

NETWORK RAIL (SUFFOLK LEVEL CROSSINGS REDUCTION) ORDER

Note on Ecology

Introduction

1. On Day 9 of the Inquiry the Inspector asked about ecological surveys and how the impact on EU protected species had been considered, made reference to ODPM circular 6/2005/Defra circular 1/2005: *Government Circular: Biodiversity And Geological Conservation – Statutory Obligations And Their Impact Within The Planning System* and raised queries in relation to crossings S01 and S02. The inspector asked:
 - 1.1. *“where the designations are, what we are trying to protect, and what Natural England said in correspondence, and if they have said that what weight Network Rail say I should give to that in balance between Natural England saying it should be protected, balanced against the views of people who want to maintain that route and if there is any statutory weight behind that. ...I want to know where in that suitable and convenient argument does the NE point become relevant?”*
 - 1.2. *“Mr Murray Wood raised concerns regarding ecology – I have the EIA screening report. I want to understand more as to how the impact on EU protected species has been considered. Under a normal planning regime it wouldn’t be appropriate to leave until after planning permission has been granted to see if there is protected species – Mr Murray suggested habitat survey.”*
 - 1.3. *“I am looking for something more solid in terms of the details of the surveys – particularly regarding the 2005 circular which deals with habitats and what it says about the need to do surveys”*
 - 1.4. *“There are two aspects to the reason for removing the footpath at S01 – one was Natural England wanting to extinguish the part so they have less people – and second thing is that MM decided that it would be better not to have footpath on both sides on the basis that there would be disturbance?”*
2. This Guidance refers to statutory designations for Part I: international designated sites, Part II: national designated sites; Part III: conservation of habitats and species outside designated sites; Part IV: conservation of protected species and Part V: Other duties and use of statutory powers.
3. Paragraph 1 states:
 - 3.1. *“This Circular provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. It complements the expression of national planning policy in Planning Policy Statement 9, Biodiversity and Geological Conservation (PPS9) and the accompanying Good Practice Guide. Although this Circular outlines how statutory obligations impact within the planning system, in some cases the legislation will have an equal bearing on other regimes e.g. Transport and Works Act 1992.”*
4. PPS 9 was overtaken by the NPPF in March 2012, but the Circular has remained in place.
5. In accordance with the requirements of the Circular and in accordance with the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006 (“Applications Rules”), Network Rail considered the proposed works and implications for designated sites and species (Parts I to IV of the Circular) as part of the project and considered (under Part V of the Circular and in accordance with Applications Rule 7) the position on Environmental Impact Assessment. In relation to the other duties identified in Part V of the Circular, the need for SEA is not engaged on TWA schemes and to the extent that the Water Framework Directive is directly engaged by this scheme the Screening Report considered potential effects on water

resources and, as regards water quality, under article 17(7) of the Order, the need for an environmental permit for any discharge into a watercourse is not disapplied.

6. As set out in a separate note attached to this, Mott McDonald considered and carried out desktop and other preliminary surveys to inform the screening report and request, including whether the works in the scheme would be likely to give rise either to any significant adverse effect on the environment or on international, European or nationally protected sites or species. The note also considers the issues raised at S01 Sea Wall and S02 Brantham High Bridge during the inquiry.

Planning conditions

7. Although the Secretary of State is satisfied, evidenced by the screening opinion, that the proposed scheme would not give rise to significant adverse environmental effects and that therefore no environmental statement is required, there is still the potential for protected species to be found at the construction stage, which would require Network Rail to comply with the relevant statutory requirements including, if necessary in the circumstances, to obtain a species licence.
8. The Screening report Appx D sought to rely on Network Rail's Contract Requirements-Environment as a means to address the unexpected discovery of a protected species, but on reflection, Network Rail considered that more specific planning conditions would more effectively address ecological statutory requirements in relation to (a) nesting birds and (b) if found any protected species.
9. As part of the application for the Order Network Rail under Application Rule 10(6) Network Rail submitted a request for deemed planning permission under section 90(2A) of the Town and Country Planning Act 1990 which was accompanied by draft planning conditions. Draft ecological planning conditions were included in the Rule 10(6) request as follows:
 - 9.1. "6. During the bird nesting season (March to July), trees and any other suitable habitat affected by the works should be searched for nesting birds and if any nesting birds are found the nest shall be protected until the young have fledged and left the nest.
 - 9.2. 7. No development shall commence until a plan describing the mitigation procedures that will apply in the event that any protected species is unexpectedly discovered during construction of the development is submitted in writing and approved by the local planning authority."

Precautionary Method of Works

10. Paragraph 7.24 of the Guide to TWA Procedures explains that [TWAO] applicants should establish whether there is, or is likely to be, a need for a licence to be obtained under the Conservation of Habitats and Species Regulations [now 2017] because the Secretary of State needs to be satisfied before making an Order that he has full information on significant environmental effects of a scheme, including proposed measures to mitigate significant adverse effects and the Secretary of State needs to be satisfied that there is a reasonable prospect of the Scheme going ahead without being blocked by any impediments such as the need for another consent or licence.
11. In the case of this scheme, the Secretary of State is already satisfied through the Screening process that the scheme is unlikely to give rise to significant adverse effects and that there is therefore no need for an environmental statement. Further, in this case, as set out in this note, it is clear that it is unlikely that there will be a need for a licence. In the unlikely event that one is required, the draft planning condition will ensure that no works at the particular crossing can be undertaken except in accordance with a licence. If there were a need for a licence and one were not forthcoming, in this case, it is submitted that the impediment would relate to the relevant

crossing works, rather than the Order works as a whole and therefore, given the nature of this Order, that would not be a reason not to grant the Order as a whole.

SSSI

12. As regards the works in SSSI at S01 Sea Wall, Network Rail does not consider any works to be undertaken as part of this project are likely to cause damage to the special interest features of the Stour Estuary SSSI. If that position were to change, Network Rail is a statutory undertaker and would be obliged to follow the procedures under section 28H of the Wildlife and Countryside Act and obtain consent from NE and comply with conditions proposed or explain why those conditions will not be followed but carry out the works causing as little damage to the special features of the SSSI as possible.
13. NR is therefore satisfied that the Order scheme is in line with requirements under circular and mechanism in place to deal with SSSI designations

Winckworth Sherwood

16 April 2018