



Winckworth Sherwood LLP  
Solicitors and Parliamentary Agents, Minerva House  
5 Montague Close  
London SE1 9BB

Your Ref:  
Our Ref:  
Date: 5 December 2017  
Enquiries to: Steve Kerr  
Tel: 01473 264745  
Email: [Steve.Kerr@suffolk.gov.uk](mailto:Steve.Kerr@suffolk.gov.uk)

Dear Sirs,

**TRANSPORT AND WORKS ACT 1992 (TWA):  
APPLICATION FOR THE PROPOSED NETWORK RAIL (SUFFOLK LEVEL  
CROSSINGS REDUCTION) ORDER**

Further to Suffolk County Council's objection letter dated 3 May 2017 (as ratified at its full council meeting on 20 July 2017, hereafter "the Objection") and Mark Stevens's (Assistant Director – Operational Highways) letter dated 2 August 2017 addressed to the Secretary of State for Transport (SoSfT), the Council is now in receipt of the Department of Transport's letter to you dated 27 November 2017, advising that the start of the Suffolk public inquiry has been postponed until further notice.

Notwithstanding the recent adjournment of the Inquiry, we are mindful that the Transport and Works (Inquiry Procedure) Rules 2004, and the Guide to TWA Procedures, makes clear that parties are encouraged to provide maximum disclosure and exchange of information before the Inquiry takes place. In this regard, we seek to provide further detail on a number of the Council's objections to the Order.

Suffolk County Council is formally requesting that the Inspector allow the contents of this letter to be added to the County Council's statement of case (pursuant to rule 18(9) and rule 7 of the Inquiry Procedure Rules).

**Further request for access to the proposed alternative routes**

The Council wishes to express its concern at Network Rail's (NR) continued failure to provide Suffolk County Council with access to the proposed alternative routes for the rights of way which could be affected by the above Order. The County Council's officers will need to have had access to the proposed alternative routes in good time before the deadline for the exchange of proofs of evidence. This is to ensure that the County Council can properly assess what is being proposed by the Order and whether or not, in the view of the County Council, each of the proposed alternative routes is suitable and convenient for existing users.<sup>1</sup>

<sup>1</sup> See *A Guide to TWA Procedures*, Annex 2, p. 105 which states that, in relation to an alternative right of way being provided under 5(6) Transport and Works Act 1992, "...the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users."



The Suffolk Level Crossing Reduction Order was first tabled by NR in 2015 and various meetings were held with council officers. The specific Order proposals were subsequently progressed by NR's appointed consultants during 2016. Throughout this process the council has stressed the importance of undertaking joint site visits with NR to inspect the proposed diversion routes currently included in the Order, the purpose of which would be to agree the works required to bring the new routes into a fit condition for use by the public and to inform the calculation of a commuted sum required to maintain the resultant network. These inspections could have the further potential benefit of reducing the number of objections on the part of the council.

It is therefore disappointing that it has only been very recently that NR has agreed to undertake these visits and highly frustrating that the earliest dates relevant NR staff were available from was the week commencing 15 January 2018 (only one day before the deadline for the exchange of proofs of evidence on 16 January 2018).

Now that the Inquiry has been postponed, we request that NR honour its commitment to enable these site visits and make all the necessary access arrangements with affected landowners. This must be done as soon as possible and, in any event, by such a date as will allow the council enough time to adequately prepare its evidence.

**Holding objection 1:** Until the County Council has been provided with access to enable council officers to "walk the route" of the proposed alternative routes in the Order, the County Council wishes to make clear that it will maintain a "holding" objection to all of those level crossing closures for which NR's proposals depend on the provision of an alternative route. It does so without prejudice to any other basis on which the County Council maintains a "holding" objection (as further detailed below).

### **Further Holding objections**

In the event that the Order is granted, Suffolk County Council, as the local highway authority, will become responsible for the maintenance of the newly diverted routes and for ensuring they are safe to use. It is therefore absolutely essential that the council has the opportunity to advise as to whether the alternative routes can be brought into a fit condition for public use. It is further essential that the county council is not faced with unaccounted for expense in maintaining the newly created routes; a liability of course that has no time limit.

Suffolk County Council is not satisfied with how the Order is presently drafted with regards *inter alia* to both the need for the County Council to (i) certify that any new highway has been completed to the reasonable satisfaction of the highway authority and (ii) agree commuted sums.

### ***Background communications on certification and commuted sums issues***

On the first page of the Objection the County Council states:

*'Some of the council's concerns could have been addressed by the applicant at an earlier stage, had, for example, NR taken up the council's offers to undertake joint site inspections of each proposal.'*

*'Further, the council must consider the impact of the proposals in its capacity as highway authority. New routes will become maintainable at the public expense and must therefore meet appropriate standards.'*

And on the second page the letter states:

*'At this stage, this response sets out whether the council objects to a proposal, and why, together with any other comments on each proposal.'*



*'The council will, however, be seeking a commuted sum from the applicant, to offset future maintenance costs of the resultant network. It is also preparing a list of works it considers necessary to bring the new routes into being and capable of being maintained at public expense.'*

In its letter of 2 August the county council advised the SoSfT of the following:-

*'Suffolk County Council is continuing to work with Network Rail to address outstanding objections and will send the list of works and commuted sums assessment referred to in its holding objection letter, in due course.'*

The point of including these references in the letters of 3 May and 2 August is to draw to the attention of the SoSfT the importance of the proposed diversion routes being capable of being brought into a fit condition for the public to use, and that a commuted sum is paid to offset the cost of their maintenance.

### **The County Council's position on the certification process**

Suffolk County Council is very concerned about the wording of draft article 16(11) of the proposed Order. As presently worded, article 16(11) provides for a deemed certification procedure, whereby if the highway authority fails to reply in 28 days to a request by NR for certification of a new highway under article 16(1), that new highway will be "treated as completed to the satisfaction of the highway authority". Suffolk County Council objects to any such "deemed certification procedure", particularly as there is nothing to stop NR from requesting certification for all new highways created under the Order at the same time, which would likely result in a disproportionate burden on the highway authority.

Suffolk County Council is also concerned that there is no provision to require "pre-works certification" by the highway authority of detailed designs for the works to be carried out before those works are started. The County Council requests that an article is added to the Order which requires there to be pre-works certification before any new highway works are carried out.

Further, the County Council is of the view that the highway authority can only certify that new highways have been completed to its satisfaction if commuted sums for the ongoing cost of maintaining that new highway have been agreed.

**Holding objection 2:** Suffolk County Council maintains a holding objection to the whole Order unless and until the Order is re-worded to address the County Council's above concerns relating to the certification process.

### **The County Council's position on commuted sums**

Suffolk County Council is of the view that commuted sums could only be agreed for new highways once the detailed designs for the works to be carried out for the purposes of creating the new highways have been agreed with the highway authority.

**Holding objection 3:** Suffolk County Council maintains a holding objection to the whole Order unless and until an appropriate mechanism for agreeing commuted sums, which addresses the County Council's concerns, is added to the Order.

### **Legal Event Modification Order**

Suffolk County Council is aware that it is under a duty, pursuant to section 53 of the Wildlife and Countryside Act 1981, to, as soon as reasonably practicable, make a modification order to the Definitive Map and Statement, which reflects a "legal event" whereby:

- (i) a highway has either been stopped up, diverted, widened or extended;
- (ii) a highway has ceased to be a highway of that description; or,
- (iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path or restricted byway.

Suffolk County Council will need to make a Legal Event Modification Order ("LEMO") to translate onto the Definitive Map and Statement the changes made to the rights of way network by the Order. In order to do so, Suffolk County Council will need information on the widths of the rights of way at issue and their Ordnance Survey grid references.

**Holding objection 4:** Suffolk County Council maintains a holding objection to the whole Order unless and until the Order is modified so as to specify the relevant information on widths and grid references to enable the Surveying Authority to make a LEMO.

#### **Compensation to the Highway and Surveying Authority**

In addition to the need to agree commuted sums for the ongoing maintenance of new, or altered, highways that may result from the Order, Suffolk County Council is concerned that significant officer time and resources have been spent in order to respond to NR's application for the Order, particularly in light of the unprecedented scale of the number of rights of way to be affected by a single Transport and Works Act order. Furthermore, if the Order were to be granted, further time and money will need to be spent on agreeing the detailed designs of works, commuted sums and to complete the certification process. The County Council will, therefore, be seeking reasonable compensation from NR for the time and money spent in this regard. The County Council notes that it charges an administration fee for applications made under the Highways Act 1980 for the diversion or extinguishment of Public Rights of Way, under sections 118A and 119A.

#### **Right to object to altered proposals**

Suffolk County Council has not objected to 15 of the 24 proposed level crossing closures. However, should NR make any changes to these proposals in the lead up to, or during, the Inquiry, the County Council reserves the right to reconsider its position.

#### **Conclusion**

As is noted above, the Council is requesting that this letter be read in conjunction with its statement of case which consists, namely, of the letter dated 3 May 2017. The County Council, therefore, maintains the objections, and concerns, set out there.

We reiterate our request that NR arrange for the County Council to have access to the proposed alternative routes as soon as possible. We look forward to hearing from you.

Yours sincerely



Stephen Kerr  
Definitive Map Manager, Rights of Way and Access,  
Suffolk Highways, Phoenix House

Cc Joanna Vincent, Persona Associates Limited, 1<sup>st</sup> Floor, Bailey House,  
Barttelot Road, Horsham, West Sussex, RH12 1DQ