

THE PROPOSED NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION) ORDER

Section 5(6) TWA 1992 – the approach taken by Network Rail to whether an alternative route is “required” to be provided

NOTE

1. On Day 2 of the Inquiry, the Inspector asked for a Note outlining how Network Rail had approached the issue of whether an alternative right of way was required to be provided under s.5(6) of the Transport and Works Act 1992.
2. Section 5(6) provides that:

“(6) An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied—

 - (a) that an alternative right of way has been or will be provided, or
 - (b) that the provision of an alternative right of way is not required.”
3. Network Rail’s approach to determining whether provision of an alternative right of way was required was as follows:
 - a. Where there are no public rights of way over a level crossing (e.g. the level crossing is subject only to private rights of way, or use is permissive only), s.5(6) does not apply, and Network Rail is not required to provide an alternative right of way;
 - b. When considering whether an alternative right of way needs to be provided, Network Rail has looked at whether a suitable diversionary route would be provided by the existing PROW or highway network. If so, it has determined that provision of an alternative route is not required to be provided (i.e. s.5(6)(b) is engaged) and the PROW over the level crossings is proposed for extinguishment in Part 2 of Schedule 2 to the draft Order¹.
 - c. In assessing whether the existing PROW/highway network provides a suitable alternative route, such that provision of a new alternative route is not required, Network Rail has considered whether that diversionary route would be suitable and convenient, applying the approach described generally in section 1.11 of Susan Tilbrook’s PoE (NR/32/1) – or could be made, suitable and convenient. In considering whether an alternative route is not required, Network Rail has also been

¹ And falls within draft Article 15: Closure of level crossings

informed by the views of Suffolk County Council (see para 1.3.8 of Susan Tilbrook's PoE).

- d. Where the existing PROW/highway network did not provide for a potential diversionary route or it was considered that a diversionary route along the existing PROW/highway network was not suitable (applying the approach set out above) it was concluded that provision of an alternative route was required (i.e. s.5(6)(a) was engaged). An alternative route has been provided for within the Order proposals, and the existing PROW has been included within Part 1 of Schedule 2 to the draft Order.²

JACQUELINE LEAN
15th February 2017

Landmark Chambers
180 Fleet Street
London, EC4A 2HG

² And falls within draft Article 14: Closure of level crossings subject to opening of new rights of way