

RE Suffolk Network Rail Inquiry 1st 2nd May 2018

From: Joanna Vincent
Sent: 30 April 2018 08:40
To: Philip Hodson
Cc: Hazel Anderson (handerson@wslaw.co.uk); Izabella Suberlak; Christopher.Mills@networkrail.co.uk; Anna Coopman
Subject: RE: Suffolk Network Rail Inquiry 1st, 2nd May 2018
Attachments: DPI V3500 17 13 Suffolk LCRO I Note final.doc

Dear Mr Hodson

I refer to your email dated 23 April 2018 enclosing further submissions, including proposed cross-examination. The Inspector's response is set out below.

As you acknowledge in your email, much of the content of what you propose falls outside the scope of Mr Kenning's evidence and it follows that it would not be appropriate to put the associated questions to him. It appears to me that the elements within scope comprise those related to consultation (section 1 and a related question on page 9). Otherwise the questions relate to: evidence given by other Network Rail witnesses, who you have already had an opportunity to cross-examine and who are not expected to appear again in relation to S22; matters outside the scope of the evidence of the Network Rail witnesses; and/or, legal matters.

I also enclose for your information a copy of the Inspector's Inquiry Note on 'Whether this Inquiry is an appropriate forum to determine if public rights of way exist over Weatherby level crossing (S22)', dated 27 April 2018.

Kind regards

Joanna

From: Philip Hodson [mailto:
Sent: 23 April 2018 20:53
To: Joanna Vincent <joannavinc@personaassociates.co.uk>
Subject: Suffolk Network Rail Inquiry 1st, 2nd May 2018

Dear Joanna Vincent,

I submit here my intended cross examination of Network Rail for the 1st/2nd May 2018 at Newmarket.

This, I ask to be added to the list of Inquiry documents.

RE Suffolk Network Rail Inquiry 1st 2nd May 2018

You will see that I have directed my cross-examination entirely at Mr Andrew Kenning, this only because I was informed that Mr Kenning will be present on those days.

However, I think that much of what I bring up will require the attention of other Network Rail witnesses.

Therefore I ask you forward this to the Network Rail for their preparation.

Yours sincerely,

Philip Hodson.

THE NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION)
ORDER 201X
and
Request for a Direction as to Deemed Planning Permission

INQUIRY NOTE

Whether this Inquiry is an appropriate forum to determine if public rights of way exist over Weatherby level crossing (S22)

1. Ruling

- 1.1. In forming my view, I have had regard to the written and oral submissions made on the matter by: Suffolk County Council, who is the Surveying Authority in relation to the relevant Definitive Map and Statement; Network Rail; the Ramblers' Association; and, a number of other interested parties.
- 1.2. I share the view of Suffolk County Council, Network Rail and The Ramblers' Association that this Inquiry as currently constituted is not the appropriate forum to determine whether public rights of way exist over S22.
- 1.3. I will proceed on the following basis:
 - I will include in my report to the Secretary of State the gist of the submissions made at the Inquiry in relation to the status of the crossing. I will not draw a conclusion on the matter of whether public rights of way do or do not exist over S22.
 - I will include in my report to the Secretary of State the gist of the submissions made at the Inquiry as regards whether the diversionary route identified by Network Rail would constitute a 'suitable and convenient' alternative and will conclude on that matter. If it would not, I will recommend that S22 is removed from the Order.

2. Reasons

- 2.1. In its Statement of Case, Network Rail stated that there are no public rights of way at the Weatherby level crossing-S22. However, it does not indicate that the Secretary of State would be asked to make a ruling on the existence (or otherwise) of public rights of way at that crossing.
- 2.2. In my judgement, in order to consider whether public rights of way do exist, it would have been necessary to make clear to interested parties and the wider public at the outset that that matter would be under consideration, enabling them to consider whether to object and/or

bring evidence specifically related to the point. In my judgement, this was not done. Furthermore, no provisions have been made either by Network Rail or Suffolk County Council to call expert evidence, which I understand is often required when dealing with such matters. Notwithstanding that a small number of interested parties have expressed a view in evidence that this matter should be considered, under the circumstances, I consider it likely that to proceed to deal with it at this Inquiry as currently constituted would materially prejudice the interests of others.

2.3. I have had regard to the concern of a number of interested parties that this Inquiry may be their only opportunity to challenge Network Rail's position that there are no public rights of way over S22. However, Section 53 of the Wildlife and Countryside Act 1981 sets out processes under which public rights, if any, over the Weatherby level crossing can be determined. These include a process under which a member of the public may formally require the Surveying Authority to consider evidence and, if it concludes that it is requisite to do so, to make an Order.

2.4. I will proceed on the following basis:

- I will include in my report to the Secretary of State the gist of the submissions made at the Inquiry in relation to the status of the crossing. I do not intend to draw a conclusion on the matter of whether public rights of way do or do not exist over S22, which is not one of the principal matters upon which the Secretary of State has specifically asked to be informed, with reference to the Statement of Matters.
- I will include in my report to the Secretary of State the gist of the submissions made at the Inquiry as regards whether the diversionary route identified by Network Rail would constitute a 'suitable and convenient' alternative and will conclude on that matter. If it would not, I will recommend that S22 is removed from the Order. This is an approach supported by Suffolk County Council, Network Rail and The Ramblers' Association.

In my judgement, this approach would be unlikely to materially prejudice the interests of anyone.

I Jenkins
INSPECTOR

27 April 2018