

Re The Network Rail (Suffolk Level Crossing Reduction) Order

Closing submissions on behalf of the Ramblers' Association

INTRODUCTION

1. The Ramblers' Association ("Ramblers") rely on the key points of objection to the Network Rail (Suffolk Level Crossing Reduction) Order ("the Order") set out in their Opening Statement, their legal submissions, and on other submissions made in writing during the inquiry. These are not unnecessarily repeated here.
2. Ramblers object to the proposed Order, both on grounds that Network Rail's strategic case for the Order is flawed and on grounds that, even if its strategic case were found not to be flawed, Network Rail has failed to appropriately implement it when preparing the Order. Furthermore, Ramblers have (without prejudice to their concerns as to strategic matters) considered each individual crossing and the proposed alternative routes suggested by Network Rail. Ramblers have taken a reasonable approach to assessing each closure and have only objected to those crossings where they feel the proposed alternative is unsuitable or inconvenient. Having now heard the relevant crossing-by-crossing evidence, Ramblers maintain objections to 10 of the crossings (see below).

The 'strategic' approach and use of the Transport and Works Act Order process

3. The approach adopted in the Anglia CP5 Level Crossing Reduction Strategy [NR 18] is flawed. The strategy does not address the balancing exercise that the Secretary of State is required to do in determining whether or not to make an Order under the Transport and Works Act ("the Act"). The strategy completely fails to mention national and local policies¹ that are key to the balancing exercise. With regard to public rights of way - the diversion of which, in order to facilitate the closure of level crossings, is the sole purpose of this 'scheme' and the sole focus of this 'strategy', it completely fails to mention the test in the Act²; it

¹ Policy is mentioned just three times - "Common Safety Method policy", "Network Rail Safety policy" and "E&P Asset Policy". Ramblers accept that a strategy developed to cover the Anglian region may be unable to cover the detail of all local planning policy but note the complete failure of the Strategy to mention para 45 of the NPPF and that no planning consultant was engaged on the project (Mr Kenning in response to cross examination by Ms Golden, Day 4).

² It was accepted by Mr Kenning in XX that the CRD does not cover the tests in the TWA.

completely fails to mention the guidance, or give an understanding of what is needed to meet the guidance³; it completely fails to mention the need to justify the application for any Order and the selection of crossings within that application. Ironically, what it does say in the context of Network Rail's perception of the difficulties it has in using the Highways Act 1980 ("the 1980 Act") to secure the closure of level crossings is, "altering public highways is a risky business when one objection, if not withdrawn, could trigger a public inquiry."

4. Network Rail has accepted that the Inspector and in turn the Secretary of State has to be satisfied that the Order should be made and that it is not just a matter of whether or not there are suitable and convenient alternative routes; Network Rail must show that the Order is justified⁴.

Flawed application and a flawed Order

5. Unsurprisingly, the flawed strategy leads, Ramblers say, to a flawed application. In reality there is no 'scheme' as envisaged by the Act - the 'scheme' exists solely to close level crossings. Network Rail seeks to rely on broad strategic aims that it cannot in practice directly link to the crossings it has selected for closure. It has been a struggle to identify quite why crossings have been selected for inclusion in this application. Selection is not based on the ALCRM score; yet this is front and centre in Network Rail's evidence⁵. It is not just about crossings that do not meet the industry standard for sighting distances - many of the crossings proposed for closure have good, clear sightlines for distances that far exceed the industry standard, even for the line speed, never-mind for the speed that the trains on the line actually travel at. The fatality weighted index (FWI) was not part of the decision to select a crossing for closure⁶. Even when a substantial part of a community, two County Councils, a District Council, a Town Council and the Ramblers' Association oppose the closure of a crossing, Network Rail will still proceed with it as a part of this scheme⁷.
6. The lack of policy consideration and absence of guidance in the strategy means that it was not possible for Network Rail to consider the spread of relevant crossings and then select

³ Mr Kenning, principal author of the strategy, accepted that he personally did not know of the suitable and convenient element of the guidance (cross examination by Ms Golden, Day 4)

⁴ Mr Kenning in XX

⁵ Mr Brunnen in evidence in chief explained that the ALCRM score was relevant because safety was a part of Network Rail's case.

⁶ Dr Algaard's evidence during cross examination by Ms Golden, Day 2

⁷ Mr Kenning's evidence during cross-examination by Mr Hodson, Day 5

crossings for inclusion in this application in the light of the legal test in the Act and relevant guidance and national and local policy. Ramblers say this is major flaw in this application.

7. It is impossible to isolate the reasons for choosing the crossings in this ‘scheme,’ and attempts to identify precisely why crossings were chosen were met with the response that the strategic case supports closure. In Network Rail’s ideal world there would be no level crossings but Mr Kenning accepted⁸ that this would be an unbalanced approach. Delinking of closures from rail service improvements means that communities that lose out from a crossing closure do not have the counterbalance of an improved rail service, merely a ‘more resilient’ service; resilient against a risk that may, in fact, never become an actuality.
8. Pre-application consultation has also been flawed. It is more than regrettable that Network Rail consulted about the Weatherby crossing in Bury St Edmonds and not in Newmarket itself; a desire not to make a consultation event about ‘only one crossing’ is not, in the view of Ramblers a reasonable reason for this failure. Generally, the consultation material gives the impression that safety is a primary factor; we now know that the improvement of safety at level crossings, by closing them, is a strategic aim and cannot be directly linked to the selection of any particular crossing in this application. Network Rail does not accept that the consultation material is misleading; Ramblers disagree. Safety is the leading bullet point in the round 1 and round 2 consultation material - in the Ramblers’ view this must have had an impact on consultation responses.
9. The assessment of current use of crossings lacks detail, even for important, utilitarian crossings such as Weatherby. It is, therefore, impossible to make an accurate assessment of the likely impacts on the public of particular proposed closures.
10. Ramblers accept that Network Rail has a duty to comply with health and safety law and agree with Mr Brunnen that this is a qualified duty⁹, i.e. ‘so far as is reasonably practicable’. Network Rail’s view is that all level crossings pose a risk and if it can close crossings with even a low risk, then it will do so¹⁰. Mr Brunnen also accepted¹¹ that all roadside walking has a safety risk and that there “is a risk across many aspects of society” and that “any level crossing open for the public is fit for use today, but that is not to say that we [Network Rail]

⁸ In XX

⁹ Mr Brunnen’s evidence during cross examination by Ms Golden, Day 2

¹⁰ Mr Brunnen’s evidence during cross examination by Ms Golden, Day 2

¹¹ Mr Brunnen’s evidence during cross examination by Ms Golden, Day 2. Mr Kenning also accepted this during cross examination by Ms Golden, Day 4

don't have concerns and that we [Network Rail] wouldn't seek to improve or change those crossings in the longer term". Ramblers agree with Network Rail that there needs to be a balancing act and that it is difficult to balance interests in favour of closing the crossing with interests against. However, the overarching and generalised objective of reducing the safety risk at level crossings simply cannot be used as a justification for the closure of these crossings in this Order.

11. Similarly, Ramblers accept that the closure of crossings reduces the cost to Network Rail of maintaining level crossing furniture, but as Dr Algaard agreed¹² this, of itself, is not enough to justify the selection of crossings in this Order.
12. Selection of crossings to close is not based on the cost benefit analysis score¹³, also highly prominent in Network Rail's evidence.
13. We are left to fall back on the content of para 2.1.2.1 of the 'strategy': "*Mainline crossings that clearly are unused or have extremely little use would be extinguished. Also crossings that would be included are those that have a nearby alternative route utilising existing bridges as a means of crossing the railway. The means to get to the alternative crossing point would be provided on Network Rail land wherever possible.*" Even this does not cover the inclusion of some crossings - S22 Weatherby, for example. Dr Algaard's evidence was that for phase 1¹⁴ of the strategy the balancing act was whether or not [Network Rail] could provide a suitable and convenient alternative¹⁵. This approach is fundamentally flawed. When Mr Kenning, principal author of the strategy, was asked to explain quite what was meant by a nearby alternative route he struggled to define it stating that there was no clear definition; that it was more just an idea; a principle¹⁶. It is understood that Network Rail does not necessarily accept that a nearby alternative is a key test¹⁷. Ramblers submit that a lack of clarity is symptomatic of the flawed approach.

¹² Dr Algaard's evidence during cross examination by Ms Golden, Day 3

¹³ Dr Algaard's evidence during cross examination by Ms Golden, Day 2 and Mr Prest's answers to the Inspector's questions on Day XX

¹⁴ As defined in her proof at para 2.6.6

¹⁵ Dr Algaard's evidence during cross examination by Ms Golden, Day 3

¹⁶ Mr Kenning's evidence during cross examination by Ms Golden, Day 4

¹⁷ Intervention by Ms Lean during Ms Golden's cross examination of Mr Kenning, Day 4

14. The public is being asked to give up routes that are direct and convenient¹⁸, to give up routes that are unique within Suffolk¹⁹, and to accept inferior alternatives²⁰, many of which include unattractive, unsuitable, inconvenient and unsafe elements of on road or roadside walking²¹ and to accept all this, for broad strategic aims to deliver safer, cost-effective improved rail services²²; aims that we can all sign up to, but remain ‘jam tomorrow, and are never jam today’. In some cases the evidence would suggest that no service improvements are likely to be made in the foreseeable future²³. Network Rail accepts that it has to justify this Order²⁴. Ramblers say that it has failed to do so and moreover the objects of this Order could have been achieved by use of other legislation²⁵.
15. In contrast to the 1980 Act administrative order processes (processes which Ramblers say provide the appropriate mechanism for obtaining a diversion²⁶), by making this application Network Rail has been able to avoid specifying detail. This may be perfectly acceptable where the closure of a public right of way is incidental to the objectives of a scheme; here, however, it is a major flaw. For example, there is no certainty that where 700 mm²⁷ of cleared, level verge for walking is required to deliver the proposed alternative route that this width of verge legally subsists. The first any landward householder is likely to know of Network Rail’s detailed designs on the land in front of their home is when the works commence²⁸. Network Rail has not ensured that the lateral extent of highway maintainable at public expense exists. Mr Russell’s evidence was that he would expect this to be done at a preliminary stage²⁹ together with any ecological assessment that may be required where hedges would need to be removed³⁰. This issue would simply never arise under a 1980 Act

¹⁸ S22 Weatherby described by Mr Prest as a “short-cut” the alternative was accepted as not being a short-cut (Sue Tilbrook in XX)

¹⁹ S01 Sea Wall and S02 Brantham High Bridge (the evidence of Mr Knight)

²⁰ S31 Mutton Hall

²¹ S23 and S24, S27 and S28, S69.

²² Passenger and freight

²³ S22 Weatherby

²⁴ Mr Kenning in XX

²⁵ The Ramblers re-iterate that the Inspector is invited to recommend refusal of the Order under section 13(2) of the TWA - that the objects of the order could be achieved by other means.

²⁶ Either under the ‘standard’ powers or under the ‘special’ powers inserted by the Transport and Works Act

²⁷ The width Ms Tilbrook considers to be the minimum required width (evidence in chief, Day 5). Mr Haunton and Mr Russell consider that the minimum would be 750mm (evidence in chief, Day 5) and Mr Russell’s evidence that it would be desirable to have 1.2m.

²⁸ Mr Russell’s evidence was that he would not rely on the ‘hedge-to-hedge’ presumption but would carry out investigations to ascertain the extent and status of the verge (evidence in chief, Day 5).

²⁹ During cross-examination by Ms Lean, Day 5

³⁰ In answer to questions from the Inspector, Day 5

Order; case law³¹ and policy³² prevent the purported diversion of off-road rights of way onto carriageway highways.

16. The Highway Authority has concerns about the deliverability of some proposals³³; Ramblers share these and the Secretary of State is expected to balance these concerns against Network Rail's assertions that engineering solutions can be found in all cases. If they cannot be found, Network Rail says that the safeguard position is that the Highway Authority will not certify the new route and the crossing may not be closed. There are two major flaws in this 'safeguard'. Firstly the ability of Network Rail to trigger the certification clause³⁴ leaving an under-resourced Council little or no time to properly inspect the works; with the default that certification will be presumed if the Council has not responded within 28 days, and, secondly, the fact that works within the existing highway are not in any way covered by the clause³⁵.
17. Ramblers have already raised the inadequacy of what has been described as the "locking mechanism" in the certification clause in respect of the Cambridgeshire Crossing Reduction Order and have made similar submissions in writing in advance of the filled order session for the present inquiry. Suffice to say that Ramblers consider that where a whole package of proposals has been proposed (or where the Inspector determines that they are necessary) Ramblers would wish to see a mechanism for ensuring that all items are delivered to the satisfaction of the Highway Authority before any crossing is closed.
18. Network Rail has limited powers to enter and survey land in private ownership³⁶; it has therefore not always been possible for it to survey the land that will be crossed by new public rights of way and it has not been possible for the County Council to enter onto private land either - in contrast the 1980 Act³⁷ gives the County Council extensive powers to access land without notice.
19. There is no agreed method for assessing the risk of crossing the railway on the level as against the risk of crossing a carriageway highway, or the risk of walking along or beside one. Where

³¹ R v Lake District Special Planning Board, ex parte Bernstein (QBD) 1983 Times, 3 February

³² Para 31, The Planning Inspectorate Rights of Way Section Advice Note 9 (9th revision January 2018)

³³ See for example the evidence of Annette Robinson in respect of S01

³⁴ Article 16 of the draft Order

³⁵ Ramblers are not comforted by the content of the note Design Approval and Certification Process [NR-INQ-79] in this regard.

³⁶ See Appendix A to Ms Tilbrook's rebuttal proof (Suffolk County Council) p 2 final paragraph

³⁷ Section 289

this is an element of a proposal, the Secretary of State has no objective means by which he can determine whether the public are being moved from a risky, but in fact, relatively safe level crossing to a far less safe carriageway environment³⁸. For some proposals Network Rail has decided that recommendations by the road safety auditors it commissioned to audit proposals should be disregarded, or do not apply to the current proposal. This is despite objections on road safety grounds by the County Council - that is, the Highway Authority. Ramblers maintain that the road safety audits were not carried out strictly in accordance with TD19/15. Technically correct is often the best form of correct and the reasons for the requirement that the Highway Authority is the overseeing authority in the process are now obvious. Network Rail is not the Highway Authority, and will not be responsible for any part of the highway network longer term. The County Council is the Highway Authority, and will be responsible. If the Order is made, Ramblers would want to see any further road safety audits carried out in accordance with the County Council's requirements and for the Council to have the final say over the need for and delivery of any safety improvement works.

20. It may be unusual for Ramblers to express sympathy for farmers and landowners, but this inquiry has heard the very real concerns of farmers³⁹ who are faced with the creation of permanent public rights of way over land they own or farm and who are struggling to understand the effect this will have because of the absence of detail. This would simply not arise in a 1980 Act order process.
21. It is difficult, if not impossible, to adequately assess whether proposed routes are going to be suitable and convenient where the detailed line and construction are not known. Again this is not an issue that arises, in practice, under the 1980 Act process. Again this may be acceptable in a scheme where there are 'works' and the diversion of a right of way is incidental to the delivery of the scheme; it is wholly inadequate when the sole purpose of the 'scheme' is to divert and stop up public rights of way.
22. Ramblers say that these are all reasons why the 1980 Act processes are to be preferred and should be used where Network Rail's sole aim is, as here, to close crossings. For example, the concerns about deliverability of new routes and the cost to the Highway Authority of ongoing maintenance of those routes can be very simply dealt with under S119A(6)⁴⁰, which

³⁸ Mr Kenning when asked in evidence in chief (Day 3) about the lack of a direct comparator, agreed that there was not one, a situation he described as "unfortunate".

³⁹ For example, Mr Paul Baker in respect of crossings at Bacton.

⁴⁰ NR-INQ-63 Tab 4

allows for a diversion order under that section to provide that Network Rail and its successors maintain any new path. One might reasonably think that if Network Rail knew that it would be liable in perpetuity for maintenance, we would have a lot more detail about precisely what is proposed.

23. Further, Ramblers say, the order-making powers in the 1980 Act were designed by Parliament to correctly balance the needs of railway operators and the protection of the public using level crossings with the very real benefit to the public of the public rights of way network. As I said in opening: “Network Rail is not the only interested stakeholder in a level crossing”. To which I would add that at times Network Rail seems dismissive of or unconcerned by the concerns of the public and the public authorities: very important stakeholders in public rights of way.

24. It is also clear that Network Rail does not particularly value the amenity of public footpaths. Ms Tilbrook was clear that in her view that the enjoyment of a route does not define its suitability. Ramblers cannot agree. For leisure walkers the enjoyment of a route is of fundamental importance. Mr de Moor’s evidence shows how routes with good amenity persuade people to walk for short utilitarian journeys. Ramblers submit that it was for precisely these reasons that Parliament introduced S119A⁴¹ to the 1980 Act and that this provision correctly embodies the balance of factors when considering closing rights of way level crossings.

25. Once a level crossing is closed, it is closed forever⁴². As Network Rail accepts,⁴³ the railway is a barrier to the rights of way network; walkers can only cross the railway where crossing points are provided. Deliberately adding to the effect of that barrier by closing crossings that have the potential to become parts of well-used walking and cycling infrastructure along quiet routes away from traffic⁴⁴ is not in the public interest and on the limited strategic case advanced in respect of particular crossings simply cannot be justified.

26. Without prejudice to Ramblers’ objections to the underlying rationale of Network Rail’s strategic case, Ramblers object to the manner in which that strategy – even if it were to be justified (and Ramblers do not accept that it is) – has been implemented.

⁴¹ NR-INQ-63 Tab 4

⁴² And as Mrs Bradin said in evidence once a crossing has gone her experience is that it will not be re-opened

⁴³ Mr Kenning in XX

⁴⁴ Such as S22 and S25

27. Once Network Rail had decided on the Anglia CP5 Level Crossing Reduction Strategy,⁴⁵ and the crossings that would be closed, it then needed to properly assess each proposed alternative route and determine if it would be suitable and convenient. Ramblers dispute both that (i) a proper assessment has been done and (ii) that a number of the proposed alternatives are suitable and convenient.
28. The work carried out by Mott MacDonald in assessing the use the public makes of crossings is limited to a “snap-shot” 9-day census (survey)⁴⁶, an assessment of consultation responses and a map based exercise looking at connecting rights of way (for rural routes) and likely destinations (for S22 Weatherby in Newmarket). On a number of occasions it has been accepted that ‘destination and origin’ of users will affect whether, and the degree to which, the proposed alternatives are ‘suitable and convenient’. However, Network Rail does not in fact know where users are coming from or where they are going to. In two cases⁴⁷ the crossings proposed for closure are on routes that lead directly to premises occupied by football clubs; yet in each case the 9-day census was carried out outside of the football season. In no case, not even at Weatherby, has Network Rail actually asked users, identified in its survey as using the crossing, where they are going to and where they are coming from. As Dr Wood pointed out in her evidence, this naturally occurred to her. It is surprising that it did not occur to Network Rail or its contractor Mott MacDonald⁴⁸. This failure has led to a lack of detailed evidence about destination and origin and limits the accuracy of any assessment of how suitable and convenient the alternative route is.
29. Similarly, Network Rail has a limited understanding of why people chose to use a particular route that includes a level crossing. Though it was accepted that there may be differing reasons why they do make use of a crossing⁴⁹, in practice there is no data on which to base an assessment of why people use a particular route, even when there are alternatives available to them. Ramblers note that the team of experts Mott MacDonald provided did not include anyone with specific expertise in rights of way⁵⁰, someone who might be expected to have an

⁴⁵ NR18

⁴⁶ Carried out to a Network Rail standard, it was accepted that this does not pick up on ‘non-visible’ disabilities (Ms Tilbrook in answer to cross-examination by Ms Golden, Day 8)

⁴⁷ S22 Weatherby and S69 Bacton

⁴⁸ Dr Wood, Day 19

⁴⁹ For example Ms Tilbrook’s acceptance in cross-examination that there was a difference between using S22 to take a child to school and using it once a month to attend a football match.

⁵⁰ Ms Tilbrook agreed that her previous experience with level crossing closures was with regard to the ECML project that did not proceed to the Order stage (XX Day 6).

understanding of recreational and utilitarian uses of public rights of way and it chose not to include the highway authority's specialist officers when carrying out site visits and assessing the alternative routes⁵¹. Moreover, surprisingly, Mott MacDonald did not consider it necessary for one person (as distinct from different people from different teams within Mott MacDonald) to walk each individual proposed alternative route and assess it.

30. With this in mind it is difficult to see how anyone can conclude that any given alternative route is 'convenient' i.e. fitting in well with a person's needs, activities and plans involving little trouble or effort; when there is a very limited understanding of the needs, activities and plans of users. Ramblers submit that in practice what has been done in the assessment is much more circumscribed, as reflected by Ms Tilbrook's evidence⁵² that: "*suitability and convenience of the proposed route has to be considered for each crossing based on local circumstances and in the context of usage, the local environment and the relationship of the existing route to the wider PROW and highway network.*" This is in contrast to the way that the County Council would assess a diversion⁵³.

31. Ramblers take the view that where the proposed alternative route already exists as highway and the public could use it if they wished to, the fact that the public continue to use the level crossing must be factored in to the consideration of whether or not the alternative route is suitable and convenient⁵⁴. People vote with their feet.

Request for deemed planning consent

32. Ramblers adopt the submissions made on behalf of the County Council and St Edmundsbury Council on the 16th April [OP-INQ-60]

Safety of pedestrians walking alongside roads

33. Ramblers accept that the existing rights of way network is fragmented and many countryside walks will involve an element of roadside walking and, sometimes, of within-carriageway walking too. The causes of this are varied, but may be due to the way the network has developed organically over centuries, or to more recent failings such as lack of weight being given to the needs of the rights of way network when planning developments or road schemes - the A14 with its pedestrian crossing point to the north of footpath 1 (S23), presumably intended to allow pedestrians to cross at grade being a case in point.

⁵¹ During cross-examination by Ms Golden, Day 5

⁵² Paragraph 1.11.1 of Ms Tilbrook's main proof

⁵³ See the evidence of Mr Kerr during cross examination by Ms Lean, Day 8

⁵⁴ For example S22 Weatherby

34. When considering proposals that involve roadside walking the issue of how much off-carriageway width is needed for the safe passage of pedestrians is one of particular concern. Ramblers would much prefer to see no increase in roadside walking at all; walking alongside roads is not attractive to people who walk in the countryside for health and recreation. Where roadside walking has to happen, Ramblers seek to ensure that it is for the minimum length necessary and most importantly that it is safe.
35. Ramblers note that Ms Tilbrook's evidence⁵⁵ was that 450mm of non-vehicle running space was required to protect the parapet of the Barrells Road overbridge. Notably the same distance is required as clearance for street furniture. Ramblers rely on Mr Russell's evidence⁵⁶ that "*where a verge is less than 500mm a vehicle on the carriageway would not be able to pass a pedestrian who was walking along the verge without the risk that the pedestrian would be hit by part of the vehicle*". With this in mind Ramblers continue to contend that much of the provision for pedestrians in the proposals is inadequate and unsafe.

Individual crossings

36. Without prejudice to Ramblers position that the Order in its entirety is not justified and should not be made Ramblers have the following submissions to make about the individual crossing proposals to which they have objected:

S01 Sea Wall

37. As explained by Mr Knight in his evidence the experience of this route is not replicated anywhere else in Suffolk and the view of the estuary from the steps leading up to the crossing is un-paralleled. For these reasons Ramblers consider that the suggested replacement is not 'suitable'. Ramblers respectfully request that this crossing is removed from any made Order.
38. Without prejudice to that position, Ramblers consider that the proposal to remove the cul-de-sac path (Footpath 13) that could remain if the crossing were to be closed is unacceptable. Particularly, as it transpires that Natural England did not in fact object and did not require the

⁵⁵ In XX day 20

⁵⁶ Para 2.20 main proof

closure of the cul-de-sac path. Ramblers, therefore, support the County Council in requesting that if the crossing is closed that this short section of path be retained.

39. Ramblers respectfully request that this crossing is removed from any made Order.

S02 Brantham High Bridge

40. The footpath leading to S02 Brantham High Bridge crossing offers a rare experience in Suffolk and as described by Mr Knight in his evidence takes the walker across open landscape on sandy ground. The crossing at S02 provides a connection from the south, without any further use of a road. The replacement involves walking alongside the busy A137 in sharp contrast to the tranquillity offered by the existing route; it is a purely functional route and is unsuitable as a replacement for a route that is primarily used for recreational purposes.

41. Having now heard the County Council's evidence about its concerns as to the sustainable delivery of the proposed new route in some places, especially the railway embankment, the Ramblers share those concerns.

42. Ramblers respectfully request that this crossing is removed from any made Order.

S22 Weatherby

43. There are considerable concerns about the particular way Network Rail went about the consultation exercise for this crossing. Mr Kenning agreed that in hindsight holding consultation about this crossing in Bury St Edmunds was "not the best thing to do."⁵⁷ He later agreed with Dr Wood⁵⁸ that Bury St Edmunds was nearer 15 miles away from Newmarket, than 11, and this was more than the ideal of a consultation venue being no more than ten miles away from a crossing, that Network Rail had set itself.

44. The inquiry heard Dr Wood's concerns about the limitations of consulting via leaflets and written material in a local community where a substantial proportion of the affected population have English as a second language⁵⁹. The inquiry heard Mr Hodson's concerns about the limited effect of the leafletting exercise⁶⁰ and Mrs Dunning could not recall any leaflets⁶¹ and maintained that position even though Network Rail's map showed her estate as

⁵⁷ Evidence during cross-examination by Ms Golden, Day 4

⁵⁸ Day 19

⁵⁹ Day 19

⁶⁰ Day 20

⁶¹ Day 19

included in the leaflet ‘drop’⁶². Finally, it was originally Network Rail’s intention not to have sessions of this inquiry in Newmarket. All this for the most used and the most consistently used crossing in this application.

45. Ramblers submit that this crossing is part of a well-used local route - used for a number of purposes. Ms Tilbrook agreed that this was the sort of utilitarian route that Mr de Moor identified. Indeed it well illustrates that sort of route; the route that people use instead of getting in a car. Its importance in linking the two parts of the town of Newmarket has been a theme in the evidence of a number of objectors.

46. Network Rail’s position that it believes there is no right of way across the crossing is unpersuasive. Mr Kenning was unable to explain why Network Rail would *permit* the public to use a high risk crossing, at Network Rail’s liability, if there was no right of way across it⁶³. Ramblers submit that the inclusion of this crossing in this scheme has more to do with Network Rail’s current view, based on the ‘Zulu’s crossing’ case⁶⁴, to which Mr Kenning referred, that there is no public right of way over the crossing. Mr Kenning agreed with Ms Golden,⁶⁵ that in answer to her cross-examination on the strategic case, he had indicated that had Network Rail considered that a public right of way existed over the crossing its approach to the crossing would be different. On Day 19 of the inquiry he sought to recover from that position. Ramblers submit that Mr Kenning’s evidence to the inquiry on Day 4 that the decision to close this crossing was “more about the status of the crossing” than its level of use⁶⁶ is to be preferred.

47. Irrespective of the actual status of the crossing it is very clear from the evidence that its closure to public use will have a serious and adverse effect on the local community. Representatives of the local community have given evidence over several days about that effect and having heard the evidence Ramblers submit that the adverse effects outweigh the alleged benefits to the public as identified by Network Rail. Ramblers consider that a different solution to Network Rail’s concerns about this crossing needs to be sought. Closing a crossing is not the only way of removing or reducing the risk (as was accepted at a number of points in

⁶² Day 20 - comment in response to the document submitted by Network Rail

⁶³ XX Day 19

⁶⁴ *Ramblers’ Association v Secretary of State for the Environment* 2017 EWHC 716 (Admin) NR-INK-63 Tab 14

⁶⁵ Evidence during cross-examination by Ms Golden, Day 19

⁶⁶ Evidence during cross examination by Ms Golden

the inquiry). Ramblers would not presume to suggest what that solution might be, but say about this crossing what was said about S25 - once it is gone, it is gone for ever - and if that happens the railway will be even more of a barrier to the people of Newmarket.

48. Weatherby is considered by Network Rail to be a high risk crossing. The inquiry heard that the crossing is 220 yards from the end of the 25MPH speed limit, which as Mr Kenning explained⁶⁷ was a legacy of the transition from a number of lines to the single track now in place. Ramblers respectfully request that the Inspector considers this fact when weighing in the balance the claimed reduction in risk from the closure of this crossing.

49. Turning to the question of the suitability and convenience of the proposed alternative route. Ms Tilbrook agreed that desire lines were important⁶⁸ (but thought it was hard to define what a desire line would be) - in Ramblers' view this crossing is a good example - people could use the "alternative" but they don't - they use the crossing. That very strongly suggests that the alternative is not suitable and convenient for walkers, or for cyclists. Mr Prest described the route over the crossing as a short cut⁶⁹; Ms Tilbrook agreed⁷⁰ that the alternative route could not be described as a short cut.

50. Ms Tilbrook agreed that the walking speed we have agreed on is the walking speed for an averagely fit adult - not someone walking with a pushchair or young children⁷¹. The inquiry heard from Dr Wood about the use made of the level crossing by parents taking children to All Saints School, there is the limited information from the census⁷² of use of the crossing by adults with children. This is a particular factor when considering the suitability and convenience of the proposed alternative route at Weatherby.

51. Ms Tilbrook explained the assessment was done on the basis of pedestrians, and cyclists.⁷³ Legally cyclists cannot use the footway⁷⁴ and must use the carriageway or alternatively push their bicycle along the footway; alongside and together with other users. Mr Hodson expressed his concerns about the difficulties this already causes and noted that at times

⁶⁷ Day 19

⁶⁸ Evidence during cross examination by Ms Golden, Day 5

⁶⁹ Para 19.6 of his proof

⁷⁰ XX, Day 14

⁷¹ XX, Day 14

⁷² Ramblers agree with Mr Woodin that the census is a very blunt tool to assess the use of a crossing in the middle of a town

⁷³ XX, Day 5

⁷⁴ Though we heard from both Councillor Hurst and Mr Hodson that some cyclists already do use the footway, Day 20.

cyclists do not dismount⁷⁵. Ms Tilbrook accepted that visibility for pedestrians using the alternative route to see under the bridge was limited in some aspects⁷⁶.

52. The proposed alternative route is alongside carriageroads and the biggest indicator of the present unsuitability and inconvenience of it, is that the public in considerable numbers chose the level crossing route instead.

53. Ramblers submit that the inclusion of this crossing in the Order is premature; consultation and assessment of the current use and purposes for which it is used have been inadequate; closure has not been justified by Network Rail, the proposed alternative route is not suitable and not convenient, added to which a formal application for a Definitive Map Modification Order has now been submitted to the County Council. For these reasons Ramblers respectfully request that this crossing is removed from any Order.

S23 Higham and S24 Higham Ground Frame

54. Ramblers have treated these crossings as linked. Ramblers concerns are primarily that the proposed new routes involve road walking or roadside walking on Higham Road where there is insufficient cleared level verge to safely accommodate walkers. Higham Road is subject to morning and evening peak traffic and at these times walkers in the road would be particularly vulnerable. The selected crossing point on the A14 slip road is in our view dangerous requiring walkers to cross at a point where they have to negotiate two way traffic and turning traffic - an area of conflict. The location of this crossing point seems to Ramblers to tend to invite walkers heading south over the railway to continue along Coal Pit Lane; a relocation to the west would tend to dissuade walkers from this option. Ramblers do not agree with the evidence of Ms Tilbrook on this point. There is insufficient width on the Coal Pit Lane overbridge to allow for safe passage of pedestrians at the same time as vehicles are crossing. We rely on the clear evidence of Mr Russell in respect of these matters.

55. With regard to S24, whilst it is accepted that it is no part of Network Rail's proposals that walkers should use Coal Pit Lane we consider that insufficient consideration has been given to the practicalities of the diversion and in particular to the likelihood, if both S23 and S24, are closed that walkers will in practice use Coal Pit Lane. The fact that walkers can choose to

⁷⁵ Evidence in chief, Day 19

⁷⁶ In answer to a question from the Inspector, Day 5

do so now is in our view not relevant since Network Rail's proposals reduce the choices that walkers currently have.

56. Overall, many of the concerns Ramblers have, could be addressed by additional commitments to specific works (such as re-profiling verges), the re-location of the crossing point on the west bound slip to the A14 and re-design to reduce the possibility of walkers using Coal Pit Lane. Ramblers are disappointed that Network Rail is unable to commit to all or any of these improvements; leaving Ramblers no alternative but to sustain an objection.

S25 Cattishall

57. Ramblers share the disappointment of Mr White⁷⁷ that Network Rail is seeking to close the Cattishall level crossing despite the negotiations concerning the provision of a bridge in association with the Berkley development to the north of the railway. Having gained recognition of the importance of rights of way and access to countryside and sustainable transport in local planning and national policies it is dispiriting to see a public body getting in the way of delivery of those policies. It is particularly dispiriting in the light of Mr White's evidence concerning the detailed work that has gone into planning for a green route on the Taylor Woodrow site, a route that directly connects to the Cattishall crossing bridge site.
58. Ramblers are particularly concerned that Network Rail is unable to give any assurance that it will not seek payment for air rights over the railway. Mr Kenning may be unable to see why Network Rail would not assist with the bridge project. Ramblers can see that removal of public rights over the crossing removes a very major incentive for Network Rail to be more active in securing a bridge; and, further that the removal of rights puts Network Rail in a strong commercial position vis-à-vis the developer. The suggestion that the closure of this crossing should go ahead because a separate process under the Highways Act might be required is unconvincing. Mr White in his evidence made it clear that the local planning authority would require two crossing points of the railway and one of these would be a bridge at Cattishall. An appropriately worded condition to that effect would engage the Town and Country Planning Act diversion processes⁷⁸.
59. If the crossing is closed and no bridge is provided at Cattishall all users will have to use the proposed alternative route. As Mr White noted some users may prefer not to use an underpass, but they will no longer have a choice to go elsewhere. The alternative route will

⁷⁷ Mentioned several times in response to cross examination by Ms Lean, Day 18

⁷⁸ Section 257 of the Town and County Planning Act 1990

be less direct for some users and less convenient for others. In her evidence⁷⁹ Mrs Bradin set out her concerns about a 3m wide underpass that will be used by cyclists, horseriders, walkers and ultimately families with pushchairs and children. In her view this was too narrow. She would still have those concerns even if a bridge is provided.

60. It was Mrs Bradin's very clear view that a bridge should be provided as soon as possible, but that it is not necessary to close the crossing before the bridge is built. There is still a need for the crossing at Cattishall; a bridge provides the safest solution. Factors that applied at Great Barton apply here - this is part of the National Cycleway Network, a bridleway is proposed as a 'downgrading' of the unclassified road south of the crossing.⁸⁰

61. For these reasons Ramblers say that the inclusion of this crossing in this Order application is premature; we support the County Council's view that this crossing should be dealt with in a later phase of the Anglian project, and would hope then for a wider public-orientated solution, rather than a narrow Network Rail focussed solution. It may not be right for Network Rail to be held to ransom;⁸¹ but equally it is not right for the position, potentially, to be reversed, for Network Rail to be able 'to hold to ransom' the developer. Or for Network Rail to be able to thwart the careful policies of the local planning authority, and at the same time reduce opportunities to access the rights of way network.

62. Ramblers strongly contend that a bridge is essential at S25 Cattishall and respectfully request that this crossing be removed from any made Order.

S27 Barrells and S28 Grove Farm

63. Ramblers note that Mr Russell's evidence in respect of the possibility of two cars attempting to pass one another on the Barrells Road bridge has now been accepted and that Ms Tilbrook's evidence is now, that at detail design stage improvements can be made to the 'verges' to make them more suitable as a refuge for pedestrians. Similar improvements may also be made to the bridge on the un-named road. Whilst Ramblers welcome this new position there is no guarantee that the measures that Mr Russell considers are essential for pedestrian

⁷⁹ EIC Day 20

⁸⁰ An application having been made as part of Taylor Wimpey development, Mr White's evidence and confirmation from Mr Woodin, Day 20

⁸¹ Mr Kenning's evidence in answer to cross examination by Ms Golden, Day 5 (in respect of disused private vehicle crossings)

safety will be delivered. Regarding the approach strip, Mr Russell would expect a full detailed design that takes visibility into consideration in order to determine the extent of protection (for pedestrians) needed on the approaches to the bridge (both the Barrells Road bridge and the bridge on the un-named road).

64. Until this is done the situation cannot be properly assessed. Ramblers therefore continue to object to the inclusion of this crossing on road safety grounds in respect of both bridges.
65. Ramblers consider that the perception of safety is particularly important for this proposal.
66. What is proposed may be objectively safe but the perceptions of the public and of Mr Fisher,⁸² an experienced walk leader, remain relevant when assessing suitability and convenience. If people do not consider that a route is safe they will not use it.
67. We heard from Mr Russell that there is no design guidance on perception of safety and no research to assist with this.
68. Ramblers also object to the diversion proposals because of the loss of amenity and enjoyment, the diversion alongside the railway line (to the south) is unacceptable. Mr Fisher's evidence⁸³ was of the current tranquillity of the existing routes and their use in Ramblers' guided walks in this area. A particular attraction to include in a circular route being the developing, nearby nature reserve.
69. In contrast, in addition to including two road bridges that he considered to be unsafe, the proposed alternative routes include sections of walking alongside the railway. He estimated that the east-west section of the route to the south of the line would take about 15 minutes to walk. Trains pass along this line on average 1 in every 12 minutes.
70. Mr Fisher considered that although he might use the road bridge he would not lead a guided walk over them. It is accepted that his view relates to the situation 'as is' but Ramblers are unable to properly assess matters absent detailed design - a common theme in Ramblers' objection to this Order application. Overall, Ramblers consider that the alternative routes proposed are not suitable and convenient.

⁸² EIC day 21

⁸³ Day 21

71. For these reasons Ramblers respectfully request that these crossings be removed from any made Order.

S31 Mutton Hall

72. Ms Tilbrook accepted that perception of safety by users was “a relevant point”⁸⁴ And that for walkers out on a rural walk using the verge was “not as pleasant”⁸⁵. Mr Kenning accepted that the short section of road walking was “slightly more detrimental”⁸⁶. In Ramblers’ view the case for closure of this crossing has not been made out and the alternative proposed cannot be said to be suitable and convenient for walkers. Ramblers respectfully request that this crossing is removed from the Order.

S69 Bacton

73. Network Rail’s approach to the alternative route at this crossing embodies many of the Ramblers’ concerns about the process that Network Rail and Mott MacDonald have adopted overall.

74. There was no attempt to ascertain what use was made of the crossing during the football season which is a remarkable omission, given the location of the football club. Although Ms Tilbrook’s evidence was that some CCTV censuses were undertaken in October and November she was not sure what pushed Mott MacDonald to do these at this time⁸⁷. Clearly it was not the likelihood of finding additional use in those months at the Bacton crossing, because no census was done in those months here. It was clear from Ms Tilbrook’s evidence that assumptions have been made as to attendance at the Club.

75. In Ramblers’ view the road safety audit clearly identifies issues with the intended use of the western verge of the B1113; this is not just applicable to the original proposal but remains an issue for the current proposal. This is where the failure to correctly implement HD 19/15 is particularly significant; had the ‘overseeing authority’ been Suffolk County Council then it is unlikely that it would have accepted that concerns no longer applied. The evidence of both

⁸⁴ Examination in chief, Day 5

⁸⁵ In XX

⁸⁶ In XX, Day 16

⁸⁷ Examination in chief, Day 5

Mr Haunton and Mr Russell was clear as to these concerns. Ms Tilbrook accepted that the RSA Stage 1 identified the full length of the B1113⁸⁸.

76. Ramblers accept that the identity of the overseeing authority would not (and moreover should not) affect the outcome of an RSA, however, Ramblers maintain that the reason that the overseeing authority should be the Highway Authority (and not Network Rail) is evident from the process that Network Rail and Mott MacDonald have adopted in relation to S69. The approach has been to discount the concerns raised at RSA Stage 1 and when challenged about this, to assert that the concerns relate to an earlier proposal, when they clearly do not. Mr Haunton's evidence was clear that 'significant issues' should be signed off at RSA Stage 1⁸⁹.
77. Mr Russell's evidence was clear that 900mm of 'pedestrian facility' should be provided on the western side of the B1113, however it is far from clear that there is sufficient land available within the highway to deliver this.
78. There has been a presumption about the lateral extent of the highway verges on the B1113 and no investigation as to their actual status. The lack of detail in the design freeze plans means that it is not possible to identify from them which verge the alternative route is utilising, nor the extent to which walkers will have to cross the road in order to locate sufficient verge to walk along. Ms Tilbrook's evidence was that overall there was sufficient verge of at least 700mm but she accepted⁹⁰ that there was no continuous verge of 700 mm width. In response to the concerns raised by the RSA commissioned by the County Council and to Mr Russell's concerns Ms Tilbrook maintained that any remaining road safety issues that may be identified at RSA stage 2 would be resolved by agreement with the County Council and that based on Ordnance Survey 1:2500 maps there was sufficient highway verge to accommodate safe pedestrian passage. The Ramblers remain sceptical of this and point to the fact that the Order as currently drafted does not make the closure of the S69 crossing conditional upon delivery of an agreed within-highway solution⁹¹.
79. The proposals for Pound Hill are not adequate⁹². There is a scheme in the public domain that can be delivered in the current extent of the highway (maintainable at public expense). Network Rail will not commit to delivering this. There is disagreement between the County

⁸⁸ In XX

⁸⁹ Day 14

⁹⁰ In XX

⁹¹ The closure is conditional only upon certification of new footpath routes.

⁹² Mr Russell's evidence in cross examination by Ms Lean.

Council and Network Rail as to the origins of water that collects in the highway. Mr Baker contends that Network Rail's infrastructure is at least in part to blame for the 'flooding'. Network Rail disputes this. From the Ramblers' point of view the cause of the 'flooding' and who may be responsible for resolving it is immaterial; there is at the moment an unresolved issue which adds to the inconvenience and unsuitability of the alternative route. The fact remains that if S69 is closed pedestrians will have to negotiate Pound Hill in all seasons of the year and will no longer be able to choose to use the footpath across the railway as an alternative when the road 'floods'.

80. Even if the 'flooding' issue is satisfactorily resolved, the Ramblers take the view that the failure to provide a raised separate footway and appropriate traffic controls means that the Pound Hill element is unsafe and inadequate.

81. Ramblers submit that the proposed alternative is ill-thought through and premature and for these reasons respectfully request that this crossing be removed from any made Order.

CONCLUSION

82. To conclude, having heard the evidence, Ramblers contend that:

- (i) The use of a TWAO is inappropriate and, or in the alternative, that the purposes of this Order can be achieved through other means (s13(2) TWA);
- (ii) Network Rail has not sufficiently justified the need for the Order as a whole, nor the need for closure of each individual crossing;
- (iii) Deemed planning permission should not be granted for the development proposed to be authorised by the Order, because the development conflicts with a number of national and local planning policies;
- (iv) The proposed alternative routes on a number of the crossings are not suitable or convenient, most notably a number of the proposed routes are *inter alia*:
 - (a) Of significantly increased length;
 - (b) Much less scenic, often requiring walkers to walk besides busy, noisy and polluted roads;
 - (c) Unsafe; and,
 - (d) Less enjoyable to walk.

83. For all of these reasons, Ramblers respectfully request the Inspector to recommend the refusal of this Order.

4 May 2018

**Sue Rumfitt
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