

THE PROPOSED NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION) ORDER

Response to Mr Hodson (Obj/13)

1. This Note sets out, briefly, Network Rail's response to matters raised by Mr Hodson in his document 'Cross examination for 1/2 May 2017 by Philip Hodson OBJ 13 Amended 23/4/18' and which were not addressed during cross examination of Mr Kenning on 1 May 2018, day 19 of the Inquiry. It also responds to 3 matters raised in Mr Hodson's Prepared Statement of 17.01.18 which are matters for legal submission rather than of evidence.

'Cross examination for 1/2 May 2017 by Philip Hodson OBJ 13 Amended 23/4/18'

2) 'The matter of Permissive Path' (pg 4) / 3) "Zulus Crossing" (pg 7)

2. Network Rail's assets (which include the land over which a level crossing passes and its infrastructure) are owned by Network Rail Infrastructure Limited. Network Rail Infrastructure Limited is a wholly-owned subsidiary of Network Rail Limited which is in turn an arms-length body of the Department for Transport.
3. Network Rail Infrastructure Limited is, therefore, a legal 'person' in the same way as a private individual or a private limited company. It has the same powers in respect of its property as a private individual as a matter of common law¹: the restrictions on its powers to dispose of (or otherwise deal with) its assets are instead to be found in the regulatory framework under which Network Rail operates (in particular, the Network Licence²) and, in the case of presumed dedication of public rights of way across its land, s.31(8) of the Highways Act 1980.
4. In short, it is not the fact that Network Rail Infrastructure Limited is a public sector organisation which means that a claim for presumed dedication of a PROW over S22 Weatherby would be bound to fail.³ Rather, it is due to the incompatibility of a PROW over the level crossing with the purposes for which Network Rail holds that asset which gives rise to its incapacity to dedicate a PROW over the crossing (see s.31(8) of the Highways Act 1980).⁴
5. Network Rail is under no general duty to provide crossing points over the railway (cf the suggestion at pg 8 of Mr Hodson's document). Where crossing points are to be provided (either to carry public roads or as accommodation/occupation crossings for land severed by a new railway) this is provided for in the enabling legislation. The fact that Network Rail is able to provide new infrastructure (for example, a bridge crossing over the railway) does not translate into this being part of its statutory duties or purposes (cf the suggestion at page 8). Moreover, dedication of public rights of way over such infrastructure would not be incompatible with Network Rail's statutory purposes in the same way as dedication of public

¹ Which would include the restriction on presumed dedication of a public right of way where that would be incompatible with the purposes for which a public body / body established by statute held the land

² On which, see section 4 of Mark Brunnen's Proof of Evidence (NR/27-1)

³ As set out in NR-INQ-49

⁴ See paras 6-9 of NR-INQ-49

rights of way at grade over an operational railway lines would be⁵ and thus the fact that Network Rail is capable of (and does in fact) construct new infrastructure over which rights are granted to the public does not support the submission that this means that Network Rail does have capacity to dedicate a public right of way over across the operational railway (pg 8).

4) Suitability of New Cheveley Road (pg 10-11)

6. This is addressed in the evidence of Susan Tilbrook both in her Proof (NR/32-1 section 2.13) & Rebuttal Proof for S22 (NR-32-4-6), and orally on 13th & 14th March 2018.

5) ALCRM (pg 11-13)

7. The development of ALCRM, and how it is viewed by the ORR, is addressed in section 8 of Mark Brunnen's Proof of Evidence.⁶ The relationship between ALCRM and historic accident data is addressed specifically at para 8.7, and public perception of risk / human behaviour at crossings within Section 9. He also explained in evidence on Day 1 of the inquiry why history (or otherwise) of incidents cannot be only matter looked at in terms of assessing risk at a crossing, and gave an example of where a proposed new bridge (which would have enabled closure of a level crossing) had been objected to, the crossing being perceived to be safe, with, tragically, a fatal accident only a week later.⁷

Mr Hodson's Prepared Statement (17.01.2018)

Serious miscarriage of due process (pg 1-2) / Unconstitutional Act (pg 4-5)

8. Mr Hodson clarified on Day 20 of the Inquiry (2 May) that his submissions in this regard were directed at the situation if the Secretary of State confirmed the Order with the proposals to include S22 as opposed to suggesting there has been non-compliance with statutory requirements by Network Rail in its promotion of the Order.
9. It will be Network Rail's submission at the close of the inquiry that if the Secretary of State is satisfied that the diversionary route proposed for S22 is 'suitable and convenient for existing users', and that Network Rail has made out its strategic case, then he may properly proceed to confirm the Order with the closure of S22 included, and that there is no jurisdictional or procedural bar to the Secretary of State doing so. Public agreement to the proposals is not a pre-requisite for confirmation of the Order, nor would it render the Order legally invalid.

Network Rail – As a Public Servant (pg 3)

10. These submissions relate to the 'permissive path' issue, addressed above at paras 2-5.

⁵ For example, in *British Transport Commission v Westmoreland County Council* [1958] AC 126 it was found that dedication of public rights of way over an accommodation overbridge would not be incompatible with the statutory objectives of the authority (headnote attached).

⁶ NR-27-1, pages 28-32

⁷ See NR-INQ-07

Closing or diverting a public right of way (pgs 3-4)

11. Mr Hodson refers on pg 4 of his Prepared Statement to a test for closure found on the website of Blackburn with Darwin Council. Those tests refer to applications for closure or diversion under the Highways Act 1980. They are not the tests to be applied on this Order. This is addressed in more detail at paras 43-48 of Network Rail's Opening Statement (NR-
INQ-2).

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