

Re The Network Rail (Suffolk Level Crossing Reduction) Order
Public Inquiry February 2018

Submissions on behalf of Suffolk County Council
on the Rights of Way Status of S22 Weatherby

1. In relation to S22 Weatherby, Suffolk County Council's statement of case states that there is "no recorded public highway status".
2. The Council accepts that, in relation to S22 Weatherby no public right of way is recorded on the Definitive Map & Statement. Suffolk County Council has received allegations the crossing should be recorded as public, but has discovered no evidence to support this, and there has been no formal application to change the DM&S to record a public right of way.
3. The Council, however, does not accept the following statement in Mr Kenning's rebuttal on S22:

Recent case law [Ramblers Association v. The Secretary of State for Environment Food and Rural Affairs, Network Rail & Others [2017] EWHC 716 (Admin)] demonstrates it is not possible to establish a public right of way over operational lines of railway "on the level" (i.e. across a level crossing) through presumed dedication, as this is incompatible with the Railway Operator's (Network Rail) statutory purpose.
4. It is submitted that no such strict legal rule applies.¹ However, it is accepted that *if*, in relation to a particular level crossing, it has been demonstrated that the establishment of a public right of way, through presumed dedication, would be incompatible with Network Rail's statutory purpose, then presumed dedication will not apply.
5. In relation to the Zulus Crossing, in the *Ramblers Association* case, the Inspector had found there to be statutory incompatibility and the High Court held on review that this was a rational conclusion for the Inspector to reach (at [52]). In addition, the High

¹ See the authorities cited to in *Ramblers Association v The Secretary of State for Environment, Food and Rural Affairs et ors* [2017] EWHC 716 (Admin) at [21]-[30].

Court held that the Inspector had lawfully decided that use of the Zulus Crossing constituted a criminal offence (contrary to section 55(1) of the British Transport Commission Act 1949) during the relevant period (at [73]) and that it was appropriate for the Inspector to have concluded that, on this basis, the principle of illegality applied to whether or not the public path order should have been made (at [76]).

6. In relation to S22 Weatherby, the Council will not be putting forward evidence to prove that a public right of way has been (or may have been) established by presumed dedication, or for that matter, by a historic legal event. Nor does the Council consider this Transport and Works Act Inquiry to be the appropriate forum for the matter to be determined. However, as a matter of law, the Council does not accept that a public right of way can never be established through presumed dedication over a level crossing.