards gone but the signage and the yellow lines still in situ. (The yellow lines have almost worn away since). **E3/E4/E5** refer to NR's obstructiveness and greed which has prevented the implementation of the permanent scheme. **E6** is the actual plan of the permanent scheme drawn up by ECC and presented to NR in 2008.

The actual relevance of all this to the inquiry is that ECC/NR now have between them to agree a scheme that meets both the bridge protection needs and the LC team's wishes, before any safe alternative route could be deemed to exist.

Tilbrook appears to believe that there are 'current arrangements to restrict the traffic to single way flow' (which rather suggests that she has not visited the site). All that there has been since 2009 is the obsolete signage (which must confuse any visitor!) which we understand has been retained by ECC in the hope that NR will one day eventually permit the permanent scheme to be implemented.

2.17 My wording here was too loose, I should have said that no actual drawn-up plan has been discussed with ECC. Mr Southgate will however no doubt assist the inquiry as to the latest situation.

2.19 Perhaps the witness could assist the inquiry by pointing out *where* in the draft orders it states that the crossings cannot be closed until the works listed in Schedules 8 and 9 (as distinct from those included in Col.4 of Schedule 2) are completed and approved by ECC?