

THE PROPOSED NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION) ORDER

S22 Weatherby – Supplementary Note

1. This Note is filed in response to the submissions made on behalf the Ramblers' Association on Day 13 of the Inquiry (14th March 2018) – OP-INQ-43.
2. Network Rail maintains the position that this inquiry is not the correct forum for determining whether, and if so, what, public rights of way exist over the level crossing. That is strictly without prejudice to its position that no such rights of way in fact exist over the crossing, nor could any claim for public rights of way by reason of long use by the public succeed (see NR-INQ-59).
3. It does not, therefore, propose to respond to the Ramblers' 'Preliminary evaluation of Network Rail's evidence' (paras 7-11 of OP-INQ-43) save to note that it does not agree with that analysis, and maintains its position as to the status of the crossing as set out in NR-INQ-59 and NR-INQ-59a. It would also note that the Ramblers' analysis does not appear to engage with the fact that the level crossing is described in the Deposited Plans for a later Act - the Great Eastern Railway Act 1879 – as an "occupation level crossing".
4. For the avoidance of doubt, Network Rail does not accept that there are 'carriageway rights' across the crossing, or that it enjoys the status of a restricted byway.
5. It is unclear whether the Ramblers are suggesting that the Secretary of State should consider whether a replacement route is required for vehicular users of the crossing, under s.5(6) of the Transport and Works Act 1992. (There is, in fact, no vehicular user of the crossing). Strictly without prejudice to its position above (and set out in NR-INQ-59), Network Rail submits that there can be no possible basis on which the Secretary of State could – or should – conclude that an alternative public right of way for vehicular users is "required". The level crossing was downgraded to a pedestrian only facility in the 1960s, following consultation with the local authorities, the need for private vehicular access across the crossing having fallen away with the construction of New Cheveley Road in or around 1902.¹
6. To the extent it is necessary² to consider whether the proposed replacement route would provide a suitable and convenient alternative right of way for cyclists, as the Statement of Case makes clear, the proposed alternative route is "along public highways on both sides of the railway".³

¹ See paras 11-13 of the Note on the Creation, History and Status of Crossing S22 Weatherby (NR-INQ-59a)

² Network Rail does not accept – for the reasons set out earlier in this Note – that the crossing enjoys the status of a restricted byway. Strictly without prejudice to that legal position, Network Rail acknowledges that cyclists do currently cycle – as well as push their bicycles – across the crossing.

³ NR26 page 83. Cf the suggestion at para 5 of OP-INQ-43 that the proposed alternative route is "wholly on footways"

7. For pedestrians (the primary focus of objections – see eg page 84 of the Statement of Case), this clearly means the footways alongside the carriageways. Cyclists may either choose to wheel their bicycles along the footways, or cycle in the carriageway. As Ms Tilbrook explained in cross-examination, the carriageways along the proposed alternative route are currently available for cyclists to use.
8. Network Rail maintains that the proposed diversionary route is suitable and convenient for existing users of the level crossing.

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