



**TRANSPORT AND WORKS ACT 1992**

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

**THE NETWORK RAIL  
(SUFFOLK LEVEL CROSSING REDUCTION)  
ORDER**

---

**PROOF OF EVIDENCE**

**-OF-**

**NIGEL BILLINGSLEY  
PROPERTY**

Document Reference	NR/29/1
--------------------	---------

- 1. INTRODUCTION**
- 2. SCOPE OF EVIDENCE**
- 3. POWERS SOUGHT by NETWORK RAIL**
- 4. COMPENSATION PROVISIONS**
- 5. COMMUNICATION & ENGAGEMENT**
- 6. HUMAN RIGHTS**
- 7. LANDOWNERS AFFECTED BY THE USE OF COMPULSORY POWERS**
- 8. CROSSINGS**
  - 8.1 S01 Sea Wall
  - 8.2 S02 Brantham High Bridge
  - 8.3 S03 Buxton Wood
  - 8.4 S12 Gooderhams
  - 8.5 S13 Fords Green
  - 8.6 S16 Gislingham
  - 8.7 S18 Low Pastures Lane
  - 8.8 S21 Abbotts
  - 8.9 S24 Higham Ground Frame
  - 8.10 S29 Hawk Head Road
  - 8.11 S69 Bacton Whipps
- 9. DECLARATIONS**

- 1. INTRODUCTION**

- 1.1. My full name is Nigel Billingsley. I am a partner at Bruton Knowles LLP, 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 programme. 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 Network Rail Suffolk 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 supporting objection management 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. However the quantum of compensation falls outside the scope of the inquiry and potential compensation sums payable are not within the scope of evidence.
- 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 (Suffolk Level Crossing Reduction) Order is to enable Network Rail to close or downgrade specified level crossings in Suffolk and, where necessary, to extinguish existing public and/or private rights over crossings; and to create alternative public 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 5, 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 column 4 of Part 1 in Schedule 2;
  - 3.2.3 relating to the re-designation of certain highways set out in column 1 of Schedule 3.
- 3.3. Network Rail is under an obligation under section 5(6) of the Transport and Works Act 1992 (the 1992 Act) which requires Network Rail not to extinguish any public right of way (PRoW) 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 Criche 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 of, or rights over (including for access), 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 1992 Act), which connect coherently to the existing PRoW network, Network Rail has sought to compulsorily acquire the necessary rights over land to create and to construct the new public rights of way. 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 justify the powers sought under the Order, in order to enable the closure of (and, where applicable, downgrading of the rights of way enjoyed over) level crossings, including the associated provision of alternative rights of way, 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 implementation of the Scheme can be used as required (temporarily occupied) and the necessary rights acquired in a realistic timescale and that no individual landowner can hold up the Scheme through a refusal to allow entry on the land for the works or to grant the necessary rights. 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 sought 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 14 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 14 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 have been completed to the reasonable satisfaction of the highway authority. Article 14 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 15 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 lists 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 (Weatherby between points P001 and P002, Higham between points P004 and P005, Leggetts between points P054 and P054B & Abbots between points P087 and P088)

Network Rail considers that a suitable and convenient route already exists (as indicated on the design freeze plans in the Design Guide (Tab NR12) and has not therefore provided a new right of way in substitution. Article 15 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. Re-designation of highways*

- 3.7.3.1. Article 13 provides for the re-designation of highways set out in Schedule 3 from the current designation in column 3 to the designation in column 4. There is only one highway to be re-designated under this article, that is BOAT 011 Mellis between points R001 and R002 which is to be re-designated from a byway open to all traffic to a bridleway.

### *3.7.4. Creation and maintenance of new highway*

- 3.7.4.1. Article 16 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 16 also applies the compensation provisions under section 28 of the Highways Act in respect of the creation of the new public rights of way, enabling landowners affected by the creation of new rights of way to seek compensation from Network Rail (discussed further in Section 4 of my Proof).

### *3.7.5. Stopping up of footpath*

- 3.7.5.1. Article 9 provides for the stopping up of existing public rights of way over footpath 019 Bacton between the points set out in that article. The footpath is not included in the Schedules to the Order because the crossing (S12 Gooderhams) is not being closed as the existing private vehicular rights of way over the crossing will be retained.

### *3.7.6. Permanent acquisition of land*

- 3.7.6.1. The Scheme does not require the permanent acquisition of land.

### *3.7.7. Permanent acquisition of rights of access over land*

- 3.7.7.1. The Order, if made, would authorise Network Rail to acquire new rights of access over the land detailed in Schedule 4 to the TWAO. The rights may be acquired for access for the creation of a public right of way, or access for the removal of a level



crossing and associated infrastructure, or for construction of the authorised work or maintenance.

- 3.7.7.2. 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.

3.7.8. *Temporary rights for construction purposes over land*

- 3.7.8.1. The Order, if made, would also authorise Network Rail to enter upon and take temporary possession of land specified in Schedule 5 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.

3.7.9. *Temporary rights of entry for maintenance of works*

- 3.7.9.1. 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 during the maintenance period and to construct any temporary works associated with that maintenance. These powers cover a twelve month period commencing upon the date that the authorised works are completed. Network Rail will be responsible for the new public rights of way and any related footbridges for the first twelve months after construction, after which the responsibility will pass to the local highway authority.

3.7.10. *Access to works*

- 3.7.10.1. The provisions of article 12 of the TWAO further provide for the improvement of access to the railway at the northern end of Eastlands Lane as described in Schedule 9.

3.7.11. *Additional rights of entry*

- 3.7.11.1. 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 29 of the Order and to enter on private land for survey and investigation purposes as set out in article 18 of the Order.

3.7.12. *Works to the highway*

3.7.12.1. The Order also provides for certain works to alter or interfere with the highway. This includes powers to temporarily stop up streets (article 10), 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. The streets specifically identified as affected by these powers are set out in Schedules 6 and 7 and 8. 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.

3.7.13. Hence if made, 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, 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's proposals 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 1961 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 to create alternative rights of way or for access for construction of the works, 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. Compensation for temporary possession of land for construction is addressed in article 22(5) and for maintenance of works in article 23(6).
- 4.6. All property owners who have rights imposed on their land under the Order, as set out in Schedule 4, 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. 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).

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

*4.8.1. Permanent acquisition of land*

4.8.1.1. As explained in section 3 above, Network Rail is not seeking to acquire any land permanently under this Order.

*4.8.2. Permanent acquisition of rights over land*

4.8.2.1. As explained in section 3, the TWAO provides Network Rail with the power to acquire rights for access over the land set out in Schedule 4. 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

4.8.2.2. Schedule 10 of the TWAO provides, in paragraph 37(2) 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 37(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.

4.8.2.3. A number of other heads of claim are also recoverable, including reasonable surveyors' fees.

*4.8.3. Temporary rights for construction purposes over land and temporary rights of entry for maintenance purposes*

4.8.3.1. In relation to land to be occupied temporarily under the powers in article 22, as set out in Schedule 5 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.

4.8.3.2. 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. As mentioned in paragraph 3.7.7.1 above, 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.

*4.8.4. Powers to suspend or extinguish private rights*

4.8.4.1. Articles 15 and 26 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.

*4.8.5. Additional rights of entry*

4.8.5.1. 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.

*4.8.6. New public rights of way over land*

4.8.6.1. 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 16(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.

4.8.6.2. 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.

4.9. 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.

4.10. It is important to note that the quantum of compensation is not a matter for the Public Inquiry. Where an affected party considers that the implementation of the Order gives rise to a loss which falls within the provisions summarised above then a claim will be lodged detailing the loss and providing evidence to support the claim.

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 set out in 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 defined in the 1992 Act);
  - 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. The project progressed through a series of phases, the first being GRIP stage 1, during this phase Network Rail consulted Local Planning and Highway Authorities (County and District Councils), Parish Councils, Councillors, and MPs. The Country Land and Business Association (CLA), the National Farmers Union (NFU) and Suffolk County Council. The initial consultation was carried out in Autumn 2015 and was used to help define the project as it moved through the process.
- 5.5. Two significant rounds of consultation were held in April to July/August 2016 and again in August/September to November 2016. These were supplemented by an information update in December 2016 to January 2017 where feedback on the results of consultation was presented publicly.
- 5.6. More specifically landowners and other holders of property interests were contacted by Network Rail and its consultants. Bruton Knowles became Network Rail's land

agent and involved in the project from early 2017. I set out the consultation process prior to that time as confirmed to me by Network Rail and their advisors.

- 5.7. The approach adopted for consulting with landowners and other affected parties is described below :
- 5.8. 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).
- 5.9. At GRIP Stage 1, a prioritised group 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.
- 5.10. At GRIP Stage 2-3, written correspondence and discussions continued with landowners during three phases of activity as set out below:
- 5.11. 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.
- 5.12. A second phase of consultation between August and October 2016 for key landowners on single preferred options.
- 5.13. 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.
- 5.14. 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.



- 5.15. 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.
- 5.16. The team made on average three separate attempts to contact individual land parties to ensure that they had sufficient opportunity to be consulted.
- 5.17. In autumn 2017 Network Rail's land referencers carried out an audit of the Book of Reference (NR9) (submitted as part of the application for the Order in March 2017), which identified a number of interests which had not been included in the Book of Reference. Notices were subsequently served on the persons identified through the audit as having an interest in the affected parcels of land. Network Rail has subsequently decided not to pursue the powers sought over the plots of land which were subject to late notices (I understand an amended version of the Order will be provided at the opening of the inquiry), and has therefore withdraw those late notices. I understand that The Secretary of State confirmed his agreement to this approach. I confirm, for the avoidance of doubt, that Bruton Knowles was not responsible for compilation of the Book of Reference, and I am therefore unable to provide any further detail in respect of the steps taken to compile the same.
- 5.18. Network Rail has confirmed to me that all identified parties in the Book of Reference were consulted prior to submission of the Order.
- 5.19. 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.
- 5.20. 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.
- 5.21. 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.

- 5.22. Network Rail is seeking compulsory powers in the TWAO (NR02-SCC) 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 1992 Act. By enacting the 1992 Act the Government has determined that, subject to procedural safeguards, it can be in the public interest for individuals to 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 Elaine 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 (NR09). Of these, a number of landowners objected to and made representations regarding the Scheme.
- 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 made, 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 from objectors who 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.
- 7.6. In responding to objectors Network Rail highlighted a number of points common to all objectors. In particular the background to the project, and the basis on which the Order was pursued, was highlighted in the majority of letters to objectors that Network Rail in the following terms :

*Network Rail is responsible for the management and safe and efficient operation of the railway network. It operates under and is bound by the terms of its licence under the Railways Act 1993. It is regulated by the Office of Rail and Road (ORR).*

*In accordance with the terms of its licence and the strategic aims and policies of the ORR, Network Rail has a duty to ensure the safety of users of the railway and to promote improvements in railway services by cost effective and efficient management of the network. It is also legally responsible for safety on and around the railway, including at level crossings, not only for those using the railway, but members of the public who may otherwise come into contact with it. Network Rail is thus obliged to protect the public from the dangers of the railway so far as*

*reasonably practical. As is recognised by the ORR in its Level Crossings Policy, the removal of level crossings is the most effective way to achieve this objective, removing the interface between trains and highway users entirely.*

*ORR's strategy for health and safety regulation of level crossings makes clear that it will encourage crossing closure, and ensure that all risk assessments consider this first, in line with the principles of prevention. In accordance with that objective, Network Rail has established a long term strategy of reducing level crossing risk (see Transforming Level Crossings 2015-2040). Closure of level crossings is the most effective way of removing the risk from the network. Reducing the number of level crossings will also remove constraints on the railway to enable enhancement of capacity and improvement of line speed (in association with other schemes) and to secure operation and maintenance of the network in a timely, efficient and economical manner in accordance with Network Rail's statutory duties and licence.*

*For further information about Network Rail's strategic aims please refer to Network Rail's Statement of Case, which can be found at <https://www.networkrail.co.uk/running-the-railway/our-routes/anglia/anglia-level-crossings/>.*

- 7.7. In addition each letter to landowners provided guidance on where to access additional information on compulsory purchase and compensation issues in the following terms :

*The Order provides for compensation to be paid to owners for loss or damage as a result of the Order. Article 16 of the Order incorporates the provisions of s28 of the Highway Act 1981 for compensation for loss as if the new public right of way was created by a public path creation order. In case of a dispute as to the amount of compensation the matter is referred to the Upper Tribunal. Network Rail will be responsible for the maintenance of the new public right of way for the period of 12 months from its completion and afterwards it will be maintained by the highway authority.*

*In so far as Network Rail's proposals may affect the value of [your] property, [you] may be entitled to compensation in line with the compensation code. The UK Government has issued guidance on compulsory purchase, which is available from Government publications on the following link (<https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-1-procedure>).*

- 7.8. The TWAO includes the closure of two crossings S18 Cow Pasture Lane and S21 Abbots which are used by common rights holders to take access between parts of a registered common. Several common rights holders have lodged similar objections and the objections relate to both of the crossings, hence in addressing the objections below I have considered each of these objections together rather than

under both crossings to avoid duplication. A number of those objectors have indicated they continue to oppose the Order as they have not received confirmation of the level of compensation to which they are entitled as the holder of common rights. I reiterate that quantum of compensation is not a matter which falls to be determined at this inquiry. I have set out in Section 4 above the provisions under which a claim for compensation would fall to be assessed.

## **8 CROSSINGS**

### **8.1 S01 Sea Wall**

#### **Objector – John R Keeble & Son Limited (S01, S02,)**

Objector Reference – 44

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

- Unless appropriate measures are taken, trees that are not properly managed on the lower slope of the embankment will damage the proposed fence and encroach onto the footpath which will result in footpath users diverting onto the objectors agricultural land.
- The objector is considering the installation of a new farm road from P162 along the side of the railway down to Work 6 Area which would necessitate a crossing for agricultural vehicles over the stream at or adjacent to Work 6 Area. The objector considers that further consultation with Network Rail could result in a joint scheme resulting in cost savings for both parties.

8.1.2 Response to Objection

8.1.2.1 I have reviewed the objection letter on behalf of John R Keeble & Son Limited and consider the issues raised have been dealt with in a letter from Network Rail dated 18th December 2017, the material parts of which I set out below.

*You are concerned that “unless appropriate measures are taken (both now and ongoing) by Network Rail between P161 and P162, trees on the lower slope of the embankment will damage the proposed fence and encroach onto the footpath, with the result that users of the footpath will divert onto our retained agricultural land”.*

*Network Rail will cut back the vegetation along the proposed route to erect the fencing and create the footpath.*

*Under the provisions in the proposed Order we will continue to maintain the footpath in the first year after it has been created.*

*The local highway authority, Suffolk County Council, will assume responsibility thereafter.*

*We note your intention to construct a new farm road between points P162 and Work No. 6, and a suggestion to combine your works with the footbridge works to save and to ensure “a more integrated outcome at this point”. Network Rail regards this as a sensible approach and would be happy to discuss the possibility with you. Please provide us with the details of your works and let us know how advanced your proposals are.*

*In so far as Network Rail's proposals may affect the value of your property, you may be entitled to compensation in line with the compensation code. The UK Government has issued guidance on compulsory purchase, which is available from Government publications.*

*Where powers are required for temporary use of land, article 22 of the Order provides that Network Rail must pay compensation to the owner and occupiers of land of which temporary possession (sic) is taken under this article for any loss or damage arising from the exercise of these powers. Network Rail must also restore the land to the reasonable satisfaction of the owners of the landowner.*

## **8.2 S02 Brantham High Bridge**

### **Objector – John R Keeble & Son Limited (S01, S02,)**

Objector Reference – 44

8.2.1 The main point of objection is that the proposed revised footpath network, retaining the dead-end section of Footpath 06 Brantham with a fence at its end point, will encourage footpath users to divert onto the objector's agricultural land.

8.2.2 Response

8.2.2.1 I have reviewed the objection letter on behalf of John R Keeble & Son Limited and consider the issues raised have been dealt with in a letter from Network Rail dated 18th December 2017 the letter is as set out above with additional the material parts relating to S02 set out below which explain the reasoning behind the proposed diversion more fully in relation to S02.

*Regarding S02 Brantham High Bridge level crossing, as you say, it was initially intended to extinguish the footpath adjacent to Victoria Cottage between points P147A/P155A through to P153. However, in consultation with Suffolk Highways, they requested for the section of footpath between P145/P154 and P153 to remain in order to retain access to the woodland area.*

## **8.3 S03 Buxton Wood**

### **Objector – David Caldwell**

Objector Reference – 60

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

- The objector became aware of the scheme as a result of public consultation events and newspaper advertisements in September 2016 that he has not had any



meaningful discussion with Network Rail since that time and the objection letter of May 4<sup>th</sup> from his solicitors Birketts.

- Network Rail fail to maintain drainage of its land and as a result an alternative route which would be acceptable, is not viable. The objector refers to separate litigation on the matter of drainage between the objector and Network Rail.
- The proposed diversion route will stop the objector from dredging the nearby watercourse in accordance with the Environment Agency permit due to the inability to spread the spoil on land affected by the scheme.
- The proposed footpath will render uneconomic the cultivation of land situated between an electricity pylon and a watercourse.
- The proposal will unduly impact on flora and fauna.
- The objector states that the proposed diversionary route adds some 220 metres to the distance to be walked between the two crossings, which is substantially less convenient to the public. In consequence, the objector expresses a concern that the proposed footpath will encourage trespass onto his agricultural holding.

### 8.3.2 Response

8.3.2.1 I have reviewed the objection letter on behalf of David Caldwell and consider the issues raised have been dealt with in a letter from Network Rail dated 11th January 2018, the letter follows a meeting held on 21<sup>st</sup> December 2017 between representatives of Mott McDonald & Bruton Knowles and Mr Caldwell, I set out the material parts of that letter below:

#### *Consultation*

*Before the application of the Order, Network Rail employed various methods of notification which were intended to bring Network Rail's proposals to the attention of as many people as possible who might be affected by them. This comprised the circulation of consultation flyers to properties in the vicinity of level crossings, public consultation events and publicity in the local press and Network Rail's website. Network Rail also sought to notify people of our public consultation events by posting notices at all the affected level crossings, stating the dates of the public consultations, and pointing interested parties to our website. The notices were placed in areas around each level crossing so that the public could see them, such as footpath junctions and stiles.*

*Your client's land is unregistered and therefore he was not included in the first round of landowner consultation. Nevertheless, he may have become aware of the proposals through other methods mentioned above, as he participated in round 2 consultation and provided feedback by submitting a*

*questionnaire with an accompanying email (via his agent Mr Baker at Clarke and Simpson). The feedback in this submission was considered and taken into account in Network Rail's options appraisal process. Our agent, Bruton Knowles, spoke with Sarah Caldwell on 19 December 2016, who called on behalf of Mr Caldwell and made further enquiries about the process. Your client was served notice of the application in accordance with rule 15 of The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.*

*Network Rail considered all feedback received during the two rounds of consultation before the final decision on the diversionary route was made. The Statement of Consultation submitted with the application documents sets out the extent of the consultation undertaken, including affected landowners. Your client's comments from the consultation and responses from the project team are noted on pages 94 and 95 of the Statement of Consultation.*

*As stated above, further consideration of Network Rail's current proposals and those put forward by your client was given following the meeting on 21 December. Following detailed discussions with Network Rail's engineers and its other consultants, Network Rail has decided to proceed with its proposals as submitted with the draft Order. We set out our reasons below.*

#### *Objection 1*

*Your client alleges that the drainage issues, which Network Rail stated as the reason for not proceeding with the Green Route (round 1 consultation), are the result of Network Rail's failure to maintain proper drainage of its land and that "if Network Rail was fulfilling its obligations the Green Route would be practical as would a route that replicated Network Rail's current proposal in respect of S04".*

*We note from the site meeting on December 2017 that your client's preferred route would be for the proposed footpath to run alongside the railway on Network Rail's land and you cite an example of where this is proposed at another location (S04 level crossing). However, at crossing S03, the railway is on an embankment and Network Rail's operational land is demarcated by a fence on the slope of the embankment. Therefore there is no space to create a footpath on Network Rail's land except by cutting into the embankment. As it is not possible to cut into an embankment without undermining its stability unless expensive retaining walls are provided, Network Rail does not consider your client's proposal practicable in this case.*

*The 'Green Route' on your client's land adjacent to the railway was not considered to be a suitable option because of ponding of water on your client's land at the foot of the railway embankment. This would make it unsuitable for use by the public. We are aware of the current correspondence between yourselves on behalf of your client and Network Rail's solicitors who are instructed on that matter, in relation to your client's allegations. Network Rail is refuting your client's claim and this matter has*

*not been determined.*

#### *Objection 2*

*You state that your client has a permit from the Environment Agency to dredge and keep the stream clear of silt/debris and maintain the watercourse and the area surrounding the proposed new footpath (route 2). You have also confirmed that dredging is normally carried out every 20 years or so and the required plant would be a 22 ton machine with a 9 metre boom. This machine would have a jaw on it to clear the overhanging trees/brush as well as dredge the stream without impacting the proposed footpath.*

*At the 21 December 2017 meeting, an option was discussed to set the new proposed footpath further back from the ditch e.g. in a 5 meter wide strip. However on further consideration of the frequency of dredging activities, it is Network Rail's view that the impact on your client's land would be less by not widening the strip of land to be used for the proposed footpath. Instead, when required, your client could apply to the local Highway Authority to temporarily stop up the public footpath to carry out dredging activities.*

#### *Objection 3*

##### *Electricity pylon in field adjacent to proposed new footpath*

*Network Rail has noted that the proposed route may affect the ability of your client to farm a small area between the electricity pylon and the watercourse.*

*Insofar as Network Rail's proposals may affect the value of your client's property, your client may be entitled to compensation in line with the compensation code. The Government has issued guidance on compulsory purchase, which is available from Government publications on the following link (<https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-1-procedure>).*

#### *Objection 4*

##### *Impact on flora and fauna*

*A desktop study for proposed works at S03 did identify Buxton wood and water meadows (a County Wildlife Site) adjacent to the new route. The water meadow is an extensive area of grassland that lies adjacent to Buxton Wood, an ancient woodland. A field survey of the route was undertaken by ecologists on 10 January 2017 to assess the potential impacts of the proposed route on habitats and species. The proposed route runs along an arable field margin adjacent to the water meadows. No vegetation removal is required within the water meadow and no resurfacing works are required. The vegetation removal along the proposed route alignment will be minimal and will not impact the water meadow or the adjacent ancient woodland, nor will it disturb the environment as your client states.*

*Any impact resulting from the creation and operation of the new route is unlikely to be significant compared to the existing arable farming activities and existing footpaths.*

#### *Objection 5*

*Diversion less convenient to public, additional 220m*

*Under s5(6) of the Transport and Works Act 1992, Network Rail cannot extinguish any public right of way over land unless the Secretary of State is satisfied that an alternative right of way has been or will be provided or that the provision of an alternative right of way is not required. In considering the provision of an alternative right of way, the Secretary of State takes into account whether the alternative right of way is a convenient and suitable replacement for existing users.*

*The impact of the proposed diversion will be dependent upon users' points of origin and destination. In the case of the proposed diversion route for S03, those users approaching from or heading to the east will see their route reduced by approximately 300m. As an indication, this equates to 4.5 minutes using an average walking speed of 1.115m/s (or 2.5 miles per hour) which is provided in guidance issued by the Ramblers (source: <http://www.ramblers.org.uk/advice/navigation/calculating-walking-pace.aspx>). Conversely those approaching from or heading to the west will have their route increased by approximately 340m (approx. 5 mins walk).*

*The difference between the Round 1 'green route' and the proposed route under the Order is 220m, or just over 3 minutes walking. This difference is considered not to be significant in the context of a leisure walk and unlikely to affect the behaviour or route choice of users. Walkers are used to following field edges when using public footpaths, even where this means small increases in their route.*

#### *Shooting activities*

*You say in your Statement of Case that you conduct shooting activities on your land. However, we were unable to locate planning permission that would allow you to do so. If you wish to change the usage of your land in the future, you may apply to Suffolk County Council to divert the public footpath.*

## **8.4 S12 Gooderhams**

### **Objector – Orwell Settlement Trustees**

Objector Reference – 25

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

- The objector notes that there have been discussions with Network Rail over a twelve month period and that some of their concerns have been addressed.
- The objectors consider that additional footpaths will result in a beneficial enhancement to the footpath network where none is required because the use of the paths is very low.
- The objectors acknowledge that Network Rail may have prescriptive rights of access to the railway but object to their confirmation in the Order.

#### 8.4.2 Response

8.4.2.1 I have reviewed the e mail dated 5<sup>th</sup> May 2017 on behalf of the owners of the Orwell Settlement trustees and consider the issues raised have been dealt with in a letter from Network Rail dated 19<sup>th</sup> December 2017, the material parts of which I set out below.

*We note that Orwell Park Estate own land straddling the railway and can only cross at a number of points and vital that they remain in use. Negotiations have been undertaken with Network Rail over the last 12 months and some concerns have been allayed as you say.*

*Your concerns are two-fold:*

*Firstly, you say that “the proposed new footway under the railway bridge at Pound Hill, Bacton (Sheet 20, Parcel 38) will significantly reduce the useable width for vehicles under the bridge. If the proposed footway restricts farm movement due to width, this will create long diversions of very large and slow moving farm machinery through neighbouring villages”. You say that this is a safety issue and a cost issue for the tenant (Mr Baker). You suggest that this should be removed from the proposed Order or an increase in permissible width of machinery should be included in the Order at crossing S12 (Gooderhams) to mitigate this risk.*

*We explain our proposals at each crossing below. (Note crossing specific responses is detailed under each crossing)*

#### **S12 Gooderham**

*This crossing is proposed to be closed to public users only. The public footpath infrastructure would be removed. Public footpath users would be diverted to Cow Creek level crossing to the north of S12 with use of the existing public rights of way and highway network. To the west of the railway, users would make use of public footpath 018 Bacton. To the east of the railway, users would use existing Kerry’s Farm Lane and the B1113. Public footpath 019 Bacton will be extinguished to prevent a dead-end path being formed up to the railway.*

*We note that the Trustees own plot 6 which can be found on sheet 18 of the Order plan. If the Order is made this plot is required temporarily to enable Network Rail to remove the current footpath structure at S12. Works at the crossing would require the removal of stile and fingerposts which should take a day to complete. This will be of minimal impact on you. Our Level Crossing Reduction team will contact you and also liaise with the Trustees' tenant, Mr Baker, directly in advance of the works so that that a suitable working arrangement can be reached.*

*You will note that the private rights over S12 will be retained.*

*Under the Order Network Rail is also seeking to acquire rights over Plot 6 for the purpose of inspecting, maintaining and renewing the remaining private level crossing from time to time. We note that you accept that Network Rail "probably have such rights by long use". Network Rail is seeking to formalise its rights of access and we do not accept that the rights sought are beyond the scope of the order, as you suggest. So far as reasonably practicable and excepting any emergency access if required, Network Rail would be happy to liaise with you regarding the exercise of its rights over Plot 6.*

*Under article 22 (Temporary use of land for construction works) of the Order Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred under this article.*

*In the second paragraph of your letter you say the proposed footpaths over the Trustees' land had been discussed, however, the draft order had reverted to previous design. We take this to mean your proposed changes to footpath 023 and footpath 014 on the west of the railway in your drawings below.*

*Network Rail's purpose in this Order is to provide suitable and convenient alternatives for current users who cross the railway on the level.*

*Under s5(6) of the Transport and Works Act 1992 a public right of way cannot be extinguished unless the Secretary of State is satisfied that an alternative right of way has been or will be provided or that the provision of an alternative way is not required. 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 alternative diversion route is suitable and convenient for users and provides connectivity to the existing footpath network.*

*The new footpath will be completed to the satisfaction of the highway authority.*

*The public rights of way network is the responsibility of the local highway authority. It is not possible to use the Order for the purpose of rationalisation of the rights of way network as a whole. Applications can be made to Suffolk Highways to extinguish footpaths that are not required. Please refer to the following for guidance: <https://www.suffolk.gov.uk/roads-and-transport/public-rights-of-way-in-suffolk/>*

## **Objector – Messrs Baker**

Objector Reference – 26

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

- The objectors are concerned about the impact of the project on the movement of large agricultural vehicles

8.4.4 Response

8.4.4.1 I have reviewed the objection letter on behalf of Messrs Baker and consider the issues raised have been dealt with in a letter from Network Rail dated 19<sup>th</sup> December 2017, the material parts of which I set out below.

*Network Rail has been in discussion with Ben Crossman who represents the freehold owner Orwell Settlement Trustees. Our Engineer, Andrew Kenning also recalls speaking with both you and Mr Crossman at a public consultation event.*

*We have set out the current and proposed status of the level crossings in the above table. It may also be helpful to clarify in detail of our proposals for each crossing to allay some of the concerns you have raised.*

### **S12 Gooderhams**

*This crossing is proposed to be closed to public users only. The public footpath infrastructure would be removed. Public footpath users would be diverted to Cow Creek level crossing to the north of S12 with use of the existing public rights of way and highway network. To the west of the railway, users would make use of public footpath 18 Bacton. To the east of the railway, users would use existing Kerry's Farm Lane and the B1113.*

*Public footpath 19 Bacton will be extinguished to prevent a dead-end path being formed up to the railway. We feel that this extinguishment will benefit your operations.*

*We note you are the tenant of plot 6 which can be found in sheet 18 of the Order plans. If the Order is made, this plot is required temporarily to enable Network Rail to remove the current footpath structure at S12. Works at the crossing require the removal of the stiles and fingerposts which should take a day to complete. This will be of minimal impact to you. Our Level*

*Crossing Reduction team will liaise with you directly in advance of the works so that a suitable working arrangement can be reached.*

*Plot 6 is also required for Network Rail to inspect, maintain and renew the remaining private level crossing from time to time. So far as reasonably practicable and excepting any emergency access if required, Network Rail would be happy to liaise with you regarding the exercise of its rights over Plot 6.*

*You will note the private rights over S12 will be retained, so you will continue to be able to use it.*

### **Consultation**

*Regarding your concerns with the consultation drawings, you will note that version 4 drawings were used for internal discussions and had not been issued to the public. You will also note the difference between the current proposed route (version 5) and the round 2 consultation plans (version 3) is the location of the path at P070-P073 which can be found in sheet 21 of the Transport Works Act Order plan. We regard this option to be beneficial to you as we have kept our proposed footpath to field edge margin between your field and the allotments to the north*

*The link P070-P073 is to reduce road walking and the use of the private track adjacent to Pretymen Avenue was rejected due to landowner objections and to provide a slightly shorter and more convenient diversion than using the private track.*

*You state that you would welcome the “rationalisation of the public rights of way in the vicinity of the proposed crossing closures as part of the Order”. Network Rail’s purpose in this Order is to provide suitable and convenient alternatives for current users who cross the railway on the level. The public rights of way network is the responsibility of the local highway authority. It is not possible to use the Order for the purpose of rationalisation of the rights of way network as a whole. Applications can be made to Suffolk Highways to extinguish footpaths that are not required.*

## **8.5 S13 Fords Green**

### **Objector – Finbows Bacton 1991 Ltd**

Objector Reference – 22

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

- Concerns regarding the communication by Network Rail and in particular a change of agent.
- Concerns regarding Network Rail’s ‘attitude’ to the project which the objector considers is predicated on a desire to save costs rather than prioritise landowner interest.



- The crossing is seldom used and therefore the closure is not required.
- The proposed diversion will put a further footpath on the objectors land and there are already two footpaths on their land.

## 8.5.2 Response

8.5.2.1 I have reviewed the objection letter from on behalf of Finbows Bacton and consider the issues raised have been dealt with in a letter from Network Rail dated 19th December 2017, the material parts of which I set out below:

### *Process/NR attitude*

*Network Rail conducted extensive consultation on its proposals with landowners and other stakeholders, including Suffolk County Council who is the local highway authority.*

*You will note at the first round of public consultation we tabled a proposal for S13 Fords Green footpath to be diverted south on the eastern side of the railway to Cow Creek level crossing. In creating this diversion it was planned to remove the cross field path as you describe. We understand that you were amenable to this option. However, the proposal was subject to further discussions with Suffolk County Council who, as the authority responsible for the public rights of way network, proposed an alternative diversion route on the western side of the railway which addressed issues which were of concern to them, such as the provision of amenity to current users by retaining the existing cross field footpath, creation of a circular walk on the western side of the railway to mitigate the level crossing closure impact on footpath users, and avoiding safety issues highlighted by the Road Safety Audit in relation to the unsuitability of the southern section of the B1113 which was considered to present a safety risk if used by pedestrians; the footpath proposal from S13 Fords Green to S69 Bacton was provided to mitigate this concern.*

*Our final proposals were based on careful considerations of a range of factors including consultation feedback and measures to provide a safe and suitable diversion route for users.*

*During consultation Network Rail and the design team were asked to consider whether an abandoned underpass beneath the railway could be utilized as an alternative crossing point for the diversion, as you say. It has been noted that the structural elements of the underpass designed to support the railway were intentionally destroyed during the abandonment and backfilling process. In essence there is no longer an underpass that can be reinstated by simply removing the backfill. The reconstruction and re-provision of works such as a new underpass or bridge would not be within the remit of this Order proposal.*

*We further note our land agents Bruton Knowles have been in communication with you between 4 January 2017 and 13 March 2017. In the email dated 28 February, you say you agree to the proposed route so long as the in-field path is extinguished.*

*We believe we have achieved what you ask.*

#### *Safety concerns*

*You state that Network Rail's objective "Norwich in 90" is to expand the commuter belt into rural communities to increase profits, although you acknowledge, "understandably", but that "they seem to be afraid to spend money on infrastructure at level crossings to make them safer, it is cheaper just to close them". You go on to say that you don't feel that "NR has the right to extinguish them without due consideration of lights barriers bridges or tunnels as an alternative, to increase safety!"*

*We explained above that safety is not the only reason for closure of level crossings.*

*Having said that, level crossings collectively pose the highest safety risk on the railway. The installation of technology does reduce the risk at level crossings, but cannot eliminate it. Technology is also expensive, and so, where a suitable alternative exists, Network Rail seeks to divert users to safe crossing points of the railway. In this instance, users are diverted from S13 Fords Green to the nearby Cow Creek level crossing. Whilst still requiring users to cross the railway on the level, as a key agricultural crossing point of the railway, the rationalisation of rights of way to a single point will facilitate efficient construction of a suitable bridge, or provision of technology, at a later date. We also consider that the footpaths we are seeking to create will provide alternative circular walks for users that will enable them not to cross the railway at all.*

*A crossing with locking gates requires visual monitoring by the signaller or technology, to ensure that users are not trapped on the railway once the gates are locked, with protecting signals to stop approaching trains. Costs of such a system would be approximately £2m to install plus ongoing maintenance and renewal costs. We have also found that the electro-magnetic locks required by such a system are often unreliable and prone to vandalism.*

*Network Rail has a duty to manage public funds responsibly and in the public interest. Wherever possible, the diversions in this Order utilize existing infrastructure in the first instance to deliver better value for money.*

### **S13 Fords Green**

*At S13 Fords Green, the public footpath crossing is proposed to be extinguished. Crossing infrastructure will be removed and fencing will be installed to prevent trespass onto the railway. Users who currently enjoy walks across S13 will be diverted to Cow Creek level crossing to the south.*

*A new 2m wide public footpath on the west side of the railway will be created in field margins to connect footpath 022 Bacton and 018 Bacton. The new footpath would be constructed to an appropriate standard required by Suffolk County Council with new wayfinding signs.*

*We note that you own and occupy plots 10, 14, 15 and 16 which can be found on sheet 19 of the Order plan. Plot 10 and 16 are required as laydown area and worksite for the duration to construct the 2m wide public footpath. Plot 15 is required to access plot 13 to remove level crossing infrastructure and secure the railway. Plot 14 forms part of the proposed diversion route to provide northbound public rights of way connectivity for footpath 014 Bacton.*

*Under article 22 (Temporary use of land for construction works) of the Order, Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred under this article.*

*We believe our current proposals have benefited you by removing the in-field path and reducing the footpath on your land.*

*Note that drawings of the proposals are included in the letter.*

*You say the route has consequence on certain 'environmental plans' you have under farming schemes, although you do not specify what these plans entail.*

*Under the Order, minimal construction works are required and no significant environmental impacts are anticipated. The footpath is unsurfaced and no digging is required. Therefore, it is anticipated that there will be no significant ecology effects of the works.*

*Network Rail would be happy to discuss any further any concerns you have.*

## **Objector – Orwell Settlement Trustees**

Objector Reference – 25

8.5.3 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 their landholding and a potential residential development.
- The objector is concerned about footpath users being diverted onto the public highway.

8.5.4 Response

8.5.4.1 I have reviewed the objection letter on behalf of the Orwell Settlement Trustees and consider the issues raised have been dealt with in a letter from Network Rail dated 19th December 2017, the general parts of which are set out in paragraph 8.4.4.1 with crossing specific material parts of set out below

### **S13 Fords Green**

*This public footpath crossing is proposed to be extinguished. Crossing infrastructure will be removed and fencing installed to prevent trespass onto the railway. As with S12, users who currently enjoy walks across S13 will be diverted to Cow Creek level crossing to the south.*

*A new 2m wide public footpath on the west side of the railway will be created in field margins to connect footpath 22 Bacton and 18 Bacton. The new footpath would be constructed to an appropriate standard required by Suffolk Highways with new wayfinding signs.*

*We note you are the leaseholder and occupier of plots 8, 11 and 12 which can be found in sheet 19 of the Order plan. Plots 11 and 12 are required as laydown area for the duration to construct the 2m wide public footpath as mentioned. Plot 8 would be required to access plots 11 and 12 and conduct maintenance on Cow Creek level crossing. Under article 22 (Temporary use of land for construction works) of the Order, Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred under these articles.*

## **Objector – Messrs Baker**

### Objector Reference – 26

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

- The objectors are concerned about the impact of the project on the movement of large agricultural vehicles
- The objectors are concerned at the potential for interaction between the public and their pets and livestock on the farm.

### 8.5.6 Response

8.5.6.1 I have reviewed the objection letter on behalf of Messrs Baker and consider the issues raised have been dealt with in a letter from Network Rail dated 19<sup>th</sup> December 2017, the material parts of which I set out below.

#### *S13 Fords Green*

*This public footpath only crossing is proposed to be extinguished. Crossing infrastructure will be removed and fencing installed to prevent trespass onto the railway. As with S12, users who currently enjoy walks across S13 will be diverted to Cow Creek level crossing to the south.*

*A new 2m wide public footpath on the west side of the railway will be created in field margins to connect footpath 022 Bacton and 018 Bacton. The new footpath would be constructed to an appropriate standard required by Suffolk Highways with new wayfinding signs.*

*We note you are the leaseholder and occupier of plots 8, 11 and 12 which can be found in sheet 19 of the Order plan. Plots 11 and 12 are required as laydown area for the duration to construct the 2m wide public footpath as mentioned. Plot 8 would be required to access plots 11 and 12 and conduct maintenance on Cow Creek level crossing.*

#### *Consultation*

*Regarding your concerns with the consultation drawings, you will note that version 4 drawings were used for internal discussions and had not been issued to the public. You will also note the difference between the current proposed route (version 5) and the round 2 consultation plans (version 3) is the location of the path at P070-P073 which can be found in sheet 21 of the Transport Works Act Order plan. We regard this option to be beneficial to you as we have kept our proposed footpath to field edge margin between your field and the allotments to the north*

*The link P070-P073 is to reduce road walking and the use of the private track adjacent to Prettyman Avenue was rejected due to landowner objections and to provide a slightly shorter and more convenient diversion than using the private track*

**Objector – Colin & Judith Hull**

Objector Reference – 37

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

- The objectors do not have an objection in principle to closing level crossings S13 or S69.
- The objectors do not see the need for a footpath crossing their land between crossings 13 and 69.
- The objectors raise queries regarding the proposed route and suggest an alternative which is in the view of the objectors likely to be a safer route for pedestrians.
- The objectors query why a footpath width of 2m is required.

8.5.8 Response

8.5.8.1 I have reviewed the objection letter from Colin & Judith Hull C and consider the issues raised have been dealt with in a letter from Network Rail dated 18th December 2017, the material parts of which I set out below.

*You state in your Statement of Case that you had not been consulted on the proposed diversion routes until you had been alerted to Network Rail's proposals by a neighbouring landowner.*

*Network Rail carried two rounds of consultation on the proposals, both in July and October 2016. You refer to advice given at consultation in relation to culvert/underpass between S13 and S69, which indicates that you participated in the consultation process.*

*It is also noted you had emailed Martin Wheeler of Ardent Management and sent your concerns to Network Rail in October 2016, which had not been responded to, for which we apologise. You will note that at the time, Network Rail was in the process of appointing Bruton Knowles to undertake Ardent's role as land agents. Bruton Knowles was tasked to resume conversations or correspondence Ardent would have had with you and other landowners. Bruton Knowles sent a letter of introduction to you on 13th December 2016. As there was no reply, they sent another letter on 6th January 2017. Both letters were signed for but we did not receive a response. It was not clear whether you had further concerns about Network Rail's proposals. We subsequently sent to you statutory notices on 27th March 2017 and you submitted your formal objection on 4 May 2017*

*You say that there is no need for the creation of a new footpath on your land between crossings S69 and S13 as survey states that S69 is hardly used.*

*Under s5(6) of the Transport and Works Act 1992 a public right of way cannot be extinguished unless the Secretary of State is satisfied that an*

*alternative right of way has been or will be provided or that the provision of an alternative way is not required. 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 alternative diversion route is suitable and convenient for users and provides connectivity to the existing footpath network.*

*The new footpath will be completed to the satisfaction of the highway authority. Article 16 of the Order incorporates the provisions of s28 of the Highway Act 1981 for compensation for loss as the new public right of way was created by a public path creation order. In case of a dispute as to the amount of compensation the matter is referred to the Upper Tribunal. Network Rail will be responsible for the maintenance of the new public right of way for the period of 12 months from its completion and afterwards it will be maintained by the highway authority.*

*You state in your letter that one of the overriding factors for the creation of the footpath from S69 to S13 is the supposed safety aspect of keeping pedestrians away from B113. You go on to say that the diversion route brings pedestrians through the housing estate on to Pound Hill and up to the B1113 which they have to walk along until they meet Footpath 013 Bacton which then takes them towards the railway line. Your suggested solution is to move Footpath 013 Bacton to the northern boundary edge of the football club ground and northern boundary edge of the small piece of land adjoining the B1113 so that pedestrians join the B1113 approximately 100m nearer to Pound Hill.*

*You say that Network Rail stated at consultation that the culvert/underpass between S69 and S13 is 'rendered unusable'. You will note the structure at the culvert is damaged and could no longer support the railway. As such, the culvert was in-filled with concrete to enable the safe running of trains.*

*Round 1 consultation proposal had a very long length of road walking on the B1113 (approx 950m north from Fords Green level crossing). Road Safety Audit was undertaken in August 2016 and noted that traffic speed observed to be high particularly on the straight section and towards the southern end of Broad Road where there is a sharp bend. This would restrict forward visibility for pedestrians in the carriageway.*

*As a result of the feedback from consultation and the Road Safety Audit it was considered that measures should be taken to mitigate and reduce the use of B1113 Broad Road. Therefore, an off road footpath was introduced along the railway line from S69 level crossing to Footpath 14 Bacton at S13 Fords Green level crossing, which ultimately would take pedestrians to Cow Creek level crossing via Footpath 20 Bacton. From site inspections undertaken in September 2016, it was seen that existing site constraints were not suitable to extend this footpath north to Pound Hill. This amendment removed approximately 700m of road walking to the south and removed the need to use the sharp bend noted in the Road Safety Audit.*

*The remaining much shorter section of verge walking on the northern end of B1113 Broad Road will be used in the same manner that Suffolk County*

*Council expects users wishing to walk from existing Footpath 04 Cotton to Footpath 13 Bacton to undertake at the moment. It is considered that existing highway verges are available to provide the opportunities for pedestrians to avail themselves of space off the carriageway to safely undertake this short section of the diversion (which is also an existing part of the public right of way interconnectivity).*

*We consider we have addressed the RSA issues by removing the need for road walking in southern parts of B1113 which were of concern to the RSA team, without the need to provide a new footway.*

*These revised proposals with the new field edge footpath were shown at Round 2 public consultation in September 2016.*

*You ask why the width of proposed footpath between S69 and S13 is 2m instead of the required 1.5m. It was agreed with the highway authority at the early stages of consultation with them where the width of the footpath is determined and standardised across the Order.*

*You say that it is counterproductive to encourage pedestrians to walk along the busy mainline railway “when closing of the crossings is being undertaken for safety reasons”. As set out above, safety is an important consideration but it is not the only reason for closure of the crossings.*

*To prevent trespass it is proposed to install a Type F4 1.8m high fence with concrete posts and chain link mesh along the east side of the railway between S69 and S13.*

*Network Rail inspects and maintains lineside fencing on a regular basis.*

## **8.6 S16 Gislingham**

**Objector – James Black as Landowner and on behalf of James Black & Son Ltd as tenant**

Objector Reference – 11

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

- The objector is concerned that the scheme, if implemented will block off access to their farmyard.
- The objector seeks clarification as to why the land, in particular plot 05 sheet 22 is required for the scheme.
- The objector also comments that the Order should not be used to increase access for railway maintenance.

8.6.2 Response

8.6.2.1 I have reviewed the objection letter from James Black and consider the issues raised have been dealt with in letters from Network Rail dated 8<sup>th</sup>



and 13th December 2017. These letters confirm that plot 5 is being withdrawn from the Order. I set out the material parts of the letters below.

Extract from letter dated 8<sup>th</sup> December 2017

*Network Rail recently discovered certain non-compliances in relation to the service of landowner notices relating to this crossing and Network Rail served notices on additional affected parties on 10 November. In light of the service of these notices, and assuming the affected land would remain part of the draft Order proposals, the Secretary of State decided to postpone the Public Inquiry and you may have received a letter from the Secretary of State to that effect.*

*Network Rail has now decided not to include plot 05 in the parish of Finningham in relation to crossing S16 as part of this proposed Order. This means we are no longer seeking the compulsory use of your land.*

*Network Rail considered that it would be proper to remove this plot from the Order, in the interests of natural justice and fairness.*

*Network Rail has secured the agreement of the Inspector and the Secretary of State to this course of action which will enable the public inquiry to proceed. You will receive or have received formal notification from the Secretary of State to confirm that the Public Inquiry will proceed on 13 February 2018. Network Rail will submit an amended Order to reflect this change at the forthcoming public inquiry.*

Extract from letter dated 13<sup>th</sup> December 2017

*You were specifically concerned about the proposed acquisition by Network Rail of rights over Plot 5 as shown on Sheet 22 of the Order plans, which would block access to your farm yard.*

*We have confirmed in a letter dated 8 December 2017 that this plot will not be included in the Order for the reasons stated in that letter.*

## **8.7 S18 Cow Pasture Lane and S21 Abbotts with regard to common land rights**

### **Objector – Mrs F Cadman as holder of common land rights**

Objector Reference – 45

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

- The objector seeks to oppose the Scheme until such time as she has clarity on the level of compensation available to her for loss of common land rights.
- The objector also objects to permanent rights being granted to Network Rail on plot 07 although she acknowledges temporary rights are required.

- The objector also raises concerns regarding the impact of the temporary use of plots 04 and 05 on grassland, shrubs and wildlife habitat.

## 8.7.2 Response

8.7.2.1 I have reviewed the objection letter from Mrs Cadman and consider the issues raised have been dealt with in a letter from Network Rail dated 13th December 2017, the material parts of which I set out below:

*You state that you object to the extinguishment of your historic right of access across the railway at this location and will continue to do so until Network Rail confirms an appropriate level of compensation for its loss.*

*We confirm that article 15 (Closure of level crossings) of the draft Order (which can be found at Tab NR2 Folder 01 of the Application documents dated March 2017) provides for compensation to any person who suffers loss by the suspension or extinguishment of any private right of way under that article. If there is a dispute as to the amount of compensation, the matter is determined by the Upper Tribunal in accordance with the provisions of the Land Compensation Act 1961.*

*You object to the acquisition of rights over plot 7, being the access track and hardstanding, west of Abbotts crossing and east of Mellis Road. In our letter dated 28 November 2017 we advised that Network Rails intends to put forward an amendment to the Order removing the power to take rights over plot 7. Instead we will rely on the powers in the Order to gain access from the east of the railway.*

*You also object to temporary use of land in plot 4 and 5 without appropriate compensation.*

*Article 26 (Extinction or suspension of private rights of way) of the Order provides that any person who suffers loss by the suspension or extinguishment of any private rights of way under this article is entitled to compensation.*

*If there is a dispute as to the amount of compensation, the matter is determined by the Upper Tribunal in accordance with the provisions of the Land Compensation Act 1961.*

*The works will consist of removal of the level crossing furniture and fencing the line so that it is secure. The land in plots 4 and 5 would be used as worksite. These plots will be accessed via the railway or Earlsford Road to facilitate the works that are required, for example, installing new fencing materials. It is not possible to state the exact duration of the works at this stage since programming of the works will be undertaken after the Order has been made, however we would expect it to be less than 4 week at this site.*

*Once the works are completed, under article 22 of the Order Network Rail*

*is obliged to reinstate the land to the reasonable satisfaction of the owners (of the land). Network Rail's proposals will not be affecting the nearby pond or other wildlife habitats, such as grasslands and shrubs, on Mellis Common as identified during our early ecological survey work.*

## **Objector – Colin Joyce as holder of common land rights**

### **Objector Reference – 47**

#### **8.7.3 A summary of the main areas of objection is set out below**

- The objector seeks to oppose the Scheme until such time as he has confirmation of an 'appropriate' level of compensation available for loss of common land rights.
- The objector also objects to permanent rights being granted to Network Rail on plot 07 although he acknowledges temporary rights are required.
- The objector also raises concerns regarding the impact of the temporary use of plots 04 and 05 on grassland, shrubs and wildlife habitat.

#### **8.7.4 Response**

8.7.4.1 I have reviewed the objection letter from Mr Joyce and consider the issues raised have been dealt with in a letter from Network Rail dated 13th December 2017, the material parts of which I set out below:

*You state that you object to the extinguishment of your historic right of access across the railway at this location and will continue to do so until Network Rail confirms an appropriate level of compensation for its loss.*

*We confirm that article 15 (Closure of level crossings) of the draft Order (which can be found at Tab NR2 Folder 01 of the Application documents dated March 2017) provides for compensation to any person who suffers loss by the suspension or extinguishment of any private right of way under that article. If there is a dispute as to the amount of compensation, the matter is determined by the Upper Tribunal in accordance with the provisions of the Land Compensation Act 1961.*

*You object to the acquisition of rights over plot 7, being the access track and hardstanding, west of Abbotts crossing and east of Mellis Road. In our letter dated 28 November 2017 we advised that Network Rail intends to put forward an amendment to the Order removing the power to take rights over plot 7. Instead we will rely on the powers in the Order to gain access from the east of the railway.*

*We hope that in light of this you can confirm that your objection to this provision in the Order can be withdrawn.*

*You also object to temporary use of land in plot 4 and 5 without appropriate compensation.*

*Article 26 (Extinction or suspension of private rights of way) of the Order provides that any person who suffers loss by the suspension or extinguishment of any private rights of way under this article is entitled to compensation.*

*If there is a dispute as to the amount of compensation, the matter is determined by the Upper Tribunal in accordance with the provisions of the Land Compensation Act 1961.*

*The works will consist of removal of the level crossing furniture and fencing the line so that it is secure. The land in plots 4 and 5 would be used as worksite. These plots will be accessed via the railway or Earlsford Road to facilitate the works that are required, for example, installing new fencing materials. It is not possible to state the exact duration of the works at this stage since programming of the works will be undertaken after the Order has been made, however we would expect it to be less than 4 week at this site.*

*Once the works are completed, under article 22 of the Order Network Rail is obliged to reinstate the land to the reasonable satisfaction of the owners (of the land). Network Rail's proposals will not be affecting the nearby pond or other wildlife habitats, such as grasslands and shrubs, on Mellis Common as identified during our early ecological survey work.*

## **Objector – Julie Wicks as holder of common land rights**

### **Objector Reference – 50**

#### **8.7.5 A summary of the main areas of objection is set out below**

- The objector objects to the Scheme as she has not received notification of the level of compensation available to her for loss of common land rights.
- The objector also objects to permanent rights being granted to Network Rail on plot 07 although she acknowledges temporary rights are required.
- The objector also queries how Network Rail will gain lawful access to Cow Pasture Lane as she considers it does not enjoy any such rights over the common and such rights will not be granted by the Order.

#### **8.7.6 Response**

- 8.7.6.1 I have reviewed the objection letter from Julie Wicks and consider the issues raised have been dealt with in a letter from Network Rail dated 13th December 2017, the material parts of which I set out below:

*S21 Abbott's*

*You correctly state that you are entitled to compensation in respect of the extinguishment of your rights to use the crossing.*

*Article 15 (Closure of level crossings) of the draft Order (which can be found at Tab NR2 Folder 01 of the Application documents dated March 2017) provides for compensation to any person who suffers loss by the suspension or extinguishment of any private right of way under that article. If there is a dispute as to the amount of compensation, the matter is determined by the Upper Tribunal in accordance with the provisions of the Land Compensation Act 1961.*

*You object to the acquisition of rights over plot 7, being the access track and hardstanding, west of Abbotts crossing and east of Mellis Road. In our letter dated 28 November 2017 we advised that Network Rail intends to put forward an amendment to the Order removing the power to take rights over plot 7. Instead we will rely on the powers in the Order to gain access from the east of the railway.*

#### *C18 Cowpasture Lane level crossing*

*Network Rail's proposals will see the portion of BOAT across the railway redesignated as a public bridleway. We do not envisage that significant works will be required at the level crossing, which is already of a type appropriate for a public bridleway, but we are looking to make some minor enhancements, such as squaring up the level crossing across the tracks, and providing mounting blocks to make it easier for horse riders to mount and dismount when crossing the railway. On occasions when vehicular access is necessary (say for delivery of the mounting blocks), we note that the Traffic Regulation Order makes provision for vehicular use of the BOAT for purposes of 'the maintenance, improvement or reconstruction of [...] the byway'. This means that Network Rail has a right of access to maintain the crossing from Chapel Farm Lane, albeit that the byway is not maintained to an appropriate standard. It is acknowledged that access across Mellis Green is not possible and so the mounting blocks for the western side of the railway would be delivered to the eastern side and then carried across the line.*

*Network Rail is seeking powers to temporarily use Plots 1 and 3 shown on Sheet 25 of the Order plans for the purpose of installing the mounting blocks on each side of the railway.*

### **Objector – Mrs C S Box as holder of common land rights**

Objector Reference – 59

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

- The objector seeks to oppose the Scheme until such time as she has clarity on the level of compensation available to her for loss of common land rights.
- The objector also objects to permanent rights being granted to Network Rail on plot 07 although she acknowledges temporary rights are required.

- The objector also raises concerns regarding the impact of the temporary use of plots 04 and 05 on grassland, shrubs and wildlife habitat.

#### 8.7.8 Response

8.7.8.1 I have reviewed the objection letter from Mrs Box and consider the issues raised have been dealt with in a letter from Network Rail dated 13th December 2017, the material parts of which I set out below:

*We note that you do not object to the downgrading of crossing S18 Cowpastrure Lane to a bridleway.*

*You state that as owner of Willow Farm, The Common, Mellis, you have common rights in land giving access to Cowpasture Lane level crossing.*

*You say that Network Rail has no vehicular rights over Mellis Common and that Cowpasture Lane is a no-through road. You object to any access for works to the railway crossing from the west side of the crossing and you say that any access would have to be from the Chapel Farm (east) side of the line.*

*Network Rail's proposals will see the portion of BOAT across the railway redesignated as a public bridleway. We do not envisage that significant works will be required at the level crossing, which is already of a type appropriate for a public bridleway, but we are looking to make some minor enhancements, such as squaring up the level crossing across the tracks, and providing mounting blocks to make it easier for horse riders to mount and dismount when crossing the railway. On occasions when vehicular access is necessary (say for delivery of the mounting blocks), we note that the Traffic Regulation Order makes provision for vehicular use of the BOAT for purposes of 'the maintenance, improvement or reconstruction of [...] the byway'. This means that Network Rail has a right of access to maintain the crossing from Chapel Farm Lane, albeit that the byway is not maintained to an appropriate standard. It is acknowledged that access across Mellis Green is not possible and so the mounting blocks for the western side of the railway would be delivered to the eastern side and then carried across the line.*

*Network Rail is seeking powers to use temporarily Plots 1 and 3 shown on Sheet 25 of the Order plans for the purpose of providing mounting blocks on each side of the railway. Once the works are completed, under article 22 of the Order Network Rail is obliged to reinstate the land to the reasonable satisfaction of the owners of the land.*

*Article 26 (Extinction or suspension of private rights of way) of the Order provides that any person who suffers loss by the suspension or extinguishment of any private rights of way under this article is entitled to compensation.*

*If there is a dispute as to the amount of compensation, the matter is*

*determined by the Upper Tribunal in accordance with the provisions of the Land Compensation Act 1961.*

## **Objector – Mr Nigel Battell as holder of common land rights**

Objector Reference – 57

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

- The objector seeks to oppose the Scheme until such time as he has clarity on the level of compensation available to him for loss of common land rights.
- The objector also objects to permanent rights being granted to Network Rail on plot 07 although he acknowledges temporary rights are required.
- The objector also raises concerns regarding the impact of the temporary use of plots 04 and 05 on grassland, shrubs and wildlife habitat.

### 8.7.10 Response

8.7.10.1 I have reviewed the objection letter from Nigel Battell and consider the issues raised have been dealt with in a letter from Network Rail dated 13th December 2017, the material parts of which I set out below:

*You state that you object to the extinguishment of your historic right of access across the railway at this location and will continue to do so until Network Rail confirms an appropriate level of compensation for its loss.*

*We confirm that article 15 (Closure of level crossings) of the draft Order (which can be found at Tab NR2 Folder 01 of the Application documents dated March 2017) provides for compensation to any person who suffers loss by the suspension or extinguishment of any private right of way under that article. If there is a dispute as to the amount of compensation, the matter is determined by the Upper Tribunal in accordance with the provisions of the Land Compensation Act 1961.*

*You object to the acquisition of rights over plot 7, being the access track and hardstanding, west of Abbotts crossing and east of Mellis Road. In our letter dated 28 November 2017 we advised that Network Rail intends to put forward an amendment to the Order removing the power to take rights over plot 7. Instead we will rely on the powers in the Order to gain access from the east of the railway.*

*We hope that in light of this you can confirm that your objection to this provision in the Order can be withdrawn.*

*You also object to temporary use of land in plot 4 and 5 without appropriate compensation.*

*Article 26 (Extinction or suspension of private rights of way) of the Order provides that any person who suffers loss by the suspension or*

*extinguishment of any private rights of way under this article is entitled to compensation.*

*If there is a dispute as to the amount of compensation, the matter is determined by the Upper Tribunal in accordance with the provisions of the Land Compensation Act 1961.*

*The works will consist of removal of the level crossing furniture and fencing the line so that it is secure. The land in plots 4 and 5 would be used as worksite. These plots will be accessed via the railway or Earlsford Road to facilitate the works that are required, for example, installing new fencing materials. It is not possible to state the exact duration of the works at this stage as programming of the works will be undertaken after the Order has been made, however we would expect it to be less than 4 weeks at this site.*

*Once the works are completed, under article 22 of the Order Network Rail is obliged to reinstate the land to the reasonable satisfaction of the owners (of the land). Network Rail's proposals will not be affecting the nearby pond or other wildlife habitats, such as grasslands and shrubs, on Mellis Common as identified during our early ecological survey work.*

### **Objector – Philip Butler as holder of common land rights**

Objector Reference – 30

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

- The objector seeks to oppose the Scheme until such time as he has clarity on the level of compensation available to her for loss of common land rights.
- The objector queries the rights ascribed to Messrs Cadman in the Book of Reference.
- The objector notes that he does not object to downgrading crossing S18 but queries how Network Rail intends to gain access to the crossing for provision of proposed additional bridleway infrastructure.
- The objector notes a discrepancy in the location as noted in a design freeze drawing.

8.7.11 Response

8.7.11.1 I have reviewed the objection letter from Mr Butler and consider the issues raised have been dealt with in a letter from Network Rail dated 13th December 2017, the material parts of which I set out below:

#### **S21 Abbotts**

*We note that you appreciate the need for the changes to the Abbotts level*



*crossing (S21) as proposed by Network Rail. You say that you will continue to object to the extinguishment of your historic rights of access across the railway until Network Rail confirms an appropriate level of compensation for its loss.*

*We confirm that article 15 (Closure of level crossings) of the draft Order (which can be found at Tab NR2 Folder 01 of the Application documents dated March 2017) provides for compensation to any person who suffers loss by the suspension or extinguishment of any private right of way under that article. If there is a dispute as to the amount of compensation, the matter is determined by the Upper Tribunal (Lands Chamber) in accordance with the provisions of the Land Compensation Act 1961.*

*You say that it is unclear and would appear unnecessary for Network Rail to acquire new and permanent rights in plot 7. In our letter dated 28 November we advised that we will put forward an amendment to the Order to remove the power to take rights over plot 7 and will rely on the powers in the Order to gain access from the east side of the railway.*

*Network Rail will retain the use of plot 4 on the west side of the railway as a temporary worksite during the removal of the crossing, with works comprising of removal of the level crossing deck and installing fencing.*

*We hope that in light of this you can confirm that your objection to this provision in the Order can be withdrawn.*

*Thank you for your comments regarding the description 'in respect of common land rights' against the names of Mr and Mrs Cadman in relation to plot 6. We have checked this with the land referencing agents who agree that for consistency the description should be 'in respect of crossing rights', as you point out. We will amend the Book of Reference before it is certified as being the correct document to accompany the Order when it is made by the Secretary of State. The rights of Mr and Mrs Cadman are not affected.*

*Thank you for drawing our attention to the fact that Order plan 26 shows Beecroft level crossing twice. The reference at the bottom of the plan should of course read 'Rectory Road Level Crossing (to remain open)'.*

### **S18 Cowpasture Lane**

*We note you do not object to the downgrading of crossing S18 Cowpasture Lane. You say that it is unclear how Network Rail intends to gain access to this crossing for the provision of the proposed additional bridleway structure as there is no public right of access to Cowpasture Lane across Mellis Common. You say that it is not possible to gain vehicular access to the crossing from Chapel Farm Lane.*

*Network Rail's proposals will see the portion of BOAT across the railway redesignated as a public bridleway. We do not envisage that significant works will be required at the level crossing, which is already of a type appropriate for a public bridleway, but we are looking to make some minor*

*enhancements, such as squaring up the level crossing across the tracks, and providing mounting blocks to make it easier for horse riders to mount and dismount when crossing the railway. On occasions when vehicular access is necessary (say for delivery of the mounting blocks), we note that the Traffic Regulation Order makes provision for vehicular use of the BOAT for purposes of 'the maintenance, improvement or reconstruction of [...] the byway'. This means that Network Rail has a right of access to maintain the crossing from Chapel Farm Lane, albeit that the byway is not maintained to an appropriate standard. It is acknowledged that access across Mellis Green is not possible and so the mounting blocks for the western side of the railway would be delivered to the eastern side and then carried across the line.*

*Network Rail is seeking powers to temporarily use Plots 1 and 3 shown on Sheet 25 of the Order plans for the purpose of installing the mounting blocks on each side of the railway.*

*The public rights of way references on drawings MMD-367516-S18-GEN-005 and MMD-367516-S21-GEN-005 in the Design Guide NR12 incorrectly refer to Burgate rather than Mellis as you have stated. These plans have been amended and submitted within Network Rail's Statement of Case (core document NR26). We attach the correct plans for quick reference. The footpath references are correct on the submitted TWAO plans and accompanying Order Schedules which are the legal documents.*

## **Objector – Hilary Butler as holder of common land rights**

### **Objector Reference – 31**

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

- The objector seeks to oppose the Scheme until such time as she has clarity on the level of compensation available to her for loss of common land rights.
- The objector queries the rights ascribed to Messrs Cadman in the Book of Reference.
- The objector notes that she does not object to downgrading crossing S18 but queries how Network Rail intends to gain access to the crossing for provision of proposed additional bridleway infrastructure.
- The objector notes a discrepancy in the location as noted in a design freeze drawing.

### **8.7.14 Response**

8.7.14.1 I have reviewed the objection letter from Hilary Butler and consider the issues raised have been dealt with in a letter from Network Rail dated 13<sup>th</sup> December 2017, the material parts of which I set out below:

**S21 Abbotts**

*We note that you appreciate the need for the changes to the Abbotts level crossing (S21) as proposed by Network Rail. You say that you will continue to object to the extinguishment of your historic rights of access across the railway until Network Rail confirms an appropriate level of compensation for its loss.*

*We confirm that article 15 (Closure of level crossings) of the draft Order (which can be found at Tab NR2 Folder 01 of the Application documents dated March 2017) provides for compensation to any person who suffers loss by the suspension or extinguishment of any private right of way under that article. If there is a dispute as to the amount of compensation, the matter is determined by the Upper Tribunal (Lands Chamber) in accordance with the provisions of the Land Compensation Act 1961.*

*You say that it is unclear and would appear unnecessary for Network Rail to acquire new and permanent rights in plot 7. In our letter dated 28 November we advised that we will put forward an amendment to the Order to remove the power to take rights over plot 7 and will rely on the powers in the Order to gain access from the east side of the railway.*

*Network Rail will retain the use of plot 4 on the west side of the railway as a temporary worksite during the removal of the crossing, with works comprising of removal of the level crossing deck and installing fencing.*

*We hope that in light of this you can confirm that your objection to this provision in the Order can be withdrawn.*

*Thank you for your comments regarding the description 'in respect of common land rights' against the names of Mr and Mrs Cadman in relation to plot 6. We have checked this with the land referencing agents who agree that for consistency the description should be 'in respect of crossing rights', as you point out. We will amend the Book of Reference before it is certified as being the correct document to accompany the Order when it is made by the Secretary of State. The rights of Mr and Mrs Cadman are not affected.*

*Thank you for drawing our attention to the fact that Order plan 26 shows Beecroft level crossing twice. The reference at the bottom of the plan should of course read 'Rectory Road Level Crossing (to remain open)'.*

### **S18 Cowpasture Lane**

*We note you do not object to the downgrading of crossing S18 Cowpasture Lane. You say that it is unclear how Network Rail intends to gain access to this crossing for the provision of the proposed additional bridleway structure as there is no public right of access to Cowpasture Lane across Mellis Common. You say that it is not possible to gain vehicular access to the crossing from Chapel Farm Lane.*

*Network Rail's proposals will see the portion of BOAT across the railway redesignated as a public bridleway. We do not envisage that significant works will be required at the level crossing, which is already of a type appropriate for a public bridleway, but we are looking to make some minor enhancements, such as squaring up the level crossing across the tracks, and providing mounting blocks to make it easier for horse riders to mount and dismount when crossing the railway. On occasions when vehicular access is necessary (say for delivery of the mounting blocks), we note that the Traffic Regulation Order makes provision for vehicular use of the BOAT for purposes of 'the maintenance, improvement or reconstruction of [...] the byway'. This means that Network Rail has a right of access to maintain the crossing from Chapel Farm Lane, albeit that the byway is not maintained to an appropriate standard. It is acknowledged that access across Mellis Green is not possible and so the mounting blocks for the western side of the railway would be delivered to the eastern side and then carried across the line.*

*Network Rail is seeking powers to temporarily use Plots 1 and 3 shown on Sheet 25 of the Order plans for the purpose of installing the mounting blocks on each side of the railway.*

*The public rights of way references on drawings MMD-367516-S18-GEN-005 and MMD-367516-S21-GEN-005 in the Design Guide NR12 incorrectly refer to Burgate rather than Mellis as you have stated. These plans have been amended and submitted within Network Rail's Statement of Case (core document NR26). We attach the correct plans for quick reference. The footpath references are correct on the submitted TWAO plans and accompanying Order Schedules which are the legal documents.*

## **8.8 S21 Abbotts**

### **Objector – Mrs F Cadman as holder of common land rights**

Objector Reference – 45

8.8.1 A consideration of the objection is set out above in paragraphs 8.7.1 and 8.7.2

### **Objector – Colin Joyce as holder of common land rights**

Objector Reference – 47

8.8.2 A consideration of the objection is set out above in paragraphs 8.7.3 and 8.7.4

**Objector – Julie Wicks as holder of common land rights**

Objector Reference – 50

8.8.3 A consideration of the objection is set out above in paragraphs 8.7.5 and 8.7.6

**Objector – Mrs C S Box as holder of common land rights**

Objector Reference – 59

8.8.4 A consideration of the objection is set out above in paragraphs 8.7.7 and 8.7.8

**Objector – Mr Nigel Battell as holder of common land rights**

Objector Reference – 57

8.8.5 A consideration of the objection is set out above in paragraphs 8.7.9 and 8.7.10

**Objector – Philip Butler as holder of common land rights**

Objector Reference – 30

8.8.6 A consideration of the objection is set out above in paragraphs 8.7.11 and 8.7.12

**Objector – Hilary Butler as holder of common land rights**

Objector Reference – 31

8.8.7 A consideration of the objection is set out above in paragraphs 8.7.13 and 8.7.14

**Objector – Matthew & Joyce Spence as holder of common land rights**

Objector Reference – 55

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

- The objectors are concerned that the closure of the crossing will sever access between parcels of common land and note that as the line crosses through the centre of Mellis closure of the crossing has an undue impact on the village.

**8.8.8 Response**

8.8.8.1 I have reviewed the objection letter from Matthew and Joyce Spence and consider the issues raised have been dealt with in a letter from Network Rail dated 13th December 2017, the material parts of which I set out below:

*In your objection, you say that if this foot crossing at is closed, pedestrians will have to take a long detour to cross at the less busy road crossing, or a slightly shorter detour to cross at a much busier main road crossing, which does not have a footway. You also say that once closed the facility and amenity will be lost forever and will change the nature of the freedom of the open access common for negligible improvement to the rail service but increased danger to pedestrians.*

*First it should be noted that there are no existing public rights of way to cross the railway at S21 Abbotts level crossing. Under Network Rail's proposals the existing private rights will be extinguished and these users will be diverted to cross the railway at the Mellis automatic half barrier road level, which is approximately 280 metres north east of the Abbotts crossing. We attach a design plan to show our proposals. During development of our proposals, Network Rail carried out a nine-day Camera census in July 2016 to gather information on the nature and scale of usage which recorded a total of 26 pedestrians using the level crossing with 6 pedestrians using it on the busiest day.*

*Network Rail notes that while the length of the diversion varies on the users' origin, some users will be undertaking longer diversions than others. We estimate a typical diversion for the majority of households south of the railway walking from the junction is approximately 1km (0.6 of a mile). As an indication this equates to 15 minutes based on an average walking speed of 1.115m/s (or 2.5mph) which is provided in guidance issued by the Ramblers (source: <http://www.ramblers.org.uk/advice/navigation/calculating-walking-pace.aspx>).*

*The roads which form the diversion route are existing adopted roads, maintained by the relevant local highway authorities. Users of local footpaths and those accessing land to either side of the crossing would be using these existing roads at present. A Road Safety Audit (undertaken by specialists who are independent of the design team) was undertaken in August 2016 and did not highlight any issues with the proposed diversion route.*

*Network Rail acknowledges that the closure of Abbotts crossing may impact the freedom and open access you currently experience across the common. However we hope that our strategic case, outlined above, explains why closure of this crossing is in the public interest. Under the Order, Network Rail is diverting users to Mellis Road level crossing which is an automatic half barrier (AHB) crossing and is therefore a safer crossing point of the railway.*

## **8.9 S24 Higham Ground Frame**

### **Objector – Mairi Jean Johnston**

Objector Reference – 42

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

- The existing crossing is little used hence an alternative footpath is not required.
- Other existing bridleways are available which provide more advantageous routes for diverted walkers.
- The proposed diversion impacts on potential farm diversification enterprises, namely shooting and caravan storage.
- The objector does not object to closing the crossing but to the alternative footpath routes.

8.9.2 Response

8.9.2.1 I have reviewed the objection letter on behalf of Mairi Johnston and consider the issues raised have been dealt with in a letter from Network Rail to Mrs Johnston's agent dated 19th December 2017, the material parts of which I set out below:

*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 rights of way network. This was noted at the meeting with your client. Network Rail considers that the proposed alternative route is suitable and convenient for existing users. In view of the longer distances that will be travelled, and with regard to Suffolk County Council's desire to increase the network available for cycling, it was decided that part of the diversionary route would be created as a bridleway.*

*You say your clients use the land in the vicinity of the crossing for clay shooting and testing rifles and shotguns. They will therefore be aware of the risk to pedestrians who currently access or travel past the land, as well as to the users of the railway, and take appropriate precautions.*

*The creation of the proposed bridleway between points B and C was discussed at the meeting on the basis of your clients' pending planning application (DC/17/0465) for the purpose of caravan and storage. Network Rail was prepared not to seek powers to create the proposed bridleway in view of its apparent incompatibility with your intended use of the land. However, we understand that the planning application has been withdrawn and no further application has been made.*

*We note that you are agreeable to the proposed footpaths between points A-B and points A-G-F on your plan. This also accords with Suffolk County*

*Council's aspiration to create an access corridor from Higham to Risby.*

*You say that the footpath between points D-E on your plan replicates points A-B. This is also stated as point 1 in your letter of objection in connection with Notice No. 81.*

*The submitted proposals for level crossings S23 Higham and S24 Higham Ground Frame have been developed through two rounds of public consultation and we have taken your clients' concerns into consideration. However, we are also required to consider other stakeholders such as Suffolk County Council and users of the rights of way network in the design of the route. The closure of the two level crossings causes a loss of north-south Public Rights of Way. By improving east-west links to make reaching the available crossings of the railway and A14 easier, options for local circular routes and longer distance walks are improved.*

*The Public Rights of Way network in this area is a mixture of off-road paths connected by sections of road. Therefore the fact that the eastern end of the proposed bridleway finishes at New Road is not considered to present a problem. This should also address your point that 'the proposed diversion route does not lead anywhere and therefore adds no benefit to the bridleway network'. There are onward footpaths and bridleways to the north of the A14 (FP9 Risby), and to the south (BR18 and BR19 Barrow).*

*You were advised by Jonathan Boulton, our Property Surveyor, on 7 July 2017 that Network Rail was not able to agree to the removal of the proposed bridleway between points B-C, as previously discussed in the meeting held on the 9 May 2017.*

*You state in the letter that 'the intended diversion route will border the boundary of an existing clay pigeon shooting school... The direction of shot will need to be severely restricted.' However, the proposed bridleway is separated from the active shooting area east of Needle's Eye by the live railway, and so the shooting activities should have no bearing on users of the proposed bridleway.*

#### ***Impact on your clients' land***

*We note that your clients operate the well-established Barrow Heath Shooting Ground which is used for competition and recreational shooting activities. You say that the facility is subject to significant investment including a new clubhouse building. We understand the building and development are expected to take three years and shooting activities will be temporarily relocated to the site currently used for rifle and shotgun testing (B-C route on your plan).*

*If the Order is made Network Rail would be happy to talk with your clients to agree suitable working arrangements to carry out its works within the land hatched 'black' shown on your plan.*

*We note that the area hatched 'green' on your plan denotes commercial game shoot. Network Rail appreciates your concerns and would be happy*



*to discuss them with your clients in more detail to see if they can be allayed, including whether any reasonable mitigation measures might be appropriate.*

*The Order also contains compensation provisions for loss or damage as a result of the Order. Insofar as Network Rail's proposals may affect the value of your clients' property, they may be entitled to compensation in line with the compensation code. The Government has issued guidance on compulsory purchase, which is available from Government publications on the following link (<https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-1-procedure>). Article 16 of the Order incorporates the provisions of s. 28 Highways Act 1981 for compensation for loss as if the new public right of way was created by a Public Path Creation Order.*

*Point 2 of the meeting notes says that your clients' land may be earmarked for shooting activities permanently. Network Rail have identified planning permission (DC/15/2524/FUL) granted on 23 June 2016. The permission is for the area south east of the Needle's Eye. Network Rail's proposed routes are from the south west of the Needle's Eye continuing north east from the underbridge. If this is the land your clients refer to, we do not believe our proposed route will affect your clients' development.*

*Network Rail would be happy to discuss with your clients any further concerns they may have.*

*We are also appending the latest Design Freeze drawing, which Nick Johnston had requested through Persona.*

## **8.10 S29 Hawk End Road**

### **Objector – Taylor Wimpey UK Limited**

Objector Reference – 53

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

- The notice was served on a previous owner of the land.
- The objector seeks to understand more fully Network Rail requirements for plots 11 & 12 so that the construction works proposed by the objector may proceed without obstruction.
- The right sought in the Order may conflict with the residential development scheme proposed for the site.

8.10.2 Response

8.10.2.1 The land is part of a residential site being developed by Taylor Wimpey, when the Scheme footpath and access routes were designed they were planned to link in to the roadways within the development site, however the

development has progressed and the roadways within the development site no longer link up with the Scheme footpath and access routes. Following discussion with Taylor Wimpey Network Rail have instructed solicitors to complete an agreement with Taylor Wimpey whereby a revised footpath route will be confirmed that will facilitate alternative footpath routes as required to allow the crossing to be closed and confirmation that the TWAO footpath routes will not be implemented where they conflict with the development.

## **8.11 S69 Bacton Whipps Farmers**

### **Objector – Bacton United Football Club**

Objector Reference – 5

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

- The objector notes that in the past Network Rail have used alternative access points to carry out railway maintenance at the crossing.
- The objector is concerned that utilisation of the proposed access point would lead to additional vandalism and conflict with a planning requirement to plant saplings.
- The objector seeks assurances as to the standard of handed back land in the event the scheme is approved and access taken across their land.
- 

8.11.2 Response

8.11.2.1 I have reviewed the objection letter on behalf of Bacton United and consider the issues raised have been dealt with in a letter from Network Rail dated 18th December 2017, the material parts of which I set out below:

*The area coloured pink you had referred to was identified as a potential route on 5th September 2016. However, upon investigating the site, the land appear to be far too steep in certain sections to create a footpath route and requires the clearance of deep vegetation. The route was, therefore, discounted due to the unsuitable topography of the land to be used as a public footpath.*

*You state that access through the Club's property is locked in places marked blue on the plan submitted with your letter when not in use, for security reasons as local sports clubs in the area are constant target for vandalism and burglary. One of the blue marked areas is on plot 20 leading to plot 21 on Sheet 20 of the Order plans.*

*The new public right of way (which does affect the Club's land) must be approved by the Highway Authority before works to remove the level crossing can be carried out. The removal of the level crossing will be programmed in line with operational requirements. This may mean that*

*Network Rail will require access periodically over a period of months. Network Rail will consult with the Club as the programme of works is developed to seek to reduce the impact on the Club's land, where reasonably practicable.*

*Plots 20, 21 and 22 are required for access for removal of level crossing and creation of the new public right of way (which does not affect the Club's land). We note your comment that "there is an error in the land marked 20 on the map as the route currently shown (circled in black pen) would go over a raised bank planted with saplings as required by our planning permission".*

*Article 22 of the draft Order requires Network Rail to restore the land of which temporary possession has been taken to the reasonable satisfaction of the owners and to pay compensation for any loss or damage arising from its exercise of the Order powers.*

*With regard to Plot 20 we would be happy to discuss this and consider if an alternative solution could be found.*

## **Objector – Orwell Settlement Trustees**

Objector Reference – 25

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

- The objector notes that there have been discussions with Network Rail over a twelve month period and that some of their concerns have been addressed.
- The proposed footway under the railway bridge at Pound Hill is restricted in width which means that larger agricultural vehicles will need to travel a much longer route through local villages impacting upon the highway network.
- The objectors consider that additional footpaths will result in a beneficial enhancement to the footpath network where none is required because the use of the paths is very low.
- The objectors acknowledge that Network Rail may have prescriptive rights of access to the railway but object to their confirmation in the Order.

8.11.4 Response

8.11.4.1 I have reviewed the e mail dated 5<sup>th</sup> May 2017 on behalf of the owners of the Orwell Settlement trustees and consider the issues raised have been dealt with in a letter from Network Rail dated 19<sup>th</sup> December 2017, the general parts of which are set out in 8.4.2.1 above and the crossing specific parts I set out below

### **S69 Bacton**

*This public footpath only crossing is proposed to be extinguished. Crossing*

*infrastructure will be removed and fencing installed to prevent trespass onto the railway.*

*Users would be diverted north to the existing underbridge on Pound Hill. Users would get to Pound Hill underbridge via Broad Road to the east of the railway (verge walking) and Birch Avenue (existing footway) to the west of the railway.*

*On the west side of the railway, users would be able to connect to the existing public rights of way network via the existing footpath 014 Bacton. At the northern end of footpath 014 looking east, a new 2m wide public footpath and a proposed timber footbridge at Pulhams Lane would be constructed over an existing ditch. This is envisaged to be 5m in span.*

*The proposals are not envisaged to significantly reduce the track width and it is not the intention of the proposals to affect farm operations.*

*To maintain public rights of way connectivity to the east of the railway, a new 2m wide public footpath to be created along the east side of the railway to the point of S13 Fords Green where users could connect with existing footpaths heading east.*

*To provide some additional safety reassurance for pedestrians, both those who would normally use the road and those diverted from the footpath network, Network Rail has proposed tarmac footway on the south side of Pound Hill road at the approach to the road bridge to allow off road space for pedestrians to take note of on-coming vehicles.*

*However, the proposals do not involve construction of a footway under the road bridge as part of the level crossing closure works and therefore there will no restriction of movement of farm machinery, which you are concerned about.*

## **Objector – Messrs Baker**

Objector Reference – 26

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

- The objectors are concerned about the impact of the project on the movement of large agricultural vehicles
- The objectors are concerned at the potential for interaction between the public and their pets and livestock on the farm.

8.13.6 Response

8.13.6.1 I have reviewed the objection letter on behalf of Messrs Baker and consider the issues raised have been dealt with in a letter from Network Rail dated 19th December 2017, the material parts of which I set out below, with the other elements of the letter set out in paragraph 8.4.4.1

### *S69 Bacton*

*This public footpath only crossing is proposed to be extinguished. Crossing infrastructure will be removed and fencing installed to prevent trespass onto the railway.*

*Users would be diverted north to the existing underbridge on Pound Hill. Users would get to Pound Hill underbridge via Broad Road to the east of the railway (verge walking) and Birch Avenue (existing footway) to the west of the railway.*

*On the west side of the railway, users would be able to connect to the existing public rights of way network via the existing footpath 014 Bacton. At the northern end of footpath 014 looking east, a new 2m wide public footpath and a proposed timber footbridge at Pulhams Lane would be constructed over an existing ditch. This is envisaged to be 5m in span.*

*The proposals are not envisaged to significantly reduce the track width and it is not the intention of the proposals to affect farm operations.*

*To maintain public rights of way connectivity to the east of the railway, a new 2m wide public footpath to be created along the east side of the railway to the point of S13 Fords Green where users could connect with existing footpaths heading east.*

*In your letter of objection, you refer to the road width at Pound Hill underbridge. Where the public rights of way network is interrupted at S69 Bacton, we have proposed that users traverse the railway using the existing Pound Hill road as would the residents.*

*To provide some additional safety reassurance for pedestrians, both those who would normally use the road and those diverted from the footpath network, Network Rail has proposed tarmac footway on the south side of Pound Hill road at the approach to the road bridge to allow off road space for pedestrians to take note of on-coming vehicles.*

*It is not intended to construct a footway under the road bridge as part of the level crossing closure works.*

*Your context on 'poorly laid out pedestrian protection measures', we have taken to mean the provision of the footway through Pound Hill underbridge and at Pulhams Lane which have been addressed in the paragraphs above.*

*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. As the footpath network is the responsibility of Suffolk Highways, Network Rail would need to satisfy their requirements where possible to facilitate the closure of these crossings. Following round 1 consultation Suffolk County Council considered that it would be beneficial to replace the loss of circular routes over the level*

*crossing with the link S13 to Cow Creek and the footpath was relocated to the western side of the railway to accord with their requirements.*

*We note your concerns with dog fouling if users were diverted to Cow Creek. Census data conducted in June show 6 users at S12 and 6 users at S13. This suggests a total of 12 users would be diverted to Cow Creek crossing. As the census data show they are infrequently used by a small number of people and for these reasons we feel that they should not be a great imposition on your farm or local residents.*

*If you are still concerned, we are happy to discuss mitigations at this location with you. It may also be helpful to note The Suffolk Landowner Guidance if such nuisance does occur.*

## **8.12 Objector – National Farmers Union**

8.12.1 The National Farmers Union (NFU) had lodged an objection dated 3<sup>rd</sup> May 2017 prepared by Rachel Carrington of the NFU. the objection is in the form of a general objection to all three Orders in East Anglia.

8.12.2 The objection lists several points however the issues can be seen to fall under three headings, as set out below :

### **8.12.3 Communication**

8.12.3.1 In her objection, Ms Carrington sets out a general concern that the consultation process was inadequate, I set out my response to this concern below.

8.12.3.2 As set out in the Statement of Consultation (**NR/05**) and in section 5.11 to 5.13 of this document several rounds of consultation were undertaken with landowners during 2016. As part of the consultation exercise Hamer Associates/Gateley Hamer engaged with affected landowner, and passed information or suggestions received back to Network Rail and Mott McDonald to inform the development of the Order proposals..

8.12.3.3 Details of the evolution of the Scheme are set out in the proofs of evidence of Susan Tilbrook and Andrew Kenning and this shows that the concerns of land owners were considered in the development of the proposals.

### **8.12.4 Impact on Agricultural Business**

8.12.4.1 The objection raises concerns as to the closure of level crossings comprising access to agricultural land by farm businesses, employees and contractors, and asks that private rights are retained on crossings that are closed to others. I confirm that no private vehicular rights are affected by the proposals contained within the draft Order: the only vehicular rights affected are at crossing S18 where a BOAT is downgraded to a bridleway, reflecting the current position on the ground.

8.12.4.2 The objection notes that as a reduction in access across the railway there will be adverse economic impacts upon agricultural holdings and their ability to develop in the future.

8.12.4.3 Other concerns relating to the economic impact on the agricultural holding and land value are also matters than can properly be dealt with through the compensation provisions contained within the draft Order. For example, where there are costs associated with the reorganisation of the farm holding the costs may be recoverable subject to the submission of a properly evidenced claim demonstrating the loss, and depending on the nature of the powers or rights sought in respect of the individual landholding.

#### 8.12.5 **Use of TWAO process**

8.12.5.1 The objection sets out concerns regarding the use of the TWAO process for delivering level crossing closures. I understand that this is primarily a matter of law, and thus outside the scope of my evidence.

**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 12th January 2018