

TRANSPORT AND WORKS ACT 1992

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

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

ANDREW KENNING

**REBUTTAL
PROOF OF EVIDENCE**

-FOR-

S22 WEATHERBY

Document Reference	NR/30/4/7
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Proof of Evidence of Andrew Woodin (Obj/29/2/S22)

1. At paragraph 11 of his Proof, Mr Woodin -

'The Council is not persuaded that Network Rail has explained persuasively why the crossing needs to be closed and why a bridge or other mitigation measures have not been provided. Ms Noonan, Forest Heath District and St Edmundsbury Borough council's' Principal Growth Officer covers the lack of closure justification in more detail in her evidence.'

2. Network Rail does not believe there to be any public rights at the level crossing. The inclusion of the level crossing in the project is to ensure that all private rights (if any) are extinguished in a public forum. I have spoken to the Liability Negotiations Manager for Anglia Route, regarding Network Rail's belief that there are no public rights of way across this crossing, and he has informed me that:
 - The railway through Newmarket was authorized by the Newmarket and Chesterford Railway Act 1846. The level crossing was provided for a private occupation road. No public rights were recorded under the Act and the Surveyor of Highways was not referenced as an interested party. The railway was, in fact, constructed at the southern edge of the 'limits of deviation' to avoid the need to cross a public road on the level.
 - The need for private vehicular use of the level crossing declined once New Cheveley Road and Cricketfield Road were built. By the late 1960s it was therefore proposed to close the level crossing to vehicles. The local authorities were consulted in 1968 and confirmed that no public rights were in existence at the crossing. The crossing was downgraded to a private pedestrian only facility, similar to its current form.
 - Suffolk County Council was again consulted in 2007 about the status of the crossing, and once again confirmed that no public rights of way are recorded, nor are any claimed.
 - Recent case law [Rambler's Association v. The Secretary of State for Environment Food and Rural Affairs, Network Rail & Others [2017] EWHC 716 (Admin)] demonstrates it is not possible to establish a public right of way over operational lines of railway "on the level" (i.e. across a level crossing) through presumed dedication, as this is incompatible with the Railway Operator's (Network Rail) statutory purpose.
3. As a permissive footpath crossing, then regardless of the level of use, there is no obligation on Network Rail to keep the level crossing open for the benefit of the public, nor for Network Rail to provide a replacement means of crossing the railway. It would not be appropriate for Network Rail to spend public funds providing new infrastructure (e.g. a bridge) here. Like the Council, Network Rail must follow the Government's directives for Managing Public Money (a Directive that was published in August 2015) and it must justify where works are instigated and Network Rail can only take positive action for works which it is responsible for.
4. In similar situations in the past, where it was felt there was a public need for a crossing of the railway, but Network Rail has no duty to provide it, a bridge or subway has been installed at the cost of the highway authority, local council, or a developer. If such a proposal was to come forward, clearly Network Rail would consider it, but for the reasons I have already explained, it would not be appropriate for Network Rail to spend public money providing such infrastructure.

Philip Hodson (Obj/13)

5. Network Rail request to close or modify crossing states;-

- a. *'So, while I have no doubt that Network Rail has fulfilled its obligations by publishing its intent as required according to the Transport and Works Rules of 2006, by November 2017 the majority of the residents of Newmarket, still remained with no idea that their pedestrian rail crossing, S22 The Weatherby Crossing, is being considered for closure.'*
6. I am surprised at this comment as Network Rail undertook various efforts to raise the public awareness of the proposed closure. There has been various new coverage of the proposal, both in local papers and on the televised news. The local MP (Matt Hancock) is aware of it and indeed held his own local meeting to raise awareness of the proposal. Unfortunately Network Rail was not able to attend this meeting due to the short notice, and no other dates were offered for the meeting, despite Network Rail requesting this. However I believe it was well attended and again would have got the message out into the wider public of our intentions.

Newmarket Town Council (Obj/3) Warwick Hirst

7. In Key Considerations, 3-Alternative Solutions, states;-
 - a. *'Walkways have been installed at stations for pedestrian access across railway lines. Has this been evaluated for this Weatherby Crossing.'*
8. It is not clear to me what is being suggested here. I am not sure if the suggestion here is to provide a level crossing at the current Newmarket station to enable the public to cross the railway here instead. If it is, this would not be acceptable to either Network Rail or our regulator the ORR. The Network Rail does not have the power to grant a public new public right across the railway, and the ORR is clear that their view is that level crossing 'Risk control should, where practicable, be achieved through the elimination of level crossings in favour of bridges, underpasses or diversions' and not the movement of the level crossing. Therefore I very much doubt that they would entertain the movement of a level crossing. There is no need for a level crossing (in the absence of a station bridge / subway) as there is only one platform at the station and that is where the public access is.

Newmarket Town Council (Obj/3) Roberta Bennett

9. Section 5 Risk Rating of the Crossing, states;-
 - a. *'Newmarket Town Council seek clarification with regard to the ALCRM score applied to the crossing as the methodology for assessing the risk at this crossing has not been made available to Newmarket Town council'.*
10. The current ALCRM rating of the level crossing is D2. To the extent that it is relevant, general information about the All Level Crossing Risk Model (ALCRM) can be found in Network Rail's Statement of Case (pp 14-16).
11. John Prest also explains in paragraph 3 of his proof of evidence what information is required to calculate the risk score for each crossing and the role of level crossing managers in gathering information for inputting into the ALCRM model.
12. Please also refer to paragraph 8.24 of the proof of evidence of Mark Brunnen, which clarifies that ALCRM model has not been used to select or prioritise crossings for inclusion in the Suffolk Order.

SLAF (Obj/23)

13. States :-

- a. *'Also the suggested use of 2m high steel palisade fencing to stop trespass once the crossing is closed would be a visual intrusion.'*

14. Network Rail needs to be able to secure the operational railway from trespass and vandalism. In order to do this Network Rail has a suit of standards that it uses to help decide what fencing should be used where. It is my understanding from these standards that in the case of Wetherby it is appropriate that the current level crossing is fenced with palisade fencing. My reasoning is based on the fact that it is difficult to fence short sections with chainlink (matching the existing fencing) and retain sufficient tension to make the fencing effective. Also there is evidence of damage to the fencing from trespass further along the existing chainlink fencing, suggesting that when the level crossing is closed there is likelihood of some users attempting to trespass. The proposed palisade fencing could be of a coloured type (say holly green) instead of the usual galvanised (silver) type used. This would help to 'tone down' the fencing, and could be catered for at detailed design.

Witness declaration

I hereby declare as follows:

- (i) This proof of evidence includes all facts which I regard as being relevant to the opinions that I have expressed and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion.
- (ii) I believe the facts that I have stated in this proof of evidence are true and that the opinions expressed are correct.
- (iii) I understand my duty to the Inquiry to help it with matters within my expertise and I have complied with that duty.