

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

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## **CLOSING SUBMISSIONS ON BEHALF OF ST EDMUNDSBURY BOROUGH COUNCIL**

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### Introduction

1. St Edmundsbury Borough Council (“St Edmundsbury BC”) is the local planning authority for the area in which S25 Cattishall is situated and is a statutory objector<sup>1</sup> to the proposal to close this crossing.
2. As stated in its opening submissions, St Edmundsbury BC objects to Network Rail’s proposal to close S25, on the basis that it does not comply with local planning policy and the alternative route is not a suitable and convenient replacement for existing users of the crossing.
3. There is a clear overlap in the objections of St Edmundsbury BC and Suffolk County Council (“SCC”) in relation to S25. For ease of reference, and to avoid unnecessary duplication, these closing submissions will, therefore, cross-refer to submissions made on behalf of SCC, making clear any points that are adopted by St Edmundsbury BC.

### Planning context

4. S25 Cattishall is located within a unique local planning context. It sits, geographically, at the heart of a planned strategic extension area to the north-east of Bury St Edmunds, through which the local planning authority is seeking to deliver considerable levels of housing and future plan-led development. The railway line acts as a physical barrier through this planned area of growth, which is why St Edmundsbury BC has been

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<sup>1</sup> As defined by rule 2(1) of the Transport and Works (Inquiries Procedure) Rules 2004 and section 11(4) of the Transport and Works Act 1992.

working so hard, through its planning system (both at a plan-making and decision-taking level) to ensure that there will be sufficient connection points across the railway. Its aim is to accommodate integrated and sustainable communities in Bury St Edmunds, both now and into the future. S25's location makes it a key connection point in this regard and Network Rail's proposals – in seeking to close S25 through this Order – would, thereby, undermine and conflict with this long-term local planning objective.

### ***Relevant Local Plan Policies – Strategic Growth Area***

#### *Core Strategy 2010*

5. Through his evidence at the Inquiry, Mr White, Principal Planning Officer for West Suffolk Councils,<sup>2</sup> set out the local planning context in more detail. He explained both in oral evidence, and by way of a briefing note (OP-INQ-79) that the St Edmundsbury Local Plan is made up of four documents: the Core Strategy<sup>3</sup> (adopted in December 2010), the Bury St Edmunds Vision 2031 Document<sup>4</sup> (adopted in September 2014), the St Edmundsbury and Forest Heath Development Management Policies Document<sup>5</sup> (adopted February 2015) and the St Edmundsbury Policies Map Book (Adopted February 2015).<sup>6</sup>
6. As explained by Mr White, the Core Strategy is a high-level document which sets out the overall amount of housing growth in the borough and the strategic directions of growth around Bury St Edmunds. Five directions of growth were specified for Bury St Edmunds and Core Strategy policy CS11 sets out high level policy relating to each of these areas. Mr White recognised that the Core Strategy did not, itself, define the exact parameters of the strategic sites that related to each of these directions of growth, but he confirmed that the relevant location of these sites was known at the time the Core Strategy was drafted.<sup>7</sup> Two of these sites are relevant to S25: (i) the North-East Bury St Edmunds site and (ii) the Moreton Hall Bury St Edmunds site.

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<sup>2</sup> West Suffolk Councils includes both Forest Heath DC and St Edmundsbury BC.

<sup>3</sup> OBJ-29-C10 (in full) with relevant extracts included in Appendix 2 to Mr White's proof of evidence.

<sup>4</sup> OBJ-29-C3.

<sup>5</sup> Relevant extracts included in Appendix 3 to Mr White's proof of evidence.

<sup>6</sup> See OBJ-29-C2 and OP-INQ-76.

<sup>7</sup> OP-INQ-79.

7. In relation to CS11, Mr White's evidence was clear that policy CS11(ii) applied to the Moreton Hall site and CS11(iv) applied to the North-East site. When challenged, through cross-examination, that the sub-policies in CS11 were not site-specific, when read alongside para 5.12 of the explanatory text, Mr White's response was clear: these were broad directions of growth that related to specific allocations<sup>8</sup> ("put it this way, when Taylor Wimpey submitted its application [for the Moreton Hall site] CS11 was key to considering it"<sup>9</sup>).

8. Mr White highlighted the following policy requirements in CS11(ii):

(i) *2011 onwards – Limited growth completing the existing Moreton Hall urban extension by:*

...

- *Providing improved public transport, foot and cycle links to the town centre and other locally significant leisure, employment and service destinations;*
- *Enabling potential transport links to the north of the railway line;*

9. This requires any development of the Moreton Hall site to ensure linkages to the north of the railway line. Bearing in mind that S25 is situated on the northern boundary of the site and is the only crossing point open for use in the vicinity, Mr White's view was that "if we had brought forward a proposal that didn't link into the crossing I would have said that was contrary to the policy."<sup>10</sup>

10. As regards CS11(iv), Mr White highlighted:

(iv) *Long term strategic growth – north-east Bury St Edmunds that:*

...

- *Provides improved public transport, foot and cycle links to the town centre and south towards the A14 and strategic employment sites*

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<sup>8</sup> Mr White S25 XX.

<sup>9</sup> Mr White S25 XX.

<sup>10</sup> Mr White S25, response to the Inspector's questions.

11. Mr White explained in his proof of evidence, the purpose of this bullet point is to avoid isolation of the North-East allocation by ensuring appropriate linkages to the site.<sup>11</sup> Mr White highlighted the word “improved” and the fact that the plural word “links” was used. Whilst St Edmundsbury BC accepts the underpass (by which Network Rail is seeking to divert users of S25 through this proposal) is located on the southern side of the North-East site and – if re-opened – would act as one link to this site, this planning policy did not envision reliance on there only being a connection through the underpass.

*Joint Development Management Policies Document: Concept Statements*

12. DM3 of the Joint Development Management Policies Document requires Masterplans for development proposals on the Moreton Hall and North-East sites which should be in accordance with any concept statements approved by the Local Planning Authority. Mr White explained that the Concept Statement provides high-level requirements with the Masterplan provided the “flesh on the bone”.<sup>12</sup>

13. It is notable that the North-East site’s Concept Statement<sup>13</sup> states at 1.15 that:

*The site is separated from the existing urban edge of Bury St Edmunds by the railway line which provides a physical barrier. This could present difficulties in achieving integration of the new development with the existing with opportunities for footpath and cycle connection limited. The existing level crossing point at Cattishall and footpath tunnel should be utilised.*

14. For the Moreton Hall site, the Concept Statement<sup>14</sup> states at 1.30:

*Opportunities to reduce short trips by car will be an important factor in measuring the environmental sustainability of the development. Movement through the site will be facilitated by a network of footpaths and cycleways, which will connect with the existing system which provides access to the town centre. Links should also be made to development proposed to the north of the railway line...*

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<sup>11</sup> Mr White’s proof of evidence at para 13.

<sup>12</sup> Mr White S25 XIC.

<sup>13</sup> Located in Appendix 9 to the Bury St Edmunds Vision 2031 (OBJ-29-C3) with relevant extracts provided in Appendix 4 to Mr White’s proof of evidence.

<sup>14</sup> Located in Appendix 7 to the Bury St Edmunds Vision 2031 (OBJ-29-C3) with relevant extracts provided in Appendix 6 to Mr White’s proof of evidence.

15. St Edmundsbury BC submits that these two provisions clearly point to a reliance on the S25 crossing providing a point of access. In particular, para 1.15 above specifically refers to both S25 and the underpass being used in tandem.

### Masterplans

16. Masterplans have now been adopted for both of the sites in question which, as Mr White explained, followed on from a consultation process between the developers and the local planning authority and a formal adoption of the plan by full council.<sup>15</sup> Mr White gave evidence at the Inquiry and in his proof of evidence documenting how these two masterplans clearly envisage maintained linkages to S25.<sup>16</sup>
17. Mr White further highlighted that, in relation to the Masterplan for the Moreton Hall site, there had been great effort<sup>17</sup> to plan for a linear park leading up to S25 that would act as an attractive and car-free route to and from the crossing. Mr White recognised that in the plan, included as Figure 9 in his proof, the paths leading up to S25 appear to veer off to the left.<sup>18</sup> Mr White explained that this plan was prepared with a view to enabling both the current use of S25 in the short-term and the installation of a bridge at a later point in time (once the North-East site is brought forward). The paths are designed to lead up to the future position of the bridge and this makes sense where the “end game is a bridge”.<sup>19</sup> Mr White also highlighted that S25 fell outside the plan’s red line which may have explained why the section beyond the red line has been shaded in green.
18. It is clear, however, that Mr White is correct as to how the linear park connection to S25 is designed to work prior to a bridge being constructed. When the question was put to Mr White in re-examination whether he had expected – at the time the plan showing in Figure 9 of Mr White’s proof was agreed to - that there could be a scenario

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<sup>15</sup> Mr White in response the questions by the Inspector.

<sup>16</sup> See, for example, the proposed pedestrian/cycle links shown in Figure 5 of Mr White’s proof and Figure 7.

<sup>17</sup> “It was a collaborative work with the local planning authority – to make the linear park as attractive and welcoming to pedestrians and cyclists – you’ll see there is a grey road crossing the green lane – we spent many many hours regarding how that might work – from a highway perspective – in terms of slowing traffic down but enabling traffic to use it.” Mr White in response to questions by the Inspector.

<sup>18</sup> Mr White in response to questions by the Inspector.

<sup>19</sup> Mr White in response to questions by the Inspector.

where there was no crossing point, Mr White replied, “absolutely not” noting that it was always considered that the link to the north would be there when working up the Taylor Wimpey development.<sup>20</sup>

19. Furthermore, this position is supported by the response of SCC to a recent request for a stopping up order under section 247 of the Town and Country Planning Act 1990. The request seeks to stop up the existing highway and replace it with a bridleway.<sup>21</sup> SCC has raised a concern with the Department for Transport in relation to this draft order that the proposed bridleway needs to connect up to the level crossing (where, at present it is shown as only leading up to the point of access for a future bridge).<sup>22</sup>

#### Current status of development

20. At present, the Moreton Hall allocation has been granted outline consent, with phases 1 and 2 having received full detailed consent. The development is currently under construction with some parts having already been completed. As has been noted, a Masterplan has been agreed for the North-East Site and a hybrid planning application expected in the very near future.

#### Replacement bridge

21. Mr White has highlighted that, from the Local Planning Authority’s perspective, one of the main points of frustration, and confusion, arising out of Network Rail’s proposals is the fact that it appears to fly in the face of concurrent ongoing discussions with the proposed developer of the North-East site to provide a bridge over S25 as part of the development. St Edmundsbury BC is aware that legal agreements have been drafted and agreed but not yet completed that would require the developer to pay Network Rail to install a bridge within 12 months of a grant of planning consent. Network Rail’s proposal to close the crossing now, through this Transport and Works Act Order, raises serious concerns, on the part of the Local Planning Authority, about the uncertainties that closure would bring in relation to the agreement to build a bridge.

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<sup>20</sup> Mr White S25 RIX.

<sup>21</sup> OP-INQ-82.

<sup>22</sup> OP-INQ-82.

22. There would appear to be an obvious “buy-in” for Network Rail to enter such an agreement if the crossing remains open. Indeed, a bridge would remove any additional safety risks at the level crossing associated with the proposed development of the North-East site and any ongoing maintenance costs associated with the level crossing. It is distinctly unclear whether Network Rail’s position would be the same if the crossing were to be removed through this Order.
23. When the concern was put to Mr Kenning, that Network Rail may no longer agree to construct a bridge if S25 were closed, Mr Kenning responded that he “didn’t know why we wouldn’t continue”.<sup>23</sup> But he could not make any formal commitment,<sup>24</sup> which is understandable as it would appear to fall outside the scope of Mr Kenning’s expertise. However, having “listened very carefully”<sup>25</sup> to Mr Kenning’s responses, Mr White noted that Mr Kenning did not say that “without question” Network Rail would bring the agreement forward, rather he said “there was no reason that Network Rail wouldn’t want to”.<sup>26</sup> That cannot allay the Local Planning Authority’s concerns as to the future deliverability of such an important piece of infrastructure.

#### Consultation with Network Rail

24. St Edmundsbury BC maintains that Network Rail were consulted on the Core Strategy and Joint Development Management Policies Document and that if they had any concerns over the position at S25, they should have raised these at that time. Furthermore, Network Rail have now accepted that they were also consulted on the Moreton Hall development and did not object.<sup>27</sup>

#### Conclusion on conflict with planning for the strategic growth area

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<sup>23</sup> Mr Kenning S25 XX.

<sup>24</sup> For example, Mr Kenning could not say for certain that Network Rail would give the air rights if the crossing was closed S25 XX by the Ramblers.

<sup>25</sup> Mr White S25 XIC.

<sup>26</sup> Mr White S25 XIC, further noting in response to Network Rail’s point that nothing they are proposing will preclude the provision of a link via a footbridge, “it feels as if you’re asking the Local Planning Authority to trust you but yet nothing has been put in front of us to say we will definitely work on the basis that it is open even if it is closed.”

<sup>27</sup> OP-INQ-69.

25. In light of the above, St Edmundsbury BC considers that Network Rail's proposal to close S25 clearly conflicts with a carefully designed local planning framework seeking to plan strategically for growth in Bury St Edmunds.

26. Mr White gave detailed evidence about the specifics of the planning context. He did so, not only as a planner, but as somebody who is uniquely placed to understand the basis for both the plan-making and decision-taking in relation to the sites in issue. As Mr White explained, he was in a privileged position having worked on the local plan team involved in delivering the Bury St Edmunds Vision 2031 Document and, subsequently, on the implementation side, overseeing the adoption of the Masterplans and strategic development sites on the eastern side of Bury St Edmunds. In light of this, St Edmundsbury DC submits that significant weight can be placed on his evidence.

### ***Further relevant planning policies***

27. St Edmundsbury BC considers the proposal to close S25 conflicts with further planning policy at both a national and local level. Mr White explained that he considered there to be a conflict with paras 34, 37 and 61 of the NPPF,<sup>28</sup> due to the additional length of the alternative route for users of the crossing and having regard to the thrust and spirit of what the NPPF is seeking to do in these paragraphs.<sup>29</sup>

28. Furthermore, Mr White has highlighted conflicts with Core Strategy Policy CS8 and Joint Development Management Policies DM2 and DM44 as Network Rail's proposal will result in a significantly longer route that will, in practice, reduce access to the countryside and worsen sustainable transport links.

29. St Edmundsbury BC notes para 1.28 of the Department for Transport's guidance on the Transport and Works Act 1992, *A Guide to TWA Procedures (2006)* which states:

In determining an application for a TWA order to authorise works, and any related application for deemed planning permission, the Secretary of State will have regard to, amongst other things, relevant national, regional and local planning policies. Therefore, in drawing up works proposals, prospective

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<sup>28</sup> Appendix 1 to Mr White's proof of evidence.

<sup>29</sup> Mr White S25 XX.



applicants should pay particular attention to relevant national policy guidance and development plan policies, including those in regional spatial strategies and local development documents. In line with the plan led system for determining planning applications, projects that conflict with relevant policies in the development plan are unlikely to be authorised, unless material considerations indicate otherwise.

30. Furthermore, the Secretary of State has asked to be informed on the extent to which the proposals in the Order are consistent with the NPPF, national transport policies and local transport, environmental and planning policies.<sup>30</sup> Whilst St Edmundsbury BC recognises that planning permission is sought (through Network Rail's request for deemed planning permission) for specific works required in relation to the Order, but submits that it is clear from the TWA Guidance and the Statement of Matters that the Secretary of State will need to consider the extent to which the substance of what is being proposed at S25 – in other words, whether or not to close the crossing – is consistent with relevant planning policies.<sup>31</sup>

31. St Edmundsbury BC considers that, for the reasons given above, there are a number of planning policy conflicts associated with closure of S25 and, on this basis, requests that the Inspector recommends removal of this proposal from the Order.

#### Suitability and convenience of the alternative route

32. St Edmundsbury BC further considers that the alternative route is not a suitable and convenient replacement for existing users. It refers to, and adopts, the closing submissions made by SCC in this regard.

**MERROW GOLDEN**

**24 MAY 2018**

**FRANCIS TAYLOR BUILDING  
INNER TEMPLE,**

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<sup>30</sup> Statement of Matters para 3.

<sup>31</sup> St Edmundsbury BC has made joint submissions with SCC concerning Network Rail's request for deemed planning permission (OP-INQ-60). These submissions should be read alongside these closing submissions and are not unduly repeated here.

**LONDON, EC47 7BY**

CS8 and DM2 – added conflict

coclude with Mr White's planning background and understanding of context