

Our Ref: MG/175983.0004  
Your Ref:  
Date: 24 May 2018

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Dear Joanna

**Cost Application: Transport and Works Act 1992: Application for the Proposed Network Rail (Suffolk Level Crossing Reduction) Order  
Level Crossing: S24 Higham Ground Frame**

I am writing to make a cost application on behalf of our clients, Mairi Johnston and Alistair Fish as Trustees M J Johnson Settlement and M J Johnston Children's Settlement and Mairi Johnson and Alistair Fish, the owners of the land affected by the proposed closure of the S24 Higham Ground Frame level crossing.

**1. PARTY BEING CLAIMED AGAINST**

1.1 Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN

**2. COSTS BEING APPLIED FOR**

2.1 Our Clients have incurred unnecessary costs as they have been forced into instructing a land manager, Strutt and Parker, and Birketts LLP in respect of the preparation and attendance of the public inquiry. In particular cost have been incurred in preparation of:-

- 2.1.1 Our Clients' objection
- 2.1.2 Proofs of evidence,
- 2.1.3 Statement of Case,
- 2.1.4 and attendance of the public inquiry
- 2.1.5 this cost application.

**3. REASON FOR THIS COSTS APPLICATION**

3.1 Network Rail have behaved unreasonably as they have:-

- 3.1.1 failed to respond fully and engage in meaningful discussion in respect of the preparation of the making of the proposed Order.

20588948.V1 Costs Application Letter to Joanna Vincent  
175983.0004 24/05/2018  
Chelmsford and Norwich

- 3.1.2 failed to consider the full impact of the additional proposed routes on our Clients' business and failed to consider the safety impact on the public, in particular horse riders.
  - 3.1.3 failed to identify that the proposed additional public rights of way on our Clients' land are not necessary to mitigate the closure of the crossing.
  - 3.1.4 included the additional route to the north of the railway line after all parties agreed that it did not fit the framework due to the fact that the area is used for shooting.
  - 3.1.5 changed the proposals at the last minute without discussion or agreement with our Clients.
  - 3.1.6 changed the status of the additional routes from footpaths to bridleways without further discussion with our Clients.
  - 3.1.7 failed to consider further what actions could be taken to mitigate the effect of the additional public rights of way on our Clients' business.
- 3.2 Network Rail would appear to have acted at the request of Suffolk County Council. The proposals were discussed at a public consultation and also with Suffolk County Council as outlined in Andrew Kenning's Proof of Evidence reference NR30/1, paragraph 21.5. It is however, clear that Mott MacDonald were fully aware that Section 5(6) of the Transport and Works Act, 'is not concerned with seeking enhancements to the PROW (public right of way) network...' as stated by Sue Tilbrook, Proof of Evidence, reference NR32/1, paragraph 1.3.6. Network Rail however, continued to proceed against this guidance by adding unnecessary additional routes to the Order. Network Rail acted on the desire of Suffolk County Council rather than assess the full impact and necessary requirement of the additional routes.
- 3.3 Network Rail also admit in their letter dated 19 December 2017 that the land being used for shooting, testing rifles and shotguns is a risk to pedestrians, however, Network Rail have continued to pursue the inclusion of additional routes in the Order.
- 3.4 Network Rail also advise in their letter of 19 December 2017 that they 'would be happy to discuss with your clients any further concerns they may have.' However, the Design Freeze drawings had already been produced effectively closing the door to any further consultation and discussion with our Clients.
- 3.5 Network Rail did not address and fully consider the effect of the proposals on our Clients' business. Network Rail merely stated that any loss to the business will be compensated. However, any compensation paid is unlikely to take into account any expansion or development of the business and the potential future profits from those developments.

#### **4. SUMMARY**

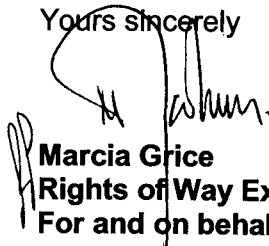
- 4.1 Our Clients would not have incurred significant legal and other costs if Network Rail and their Agencies had considered that the inclusion of the alternative additional routes proposed on our Clients land are not required to mitigate the closure of S24 Higham Ground Frame level crossing.
- 4.2 As Network Rail have failed to fully consider the safety of the users of the additional routes and have failed to take time out to understand the implications of the additional routes on our Clients' business interests. Network Rail failed to engage with our Clients' fully and take their concerns into consideration. As a result, Network Rail have prepared an Order which

includes additional public rights of way which are outside of the remit of the Transport and Works Act.

- 4.3 Our Clients have therefore, been forced into incurring unnecessary costs. We are therefore, making this cost application on behalf of our Clients for Network Rail to pay full legal and professional costs and other costs incurred in this matter.

Please acknowledge receipt of this letter.

Yours sincerely



**Marcia Grice**  
**Rights of Way Executive**  
**For and on behalf of Birketts LLP**

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