

Note on S27 / S28

1. On Day 21 of the inquiry, the Inspector queried what the effect would be if the closure of S27 (or S28) was recommended for removal from the draft Order.
2. Under the draft Order as presently drafted, both S27 and S28 fall under Article 14: 'Closure of level crossings subject to opening of a new right of way', which provides (so far as is material) as follows:

“(1) Subject to paragraphs (3) and (5), the level crossings specified in column (2) of Part 1 of Schedule 2 (closure of level crossings) are stopped up and discontinued.

(2) Subject to paragraph (5), upon the stopping up and discontinuance of the level crossings referred to in paragraph (1) –

(a) any rights of way over those crossings are extinguished to the extent specified in column (2) of Part 1 of Schedule 2; and

(b) any public rights of way specified in column (4) of Part 1 of Schedule 2 are extinguished to the extent specified, by reference to the numbers and letters shown on the deposited plans.

(3) Paragraphs (1) and (2) are not to have effect until, in respect of each level crossing in that table, the new highway specified in column (5) has been constructed and completed, to the extent specified by reference to the numbers and letters shown on the deposited plans, to the reasonable satisfaction of the highway authority in accordance with article 16 (creation and maintenance of new highways) and is open for use. ...”

3. Part 1 of Schedule 2 provides as follows in respect of S27 and S28

(1) Area	(2) Extent of level crossing to be stopped up and discontinued	(4) Extent of highway to be extinguished	(5) Status and extent of new highway
District of Mid Suffolk Parish of Thurston	Barrells between points P024 and P025 and Grove Farm between points P030A and P032	Footpath 005 Thurston between points P023 and P024 and between points P025 and P026 Footpath not on definitive map between points P024 and P025 Footpath 011 Thurston between points P029, P030A, P030, P033 and P032	Footpath between points P032, P034 and P035 Footpath between points P029 and P031

		Footpath not on definitive map between points P027, P028A, P028, P037 and P036	
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4. The Order Plans showing the P points referred to above are Sheets 11 (S27- Barrells) and Sheet 12 (S28 – Grove Farm).
5. The proposals for S27 and S28 are thus interlinked. As the Order is currently drafted, closure of both S27 and S28 (or indeed, of S27 or S28) is dependent upon the provision of the new PROWs detailed in the 4th column of Part 1 of Schedule 2.
6. Therefore, if the Order were modified to remove closure of S27 this would not remove the need to create the proposed new PROW on the northern side of the railway running south from Barrell's Lane along the field edge to the west of Mr & Mrs Brace's property, and then running east past S28 Grove Farm to tie in with the existing Footpath 011, Thurston. The effect would be that this footpath would be created in addition to the retention of Footpath 005 Thurston running across S27, as it provides an alternative diversionary route on the north side of the railway for users heading west if S28 were to be closed. Network Rail would highlight that Mr Le Mar has never been consulted on such a proposal
7. If it were proposed to modify the Order to (1) remove the closure of S27 and (2) remove the creation of the new footpath running to the east of Mr Le Mar's field (to the west of Mr and Mrs Brace's property), this would leave users of Footpath 011 Thurston (travelling from the east towards S28) without an onward western connection.
8. Network Rail does not consider it could support this, or other¹ proposed modifications to the Order at this stage, particularly having regard to potential impacts on third parties not party to this inquiry.² Network Rail would emphasise that the proposal to extinguish the northern section of Footpath 005 Thurston and to provide a new N-S footpath to the east (ie to the west of Mr & Mrs Brace's property) was a direct result of concerns raised by the directly affected landowner (Mr Le Mar) to paragraph 3.48 of the DfT Guide to TWAO Procedures, which provides that:

"3.48 Aside from the ES, it is recognised that an applicant may wish to submit to the Secretary of State after an application has been made - perhaps as a result of negotiations with objectors - information additional to that submitted with the application; or amendments to a document or documents previously submitted with the application, including the draft order itself. Where this can properly be done, it can avoid the need for a fresh application, with the extra delay, expense and, in some cases,

¹ For example, extinguishment of (eg) Footpath 011 Thurston to the east of S28, or provision of new sections of footpath affecting (directly or indirectly) third party land

² Depending on what might be proposed by way of further modification, this could also raise concerns regarding the practicality of providing the proposed alternative and/or as to potential implications for increasing risk at an alternative at-grade crossing point

extended blighting effect that this may entail. With this in mind, the Secretary of State would normally be prepared to accept for consideration additions and/or amendments where he or she is satisfied that:-

(a) the modifications did not contain (expressly or by implication) a proposal to authorise the compulsory acquisition of land, or the right to use land, or the compulsory extinguishment of easements or other private rights over land (including private rights of navigation over water) which was not included in the application;

(b) the modifications (taken together, if there were several of them) would not change the essential nature of the proposal submitted to the Secretary of State so as to amount, in effect, to a substantially different proposal. This would be a matter of fact and degree, having regard to the nature of the modifications in relation to the originally submitted proposals; and

(c) the interests of other parties would not be prejudiced by acceptance of the amendments or additional information (taking account of what opportunity to comment had been, or might reasonably be, given to other parties who might have an interest - see paragraph 3.49 below).

If any of the above conditions were not met, it is likely that a fresh application would be required."

9. If the Order was modified to remove closure of S28, the Order would still require the creation of the PROW on the southern side of the railway from the eastern end of the unmade path terminating at S28 to the unmade road to the east as it provides an alternative diversionary route for users heading east on the south side of the railway if S27 were to be closed.
10. Network Rail is, of course, mindful that in order for either or both crossings to be closed, the Secretary of State will need to be satisfied that the proposed diversionary route is suitable and convenient. It has developed its proposals for S27 and S28 together and this is reflected in the Order proposals. Network Rail's position remains, therefore, that diversionary routes proposed (which it considers suitable and convenient for existing users) work best with both crossings closed, and separating them out would provide a sub-optimal arrangement within existing Order powers.