

Written Submissions Made on Behalf of the Ramblers' Association
On the Wording of the Amended Draft Order (NR-INQ-1) and the Request for Planning
Permission (NR10)

Starting-point

1. It should be noted at the outset that there is no binding precedent on the wording to include in the proposed Network Rail (Suffolk Level Crossing Reduction) Order (the “Order”). The Inspector can propose any modification that he deems fit and the Secretary of State can, likewise, determine to make the Order “with modifications”.¹ It is important, therefore, that the Inspector considers the wording of the Order, having regard to the particular purpose proposed aims of this Order. Whilst, previous Transport and Works Act Orders (“TWAOs”) and the proposed wording set out in the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, may provide a “starting-point” for the suggested drafting of the Order, they do not, in any way, establish a “precedent” which needs to be followed.
2. Overall, therefore, the Inspector is urged to consider the proposed wording of the Order by reference to the Order’s own specific context, and is cautioned against any undue deference to what is “usually” included in Transport and Works Act orders.
3. Furthermore, as is standard practice with any discussion of conditions, the submissions made on behalf of the Ramblers’ Association (“Ramblers”) here must not be read as detracting from any of the substantial points of objection that Ramblers have raised in relation to the Order as a whole, or in relation to specific alternative routes proposed in the Order.

¹ Article 13(1)(a), Transport and Works Act 1992. According to Article 13(4), where the Secretary of State proposes to make an order with modifications that will, in his opinion, make a substantial change to the proposals, he shall (a) notify any person who appears to him to be likely to be affected by the modification, (b) give that person an opportunity of making representations to him about the modification within a specified period and (c) consider any representation duly made to him before making the order. These provisions affect the procedure for making modifications to the Order, but they do not set out any underlying substantive test as to when modifications can be made.

Limited Scope of Article 14

4. Article 14 of the draft Order provides, what will be referred to as, a “locking mechanism”, affecting those level crossings, where closure is dependent on the provision of an alternative route that includes the provision of new highway. For these crossings, specified in column (2) of Part 1 of Schedule 2 (“Closure of Level Crossing Subject to Opening of New Highway”), Article 14 requires, at subparagraph (3):

(3) Paragraphs (1) and (2) [allowing closure of the crossings] are not to have effect until, in respect of each level crossing in that table, the new highway specified in column (3) has been constructed and completed, to the extent specified by reference to the numbers and letters shown on the deposited plans, to the reasonable satisfaction of the highway authority in accordance with article 16 (creation and maintenance of new highway) and is open for use.

5. Essentially, therefore, Article 14 requires the provision of new highway to be “locked in” before the relevant crossing can be closed. Whilst this locking mechanism is to be welcomed, the Ramblers are concerned with two aspects of it, as presently drafted.

(1) Locking mechanism limited to the provision of “new highway”

6. Firstly, the locking mechanism is unduly limited in scope. It only refers to the provision of new highway (and the parameters of those new highways are specified in column (3) of Part 1 of Schedule 2). In relation to a number of the proposed alternative routes in this Order, Network Rail is not only (or not at all) providing new highway to ensure that a route is “suitable and convenient”. Network Rail is, for example, also offering to provide a new footway on A14 onslip westbound (S23 and S24), and new footway on the A137 (S02).
7. Ramblers are concerned that there is no “locking mechanism” which will ensure that the “package deal” offered by Network Rail for each proposed alternative route will, in fact, be delivered (whether before the crossing in question is closed or at all). This is a serious concern for Ramblers.

Locking mechanism (Art 14) links to the “deemed certification” procedure (Art 16)

8. Without prejudice to Ramblers’ concern as to the limited scope of Article 14, the Ramblers are also concerned by the present drafting of Article 14 and its reliance on the certification procedure in Article 16. Article 14(3) provides that new highways must be constructed and completed to the “*reasonable satisfaction of the highway authority in accordance with article 16...*”.
9. Crucially, Article 16 (Creation and maintenance of new highway) contains what can be referred to as a “deemed certification” procedure in Article 16(11). Article 16(1) provides an initial protection for the highway authority, who must certify that any new highway has been completed to its “reasonable satisfaction”.² However, Article 16(11) then provides:

(11) The new highways are to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.
10. Effectively, the Highway Authority’s approval of a stretch of new highway will therefore be “deemed” to have been granted, if a response is not given in 28 days of receiving a certification request by Network Rail. Suffolk County Council has raised concerns about this provision, and Ramblers echo these concerns. The time-scale provided in Article 16(11) is far too short (there being nothing to stop Network Rail from making a number of certification requests at the same time) and Article 16(11) completely undermines the initial safeguard set out in Article 16(1).
11. Ramblers also wish to highlight the suggestion, by Essex County Council, in relation to the public inquiry (now adjourned) into the Proposed Network Rail (Essex and Others Level Crossing Reduction Order), as to how the deemed certification

² Article 16(1) reads in full:

The new highways specified in column (4) of Table 1 in Schedule 2 (closure of level crossings) are to be completed to the reasonable satisfaction of the highway authority and are to be maintained by and at the expense of Network Rail for a period of 12 months from their completion and after the expiry of that period by and at the expense of the highway authority.

procedure could be modified, as put at paragraphs 15 and 16 of Garry White's (Public Right of Way and Records Manager, Essex County Council) proof:

It would be preferable to ECC, and indeed beneficial to other Councils affected if NR had to apply for certification within 7 days, for example, of completing the works on the ground then the Highway Authority upon receipt of a request for certification could undertake best endeavours to respond to the request within 2 months, and where this is not achievable, the Highway Authority will provide to NR an estimated time of response for approval. Following on from that, where the estimated time of response is exceeded by 14 days, the highways are to be treated as completed to the satisfaction of the highway authority.

This approach balances the need for NR to adhere to a time scale, with the pressures faced by local authorities, and provides a more realistic procedure that is more likely to produce the right outcome for the users of the PROW and mitigate the burden that will after 12 months fall to the local authority.

12. Ramblers strongly resist the current “deemed certification” provision in Article 16 and request that the Inspector consider removal of it, or modification to it in line with a more balanced approach such as that suggested by Essex County Council. Ramblers also wish to highlight that, were the currently-worded “deemed certification” procedure to be approved in relation to this Order, there is an inherent risk that this might set a precedent which could be even more problematic should any similar order be sought on a greater scale (with an increased number of proposed crossing closures) in another part of the country.

13. Indeed, it is worth noting, more generally, that whenever Network Rail seeks to rely on the certification requirement in Article 16 as protection for the interests of the Highway Authority (or other stakeholders), such assurances must be approached with caution. Until Article 16(11) is removed or substantially modified, it effectively “guts” the protections provided through Article 16.

Proposed solution to the drafting of Article 14

14. Ramblers, therefore, suggest that that Article 14 is modified in one of two ways:

- (i) The entirety of the proposed “package deal” offered by Network Rail, in relation to a particular alternative route, is set out in a schedule and linked into the “locking mechanism” in the same manner as the requirement to provide any new highway.
 - (ii) If it is not possible to set out the proposed “package deal” in the Order, due to the fact that the detailed designs have not yet been agreed, Article 14 must require that the Highway Authority formally approve, or certify, that the entirety of what is proposed by Network Rail, for each alternative route, has been delivered, before the relevant crossing can be closed.
15. Crucially, there must be no “deemed certification” provision, whether within the framework proposed in (i) or (ii) above, unless the process of “deemed certification” can be re-worked so as to ensure a better balance between Network Rail’s interests and those of the Highway Authority and the public who are users of the routes in question.
16. In the view of Ramblers, Network Rail should cover any additional costs incurred by the Highway Authority for certifying these works.

Stage 2 Road Safety Audits

17. Ramblers have highlighted a number of concerns relating to the adequacy of the road safety audits which Network Rail relies on to demonstrate that the proposed alternative routes are safe. Ms Tilbrook made clear in her overview evidence that Stage 2 Road Safety Audits (RSAs) would be carried out before the works are carried out. This implies that Stage 2 RSAs should be completed before the relevant alternative routes (those alternative routes which rely on the use of carriageway highway) are implemented and before the crossings these alternative routes relate to are closed. However, Ramblers note the point put by Ms Golden to Ms Tilbrook (Day 21) that if Network Rail were to decide that no works were actually required in

respect of the carriageway highway there may be no requirement to undertake Stage 2 RSAs³

18. As is set out in Mr Russell's evidence, the Stage 2 RSAs are particularly important in relation to this scheme because they will consider road collision data, traffic flows and non-motorised user flows.⁴

19. If the Secretary of State were to agree to Network Rail's proposal (to conduct Stage 2 RSAs after the Order has been granted), Ramblers submit that it is essential that protective mechanisms are included in the Order itself, or by way of planning conditions, that will ensure adequate Stage 2 RSAs are completed before crossings are closed.

20. Ramblers suggest that a condition is added requiring that:

- (i) the Stage 2 RSAs be conducted by the Highway Authority, or alternatively, certified by the Highway Authority; and,
- (ii) crossings should not be closed unless the Highway Authority have approved the relevant alternative route on grounds of highway safety, having had regard to the results of the Stage 2 RSAs. Such approval should not be unreasonable refused.

21. In Ramblers view, Network Rail should cover the costs incurred by the Highway Authority for conducting the Stage 2 RSAs and, or in the alternative, certifying those RSAs. The amount could be factored into the commuted sums or dealt with separately. In the instance that such a mechanism requires the Highway Authority to certify Stage 2 RSAs, there must be no "deemed certification" provision. The same applies to (ii) above, as certification of the safety of an alternative route should in no circumstances be "deemed". The inclusion of an "unreasonable refusal" exception would be more appropriate in this context.

³ Though Ramblers accept that Ms Tilbrook clearly stated that the project had incorporated RSAs and that she considered that even without a requirement to complete Stage 2 RSAs they would be done where issues had been raised.

⁴ Mr Russell, Proof of Evidence at paras 3.9-3.11.

22. Overall, it is imperative, in circumstances where Network Rail is asking for the Order to be granted before the full Stage 2 RSAs have been carried out, that there be a mechanism by which the carrying out, and assessment of, adequate Stage 2 RSAs is guaranteed prior to the closure of relevant crossings.

Conclusion

23. These submissions set out Ramblers' position in relation to any discussion on the wording of the Order and the proposed planning conditions. As presently worded, Ramblers have a number of serious concerns with the Order. Most notably, Ramblers request deletion or substantial modification to Article 16(11). Ramblers also request that the scope of Article 14 be expanded, or that further conditions are imposed, so as to ensure that the entirety of the proposals promised by Network Rail, for the proposed alternative routes, will be delivered prior to level crossing closure.

24. Furthermore, Ramblers request that a mechanism be provided by which crossings will not be closed unless the Highway Authority is satisfied that the alternative route is safe, having had regard to adequate Stage 2 RSAs.

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