

# **RE THE NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION) ORDER**

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## **OPENING SUBMISSIONS ON BEHALF OF SUFFOLK COUNTY COUNCIL**

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### **Introduction**

1. This purpose of this public inquiry is to assess Network Rail's application for the Network Rail (Suffolk Level Crossing Reduction) Order (the "Order") to be made under the Transport and Works Act 1992 ("TWA").
2. Through this Order, Network Rail is seeking to close 22 level crossings<sup>1</sup> and to downgrade the status of one level crossing<sup>2</sup> on mainline routes across the county of Suffolk. As drafted, the Order will confer statutory powers on Network Rail, including powers to enable it to remove the crossings, to stop-up and divert multiple public rights of way which currently traverse the crossings, to create new rights of way for purposes of providing acceptable alternative routes, and to compulsorily acquire land interests necessary for carrying out the authorised works.

### **Background Context**

3. Suffolk County Council (the "Council") is aware that this Order is being pursued by Network Rail simultaneously with two other Transport and Works Act Order ("TWAO") applications of similar import: the proposed Network Rail (Essex and Others Level Crossing Reduction) Order and the proposed Network Rail (Cambridgeshire Level Crossing Reduction) Order. It is understood that all three order applications rely on the same underlying strategic case and documentation, in particular the Anglia CP5 Level Crossing Reduction Strategy (NR18).

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<sup>1</sup> Network Rail had originally sought, upon deposition of the Order, to close 23 level crossings but have since withdrawn S05 from the Order proposals (Letter to the TWAO, dated 7 December 2017).

<sup>2</sup> S18 Cowpasture Lane.

4. As far as the Council is aware, these three order applications are also the first time that a TWAO has been sought for a project which has the sole purpose of closing and downgrading level crossings (with no other proposed “works” to which such closures are ancillary to). The Council notes that the Ramblers have submitted legal submissions to the Inquiry questioning the appropriateness of the use of a TWAO for these purposes. In light of this, the Council submits that the Inspector must be satisfied that the use of a TWA is lawful and appropriate for the purposes of this Order.

### Overview of the Council’s Objections

5. The Council<sup>3</sup> is the relevant highway authority and surveying authority in relation to the local highway networks that will be affected by the proposed Order. The Council is, therefore, responsible for ensuring that all public rights of way included in its network are fit for use and appropriately maintained. It must also ensure that any changes to the rights of way network are reflected in the definitive map and statement, which it must keep up-to-date.<sup>4</sup>

### Crossing-specific objections

6. Following a review of Network Rail’s proposals, the Council objects to eight of the proposed crossing closures. Four of these objections are based on road safety concerns:
  - S23 (Higham);
  - S27 (Barrells);
  - S31 (Mutton Hall); and,
  - S69 (Bacton).
7. Two of the Council’s objections are based on deliverability grounds:
  - S01 (Brantham Sea Wall); and,
  - S02 (Brantham High Bridge).

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<sup>3</sup> A statutory objector for purposes of this Inquiry, Transport and Works Act, s11(4) and the Transport and Works (Inquiries Procedure) Rules 2004, r2(1).

<sup>4</sup> Wildlife and Countryside Act 1981, s53.

8. The remaining two objections are based on issues arising from the length of the proposed diversions and the impacts such diversions will have on the health and wellbeing of users:
- S22 (Weatherby); and,
  - S25 (Cattishall).

#### *Safety concerns*

9. The Council takes the view that Network Rail has not properly assessed the safety issues associated with the proposed road-side walking at S23, S27, S31 and S69. The Council is concerned about pedestrian users being expected to walk alongside busy roads, with no pavement or segregation from motor vehicles. In some instances, visibility of oncoming traffic is insufficient, particularly having regard to the speeds commonly driven on rural roads.
10. The Council is also aware of the concerns that have been raised by Mr Russell on behalf of the Ramblers Association in relation to Network Rail's road safety audits. In light of this evidence, the Council submits that the Inspector must properly scrutinise Network Rail's RSAs and only rely on them if he is satisfied that they are sufficiently robust.

#### *Deliverability concerns*

11. The Council has raised distinct concerns in relation to S01 and S02 querying how Network Rail's proposals can be satisfactorily delivered.
12. In relation to S01, the proposed footpath location is prone to flooding, with accessibility issues arising from surfacing conditions. The Council also objects to what it considers to be an unnecessary extinguishment of the footpath running along the sea wall, which has highly valued views and amenity.
13. In relation to S02, whilst the Council has been unable to reasonably assess Network Rail's proposals due to a lack of accurate information, the Council is concerned that the

land to be used for the location of the new footpath is not appropriately stable, in addition to there being accessibility issues.

*Lack of amenity and impacts on local communities*

14. In relation to S22, the Council is not persuaded that Network Rail has sufficiently justified the need to close the crossing, nor demonstrated why other mitigation measures could not be provided. This crossing experiences a particularly high level of usage and is an important connecting link between the southern and northern parts of Newmarket. It is of significant community value and the Council does not consider that the proposed alternative route will serve as an adequate replacement. The Council's concerns reflect the objections raised by Forest Heath District Council.
15. In relation to S25, the Council echoes the concerns of St Edmundsbury Borough Council that Network Rail's proposals run counter to local plan policies for the planned strategic development of Bury St Edmunds. The Council also considers the length of the proposed alternative route to be unacceptable.
16. In addition, the Council has raised objections to both S22 and S25 due to public health concerns considered to arise from closure of the crossings.

*Conflict with policy*

17. With regards to all eight of the crossings objected to, the Council considers that the proposed alternative routes are not "convenient and suitable replacements for existing users".<sup>5</sup> On this basis, the Council submits that these eight proposals do not comply with a number of national and local transport and planning policies, including policies designed to:
  - (a) encourage walking and cycling as sustainable modes of transport;
  - (b) maintain and enhance the public rights of way network; and,
  - (c) improve access to the countryside.

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<sup>5</sup> A Guide to TWA Procedure (2006), Annex 2, p. 105, which appears to have been accepted by Network Rail as the appropriate test, Susan Tilbrook's Proof of Evidence, 1.3.2.

Network Rail's "strategic case"

18. The Inspector must determine whether Network Rail has justified the need for this Order.<sup>6</sup> The Council has not made an "in principle" objection to Network Rail's "strategic case". In general, the Council supports better rail services in Suffolk and the Council also recognises the three-fold strategic objectives underlying Network Rail's proposals for the rationalisation and reduction of level crossings across the Anglia Network,<sup>7</sup> namely to: (i) improve operational efficiency of the Network; (ii) increase the safety of those using and interacting with the railway; and, (iii) to ensure the efficient use of public funds.<sup>8</sup> The Council accepts, in principle, that level crossings may need to be closed to achieve these aims.
19. However, the Council does question Network Rail's decision to close some of the crossings included in the Order during this phase of Network Rail's strategy. As such, the Council will be seeking clarification as to the method by which level crossings have been chosen by Network Rail for inclusion in the Order and will be requesting that the Inspector only recommend that the Order be made if he is satisfied that Network Rail's strategic case has been adequately justified.
20. Further, the Council is cognisant that there is a potential for a precedent to be set by this Order. If the Secretary of State were to make this Order, then Network Rail may pursue similar projects in other parts of the country. There is even a risk of precedent-setting in Suffolk itself, as Network Rail has only been able to pursue its closure strategy in relation to mainline level crossings due to funding restraints (branchline level crossings are expected to be pursued by a similar strategy at a later stage). In light of the potential precedential effect of this Order, it is particularly important that the Inspector only recommend that the Order should be made if he is satisfied that Network Rail's strategy is justified and robust, or otherwise make clear his conclusions on the merits of underlying strategic case.

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<sup>6</sup> Statement of Matters, matter 1.

<sup>7</sup> This includes the counties of Suffolk, Norfolk, Cambridgeshire and Essex.

<sup>8</sup> Mark Brunnen's Proof of Evidence, para 2.3.

*“Holding objections”*

21. On 5 December 2017, the Council made a formal request to the Inspector that the contents of a letter sent to Network Rail’s solicitors (of the same date) be added to the Council’s statement of case. In a letter, dated 22 December 2017, Network Rail, acting through its solicitors Winckworth Sherwood, informed the Council that it did not object to the Council adding to its statement of case in this way. On 5 January 2018, the Inspector confirmed that the contents of both of those letters will be taken into account as forming part of the particulars of the cases of those parties to be put forward at the Inquiry.
22. In the letter, dated 5 December 2017, the Council set out a number of “holding objections” to the entirety of the Order. These are not objections to the substance of the works being proposed by Network Rail. Rather, these are objections to the current drafting of the Order and the procedure through which Network Rail’s statutory powers would be exercised.
23. The Council submits that the parameters of Network Rail’s statutory powers must be clearly identifiable on the face of the Order. This is in the interests of legal certainty and transparency. The proposed changes will not only impact on the Council, but on the public at large and, in particular, on future users of the rights of way network.
24. The Council is mindful of its own responsibilities as a public body, accountable to the public purse. It is also aware that any new highway maintainable at public expense must be fit for purpose. Network Rail has not reached the “detailed design” stage for its proposed alternative rights of way. Furthermore, the Council has been unable to attend joint site visits to the location of the new routes to assess, with the Network Rail teams, how the indicative plans would be implemented. The Council also understands that further road safety audits will be necessary before works are commenced. In light of the Council’s statutory duties, and having regard to the remaining uncertainties as to the implementation of the proposed scheme, the Council has requested that the following protective provisions be included in the Order:

- (i) **Pre-works authorisation:** There must be a requirement for a pre-works authorisation process, by which Network Rail will submit detailed plans for approval to the Council, prior to any of the works being carried out. The details of any further required road safety audits should also be submitted to the Council at this stage. Network Rail's proposals have not yet reached the detailed design stage and the Council is, therefore, unwilling to agree to their implementation without there being a further check on the detailed designs.
- (ii) **Commuted sums:** Network Rail is willing to pay commuted sums to the Council to cover the ongoing additional maintenance costs associated with the new and altered highway network. The Council hopes to be able to agree with Network Rail the principles for how commuted sums will be calculated. However, the Council requests that the Order be modified so as to clarify (i) that commuted sums must be agreed before the highway authority can certify any new routes and (ii) when commuted sums must be paid by.
- (iii) **Certification of new routes:** Network Rail has placed great emphasis on the fact that any diversion on the highway must be completed to the reasonable satisfaction of the local highway authority. However, the Council is not satisfied with the current level of protection contained in Article 16 of the Order, which provides for the certification process. As currently drafted, Article 16(11) includes a "deemed certification" clause, whereby a new route will be deemed as certified to the reasonable certification of the highway authority if the highway authority fails to respond within 28 days to a request for certification made by Network Rail. As presently drafted, there is nothing to prevent multiple requests being made by Network Rail at the same time. The Council has asked Network Rail to modify the Article 16 certification procedure so as to allow the highway authority sufficient time to respond appropriately to requests for certification. It is imperative that the certification procedure of new routes are not rushed. Each new route must be safe and fit for purpose.
- (iv) **Widths and grid references:** The Council has a duty, under section 53 of the Wildlife and Countryside Act 1981 to ensure the definitive map and statement, as a conclusive record of the public rights of way network, is kept up-to-date. This

Order would act as a “legal event” which affects the status of public rights of way and which will require the Council to make a legal event modification order (“LEMO”) to reflect such changes. In order to comply with its statutory duties, the Council will require details as to the lengths and widths of the new routes, as well as their grid references to OS mapping. The Council therefore requests that the Order is modified either (i) to include this information or (ii) to require that Network Rail provides this information to the Council by a certain date.

#### *Joint site visits*

25. The Council had maintained a holding objection on grounds that it has not been provided with access to enable Council officers to “walk the route” of the proposed alternative routes. The Council no longer maintains this “holding objection”, in the sense that it does not object to the whole Order on grounds that it has not been able to “walk the routes”. Nevertheless, the continued failure by Network Rail to arrange joint site visits with Council officers must be taken into consideration by the Inspector when assessing the evidence which objectors have been able to provide.
26. The need for further scrutiny of how Network Rail’s proposals will be implemented “on the ground” also underlies the Council’s request for a robust pre-works authorisation process.
27. The Council will highlight in evidence, particular examples where Network Rail’s plans do not, themselves, appear to correlate with ground conditions.

#### *Compensation to the highway and surveying authority*

28. The Council is concerned that significant officer time and resources have been spent in responding to the Order. In the event that the Order is made, further officer time will be need to be spent in approving the pre-works detailed designs and in responding to requests for certification of the new routes. The Council, therefore, requests that Network Rail pay reasonable compensation to the Council for this expenditure.

#### *Conclusion on “holding objections”*



29. The Council is currently engaged in discussions with Network Rail, and there has been correspondence between the parties which sets out their respective positions and which is before the Inspector. The Council is hopeful that it will be able to reach agreement with Network Rail on these matters before the end of the Inquiry. If that were to be achieved, the Council would then be able to withdraw its remaining holding objections to the Order as a whole.

### Conclusion

30. As has been noted, the Council does not object to the overarching objectives of Network Rail to improve the safety and efficiency of its railway network. However, the Council, as a local authority, must properly consider the balance of interests at stake and the effect which Network Rail's proposals will have on the public rights of way network, for which the Council is responsible.

31. The Council considers that eight of the proposed crossing closures are not acceptable and do not provide suitable and convenient alternative routes for users. It therefore requests that these eight crossing closures are removed from the Order, or otherwise modified to address the Council's concerns.

32. The Council also requests that a number of modifications be made to the Order to better protect the Council's interests, in its capacity as both the highway and surveying authority for the areas concerned. These modifications are not designed to unduly thwart Network Rail's objectives, but rather seek to ensure that appropriate procedural protections are put in place which will ensure that any new route can be effectively implemented, as well as being safe and fit for the public to use.

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