

Tuesday 27<sup>th</sup> February 2018.

Tuesday ~~27<sup>th</sup> December~~ ~~2017~~

The NFM would like to highlight its concerns over the rail crossing closures by NR and the lack of consultation by NR of closing some of the crossings to private users with vehicles and the impact of creating a footpath as a bridge way in a field. The impact this will and can have on agricultural businesses.

The NFM first realised that there was a problem with the way NR were carrying out their negotiations with landowners and tenants around June 2016 when many members were phoning the regional office with their concerns. This highlights that NR were not listening to the problems that could arise with closing a crossing or creating a footpath or way.

The NFR on behalf of all its members affected did respond to all the formal consultations carried out by NR. The points highlighted were repeated addresses

NR did not respond to any of the issues raised in the consultation responses and then the NFR submitted an objection letter on 25 April 2017 again raising all the concerns previously raised

A response to its objection letter was only received on 24<sup>th</sup> October 2017 after the TWA Orders had been submitted

Due to lack of response to concerns raised, the NFR on behalf of its members believes that NR have not adhered to the statutory requirements per Rule 10(2)(a) of the Application Rules.

This is a report summarising the consultations that have been undertaken.

The report does highlight that NR carried out numerous consultations. What it does not show is if any actual <sup>direct consultation + meaningful discussions</sup> negotiation with <sup>landowners</sup> had been carried out. NR ~~can~~ have done the minimum consultation required to meet the rules.

Landowners have been raising issues

but have not received any detailed responses to issues raised in meetings or any alternatives proposals.

As stated in the evidence report NR have also stated they have taken account of the policy guidance best practice

The document is Transport  
A Guide to TWA Procedures.

and  
The Government's "Code of Practice on Consultations",

stated under the Guide it says engaging in constructive dialogue can reduce the size of opposition - there has been no dialogue with the NFU or its members.

If constructive dialogue had been taking place the NFU would not have had to raise the same issues and concerns in ~~every consultation~~ in all the responses to the consultations.

In the first response it was highlighted that landowners concerns were not being listened to.

In the second/third round of consultation the NFU raised the issue that it thought the real driver for closing the crossing

was to reduce the maintenance costs incurred by NR. We now know that this was one of the main aims for closing the crossings.

The second aim is to increase efficiency.

It has been stated in the Inquiry

that an Adequacy Test was carried out to decide which crossings to close. The only problem is that this is an adequacy test for NR goals.

so that if NR think that an alternative crossing can be used and users easily diverted ~~and~~ <sup>and</sup> ~~there was~~ a postulated bottleneck created then this was an acceptable alternative and met the adequacy test.

No calculations or costs were carried out on the effect to an agricultural business.

The NFU has repeatedly stated that ~~this~~ the cost to agricultural businesses

has not been considered by NR in all responses to <sup>the</sup> consultations and has highlighted <sup>by the NFU</sup> in the meeting held with NR in July at the Stratford office in London.

\* ~~18~~

In particular the vehicle rights used over crossings C26 + C27 used by Matthew Purpitt and the effect of closing one of the crossings will have on farm operations.

Again this apparent in regard to crossing C02 Naams Joo O' Tels + C34 Fyrens NR had not realised the impact on the farm business. It is only in the last few months that more detailed negotiations have been carried out.

Number individual concerns were raised in our <sup>Statement of Evidence</sup> responses to the dated 13 Jul 2017 consultation in October + December 2016 but NR were not taking these concerns seriously.

NR have not been prepared to provide a suitable cost effective alternative access to the farm businesses affected.

As stated in our opening statement monetary compensation does not solve the day to day issues of access to land to farm it productively + economically.

# Safety

The NFU and its members have raised concerns over crossing being closed which do not have safety issues and this is highlighted by the ALCRT score which NR have highlighted in the plans which were consulted on.

But we now understand that NR have been looking at safety on an overall basis and not <sup>directly</sup> on an individual basis.

~~Therefore it is not necessary to ALCRT~~

NR need to be clearer as to their guidelines as safety will be raised on the individual crossings by our members.

The NFU raised from the start and asked for other solutions to be looked at rather than just closing the crossings.

The NFU still believes strongly that

lights, barriers, GPS as examples

should be looked at first before closure.



It now understands that these alternatives may not be looked at in this phase. Further to information ~~provided~~ ~~as highlighted~~ as highlighted in NR17 page 4. Plases 2019 through to 2039

The NFM is still not clear as to why these solutions cannot be used now rather than ~~over~~ 10 years down the line.

It also states on this page that NR will sensitively close level crossings where an alternative + practicable diversion route is available.

At the present time the alternative routes highlighted are only practical to NR and not to landowners + occupiers.

Included within this ~~case~~ the closing of the crossings is the issue of diverting footpaths + bridleways and in some of the proposals the diversions are over agricultural land with

NR ~~sports~~ will have to acquire an interest in the land to divert over private agricultural land.

Section 5.6.





some landowners have known about this is when looking at the plans enclosed with the Order.

5.5 This is just one example which shows that Network Rail has not carried out enough consultation with landowners and tenants.

5.6 A further example of poor consultation is that Network Rail after carrying out an initial round of meetings with landowners and discussing a route for a diverted footpath, has without any further consultation highlighted a new diverted route or an original proposed route on plans enclosed with the Order. Therefore landowners have only been able to provide comments on the proposals in a statement of case.

5.7. Section 5(6) of the Transport and Works Act (TWA) states: "An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied,

①

(a) that an alternative right of way has been or will be provided, or

(b) that the provision of an alternative right of way is not required."

Taking this into regard the NFU believes that the following needs to be taken into account when considering whether a footpath should be diverted along and over agricultural land.

- 1.1 a) Data from the surveys carried out by Network Rail demonstrates very low usage or even no use at all of some footpaths. The word 'required' does not have any special meaning in the TWA, therefore we believe it is necessary to define 'required' through its definition in the Oxford English dictionary as to 'need for a particular purpose'. The TWA does not obligate a new route to be created if it is not 'required'.
- 1.2 b) The NFU believes that many of the proposed routes are not required to be diverted across agricultural land as there is already an existing parallel or alternative route available which is not substantially less convenient.
- 1.3 c) <sup>Some</sup> Many of the proposals for diverted footpaths put forward by Network Rail create circular routes which are not currently in existence. Network Rail only have powers to provide an alternative right of way and by applying for this Order through the TWA should not be improving or upgrading the right of way network. *Ben  
Wardle*
- 1.4 d) There are cases where a diverted footpath has been replaced by the creation of a bridleway on the plans submitted with the Order. The TWA does not allow for an upgrade and betterment should not take place.



- ② 5.8. **Bio-security:** The NFU is also concerned about the suitability of some of the diverted routes for new public footpaths. For bio security reasons it is not suitable to divert a footpath to run alongside or near to a livestock building. The fact that some proposals have placed rights of way immediately adjacent, or in close proximity, to livestock sheds again demonstrates the lack of full consultation and dialogue between Network Rail and our members.

*Angie C. Westockham*

5.9 We believe that in no circumstances should rights of way be established in close proximity to poultry sheds. In May 2017 [Defra produced new guidance](#) outlining biosecurity measures farmers should consider to prevent birds becoming sick with diseases like avian influenza and Newcastle disease. As part of this guidance, written in accordance with section 6A of the Animal Health Act 1981, it explicitly states that you should strictly limit and control access to poultry flocks. This includes restricting the number of visitors and their vehicles, and keeping them as far away as possible from poultry buildings and pastures.

5.10 The guidance also raises the issue which came to light during the recent outbreak of Avian Influenza that for a number of poultry diseases, threat to the commercial poultry sector can emanate from backyard or non-commercial flocks. There is the distinct possibility that users of the rights of way network could also be owners of household or non-commercial flocks, thus increasing the risk again of spreading disease to commercial businesses.

5.11 In conclusion, we believe that the creation of new rights of way in close proximity to poultry units goes against guidance produced by Defra in May 2017 on measures to take to reduce the risk of spreading diseases. At the NFU's conference in February 2017 it was stated that the typical cost per individual farm unit from a disease outbreak is £3.0million (£2.0 million to government (culling, disposal, staff, clean up) and £1.0 m to industry (clean up and loss export trade). Therefore we believe that the

*These are*

2a)

5.12 **Neosporosis:** Other proposed diversions are onto parcels of land which are currently used for the turning out of livestock, thus increasing the risk of livestock worrying, or the spreading of disease transmitted by dog faeces such as neosporosis. It is known that abortion due to *Neospora* has been shown in cattle, sheep and horses. The dog is one of the definitive host/carries. Therefore no footpaths should be diverted through livestock farms. Abortion from *Neospora* has become more prevalent in the last few years along with dog worrying. Multiple cases have been reported this year.

5.13 **Environmental Schemes:** Some proposals to create or divert rights of way run across land which is currently entered into Environmental/Countryside Stewardship schemes, which would in turn deem the land ineligible for stewardship payment. As an example, in the Countryside Stewardship manual for option SW4 (12 – 24m watercourse buffer strip on cultivated land), it explicitly says the option 'cannot overlap a public right of way'. As such Countryside Stewardship



schemes could be affected by the creation of new rights of way, or diversion of existing rights of way. This would have an economic impact on the farm holding.

③ 5.14 **Economic impact:** Further any length of new footpath or bridleway to be created on agricultural land will have an economic impact on the farm business. As an example a farmer could make a gross margin of £556/ha per year for wheat and £824 ha per year for sugar beet. If a new footpath is to be located across an arable field and it is 3m wide and the length is 1 km the cost to the farm business for loss of crop could be £1,668 for wheat and £2470 for sugar beet over ten years.

④ 5.15 **Interest to be acquired in land:** Network Rail in many instances has not made it clear to landowners as to whether it wants to compulsorily purchase the interest over the land to create the footpath or actually purchase the strip of land. Further, no clarity has been provided on who would be responsible for the installation and ongoing maintenance of the newly diverted footpaths including the gates, stiles and fences.

⑤ 5.16 **Network Rail land:** There are a number of instances where there is potential for the right of way to be retained on Network Rail land rather than displaced onto our members' land. We note that in response to these suggestions, Network Rail has stated this would not be possible due to the 'topography' of the land, and not undertaken of safety concerns or a lack of width. In these circumstances, ground works should be taken to enable the right of way to run on Network Rail land, thus having a far smaller impact on productive agricultural land whilst retaining the right of way network.

5.17 **Watercourses:** Rights of way proposed to run alongside watercourses could limit the ability to gain access to abstracted water supplies. Furthermore many of the proposed changes occur on land situated within internal drainage boards (IDBs). Byelaws are often put in place to restrict or control activities which are conducted in or near watercourses. Network Rail has not made it clear to landowners whether there will be any restrictions on locating a new right of way next to an IDB drain. This could mean that were a footpath is to run alongside an IDB drain, it might have to be located further into the field therefore taking more land out of production than the suggested 2 or 3m. In some circumstances new rights of way running parallel to drains could create linear sections of land between the drains and the proposed right of way which are impractical and so will not be able to be farmed.

⑥ 5.18 **Fly tipping:** The NFU recently launched its Rural Crime Report which suggests that an increase in the rights of way network would result in farmers being at greater risk of becoming the victims of crimes such as fly tipping, fly- grazing, hare coursing and livestock worrying.

5.19 To illustrate this point, the Environment Agency's *Flytipping statistics for England, 2015/16*<sup>2</sup> recorded that in this 12 month period alone, 154,000 incidents were reported on

6.2 Greater consideration needs to be and should <sup>be</sup> ~~have been~~ given, to farmer and landowner responses to the consultations and to points made in meetings when on site. Only through this full engagement with landowners and other interested parties at an individual or local level can compromise arrangements be made to improve Network Rail's assets whilst not disadvantaging agricultural businesses and rural communities.

6.3 The NFU believes that due to the lack of meaningful consultation with farmers, landowners and the NFU as a key stakeholder and the lack of any agreement to proposals by Network Rail this Order should not be granted.

Prepared by Louise Staples, MRICS FAAV  
NFU Rural Surveyor  
Agriculture House  
Stoneleigh Park  
Stoneleigh  
Warwickshire  
CV8 2TZ

Date: 12 January 2018

all the issues that will be raised  
during this Inquiry on the individual crossings