

TRANSPORT AND WORKS ACT 1992

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

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

SUMMARY

PROOF OF EVIDENCE

-OF-

NIGEL BILLINGSLEY

Document Reference	NR/29/2
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1. INTRODUCTION

1.1. My full name is Nigel Billingsley. I am an equity partner at Bruton Knowles, a firm of chartered surveyors.

1.2. I am a member of The Royal Institution of Chartered Surveyors (RICS) and a RICS registered valuer. I hold a BSc Degree in Minerals and Estates Management from Sheffield Polytechnic a post graduate diploma in Urban Studies from Northumbria University.

1.3. I have worked for Bruton Knowles since 2004 and have practiced predominantly within the field of compulsory purchase and compensation. In November 2016 Bruton Knowles were appointed to undertake property services work in support of the Network Rail (Suffolk Level Crossing Reduction) Order (TWAO). Presentation of evidence at Public Inquiry into the TWAO is included as part of the instruction.

2. SCOPE OF EVIDENCE

2.1. My evidence consists of a consideration of the rights sought by Network Rail in the TWAO and the compensation provisions that accompany those rights.

2.2. A consideration of the communication of the TWAO proposal through the development of the TWAO to the public and landowners.

2.3. A review of landowner objections to the TWAO on a crossing by crossing basis.

3. POWERS SOUGHT by NETWORK RAIL

Purpose of the Order

3.1. The purpose of the proposed Order is to enable Network Rail to close or downgrade certain level crossings in Suffolk, and where necessary, to extinguish existing public and/or private rights over crossings and to create alternative public or private rights of way in substitution.

3.2. The Order, if approved, would authorise 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.

3.3. In particular, article 5 of the draft Order allows Network Rail to construct and maintain works.

3.4. Network Rail is under an obligation under section 5(6) of the Transport and Works Act 1992 which requires Network Rail not to extinguish any public right of way unless the Secretary of State is satisfied that an alternative public right of way has been provided or that the provision of an alternative right of way is not required.

3.5. The draft Order therefore incorporates provisions to enable the creation of alternative rights of way to satisfy the requirement contained in s.5(6).

3.6. In particular the Order, if approved, would authorise 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 sought predominantly affect private landowners.

3.7. Network Rail has limited the extent of the acquisition of legal interests to only what is reasonably needed in order to deliver 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 the freehold of strips of private land which it does not need and which would be wholly disproportionate given the nature of this scheme.

3.8. The powers contained within the draft Order would guarantee that should the Order be confirmed, all the land rights required for the Scheme can be acquired in a realistic timescale and that no individual landowner can hold up the Scheme through a refusal to provide access to land required to deliver the Scheme.

3.9. Hence if approved the Order will grant powers to close certain level crossings, create new rights of way, construct works, downgrade the status of other crossings and related highways, take land on a temporary basis, impose rights on land, extinguish private access rights, grant private rights over certain crossings, undertake works affecting the highway and allow entry for survey and tree lopping purposes. The rights set out in the Order are all required to facilitate delivery of the Scheme. The Order also provides for the alteration of public rights of way over one crossing, and the extinguishment of private rights over others.

4. COMPENSATION PROVISIONS

4.1. Where Network Rail impact upon private land and rights the TWAO provides for compensation to be paid to the landowners.

4.2. The compensation provisions in the TWAO vary depending upon the rights being acquired or extinguished.

4.3. The TWAO invokes Part 1 of the Compulsory Purchase Act 1965 which, through its application, has the effect of requiring Network Rail to pay compensation to qualifying parties under the Compensation Code for acquisition of new rights in land for access for construction of the works, or for rights of access for third parties.

4.4. All property owners who have new rights acquired over their land will be entitled to claim compensation in accordance with the Compensation Code, which provides a consistent approach to the assessment of fair compensation.

4.5. In addition to compensation being paid for the value of land taken, compensation will also be payable in respect to any loss in a landowner's retained property caused by it being severed from the land acquired, or by the Scheme itself.

4.6. Compensation is also payable in respect to disturbance losses that result from the construction of the Scheme.

4.7. The compensation payable in relation to the acquisition of particular interests in land is set out in detail in section 4.8 of my Proof.

4.8. As set out above, the TWAO provides for new public rights of way to be created over land. Article 15(3) makes express provision for compensation to be paid for depreciation in the value of the interest in land or for damage suffered by being disturbed in the enjoyment of the land by applying the provisions of section 28 of the Highways Act 1980.

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

4.10. The 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.

4.11. In relation to land to be occupied temporarily Network Rail must pay compensation for any loss or damage arising from the exercise of the powers in the Order and Before giving up temporary possession of such land Network Rail must restore the land to the reasonable satisfaction of the owners.

4.12. Although the TWAO provides for compensation to be paid, the quantum of that compensation is not a matter for determination at this inquiry, and my evidence does not therefore address the quantum of compensation payable or the specific heads of claim for which recovery may be sought in respect of individual landholding.

4.13. 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 TWAO.

5. COMMUNICATION & 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.

5.2. A consultation strategy was developed to adhere to the statutory requirements from Rule 10(2) (d) of the Application Rules. 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.

5.3. 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.

5.4. More specifically Landowners and other holders of property interests were contacted by Network Rail's consultants and Network Rail themselves.

5.5. The compulsory powers in the draft Order are mostly related to rights rather than outright acquisition of land. The rights sought on a permanent basis are predominantly public rights i.e. they are rights to create new public rights of way to deliver a continuity of the footpath network after the closure of crossings.

6. HUMAN RIGHTS

6.1. 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 Order, 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 COMPLUSORY RIGHTS

7.1. There are a significant number of interest holders included in the Book of Reference (NR08-SCC). Of these a number of landowners objected to and made representations regarding the Scheme. It can be seen therefore that the majority of interest holders have not sought to object to or make representations in relation to the TWAO.

7.2. A number of objections to the Scheme have been received, many of the objectors do not have a legal interest in land affected by the Scheme and therefore I do not address those objections in my Proof as follows:

7.3. I summarise and address objections received from affected landowners on a crossing by crossing basis in section 8 of my proof:

8.2.1 S01 Sea Wall

John R Keeble & Son Limited (Obj 44)

8.2.2 S02 Brantham High Bridge

John R Keeble & Son Limited (Obj 44)

8.2.3 S03 Buxton Wood

David Caldwell (Obj 60)

8.2.4 S12 Gooderhams

Orwell Settlement Trustees (Obj 25)

Messrs Baker (Obj 26)

8.2.5 S13 Fords Green

Finbows Bacton 1991 Ltd (Obj 22)

Orwell Settlement Trustees (Obj 25)

Messrs Baker (Obj 26)

Colin & Judith Hull Objector Reference – 37

8.2.6 S16 Gislingham

James Black as Landowner and on behalf of James Black & Son Ltd as tenant
(Obj 11)

8.2.7 S18 Cow Pasture Lane

Objector – Mrs F Cadman (Obj 45)

Objector – Colin Joyce (Obj 47)

Objector – Julie Wicks (Obj 50)

Objector – Mrs C S Box (Obj 59)

Objector – Mr Nigel Battell (Obj 57)

Objector – Philip Butler (Obj 30)

Objector – Hilary Butler (Obj 31)

8.2.8 S21 Abbotts

Objector – Mrs F Cadman (Obj 45)

Objector – Colin Joyce (Obj 47)

Objector – Julie Wicks (Obj 50)

Objector – Mrs C S Box (Obj 59)

Objector – Mr Nigel Battell (Obj 57)

Objector – Philip Butler (Obj 30)

Objector – Hilary Butler (Obj 31)

Objector – Matthew & Joyce Spence (Obj 55)

8.2.9 S24 Higham Ground Frame

Objector – Mairi Jean Johnston (Obj 42)

8.2.10 S29 Hawk End Road

Objector – Taylor Wimpey UK Limited (Obj 53)

78.2.11 S69 Bacton Whipps Farmers

Objector – Bacton United Football Club (Obj 5)

Objector – Orwell Settlement Trustees (Obj 25)

Objector – Messrs Baker Objector (Obj 26)

8. CONCLUSION

8.1. Network Rail has sought to limit the powers proposed in the TWAO to those that are necessary to secure, in a timely, efficient and economical manner, the land interests and rights which Network Rail have identified as being required for the delivery of the level crossing reduction Scheme. For the reasons set out in the evidence of Mark Brunnen and Eliane Algaard, there is a compelling justification in the public interest for authorising the acquisition of those rights, and powers to use, land to implement the Scheme, and any interference with private property is justified and proportionate, in accordance with the protections provided by ECHR Article 1 Protocol 1 .

Nigel Billingsley

12th January 2018

