

**TRANSPORT AND WORKS ACT 1992**  
**APPLICATION FOR THE PROPOSED NETWORK RAIL (SUFFOLK**  
**LEVEL CROSSING REDUCTION) ORDER**  
**Ref. TWA/17/APP/03/OBJ/24**

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**Submissions**

**on behalf of**

**Mairi Jean Johnston and Alistair Fish**

**Objectors**

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1. The only relevant power within the Transport and Works Act 1992 ("the Act") for the creation of a new public right of way is that set out in section 5(6). This provides that an order under the Act shall not extinguish a public right of way over land unless the Secretary of State is satisfied that an alternative right of way has been or will be provided, or that one is not required.
2. Any right of way created under the power contained in section 5(6) must therefore be an **alternative** right of way, and, it is necessarily implicit that the alternative is **required**.
3. The Oxford English Dictionary defines "alternative" as "*available as another possibility*". In common parlance this might be expressed as a different means of achieving the same objective. Similarly "required" suggests a degree of necessity, something more than desirable or beneficial. It must be needed.
4. In considering whether a route can properly be described as an alternative, it is first necessary to establish what it is an alternative to. In the context of section 5(6) of the Act it is clear that any right of way to be created is to be an alternative to the rights of way which are to be extinguished. In the context of S24 Higham Ground Frame, the public rights of way which it is proposed should be extinguished are footpath 6 Barrow and footpaths 2 and 3 Higham.
5. In order to consider what is necessary to provide an alternative to the right of way to be extinguished, it is also necessary to consider what purpose or utility is provided by the routes to be extinguished.

6. The theoretical utility of FP6 Barrow and FPs 2 and 3 Higham is to provide a north/south link across the railway and the A14 and thence to the west to join FPs 1 and 13 Higham. At no point do the routes to be extinguished provide any link to the east, nor do they link with any route to the east which would be affected by the proposed extinguishment.
7. In practice however, the routes to be extinguished currently serve no purpose as, to quote from paragraph 21.2 of Andrew Kenning's proof, "...*the existing north south link has effectively become severed by the traffic levels on the A14*". Accordingly in practice, and unrelated to the proposed crossing closure, the routes to be extinguished have no current purpose or utility. This was borne out by the traffic survey which recorded use on one occasion only, and this by participants in an organised event which used the crossing over the railway, but was not confined to the public rights of way network and did not cross the A14.
8. Given the severance of the route caused by the construction of the A14, and the lack of actual use of the routes proposed to be stopped up, it can be argued strongly that no alternative right of way is required, as no practical utility would be lost by the proposed extinguishment and that any "alternative" route will necessarily represent betterment, and thus be outside the scope of the order.
9. Where an alternative route is required, its purpose should be to preserve the connectivity, or utility, of the public rights of way network and usually this will be achieved by providing an alternative connection between the terminal points of the routes to be extinguished. In the case of S24, this is achieved by the proposed creation of a public footpath running west from the south of the crossing and using the existing bridge on Higham Lane to cross the railway to re-establish the link with footpaths 1 and 13 Higham. By this means the theoretical connectivity of the existing rights of way network is preserved. In practice the connectivity is enhanced as a safe and usable means of crossing the A14 is provided.
10. The proposed routes running to the east of existing FP6 Barrow cannot be regarded as an "alternative" to the rights of way to be extinguished. They have no relevance to the preservation of the connectivity of the existing network, which does not provide any route east of the routes to be extinguished. The proposed routes are not necessary to mitigate the effects of closure and unquestionably represent betterment of the network. Whilst it may be that betterment is acceptable when it arises incidentally to the creation of an alternative route, that is not the case here. The proposal to add these routes to the east would appear to be nothing more than the blatant adoption of the ambitions of Suffolk County Council to satisfy its Rights of Way Improvement Plan. Those ambitions have no part to play within the ambit of an order made under this Act, there being other legislative provisions (The Highways Act 1980) which are available to be used for those purposes.

11. To suggest that the routes to the east are **required** to mitigate the effect of extinguishment of existing rights of way is unsustainable. Looking at the wider current public rights of way network in the vicinity of S24 the opportunities for recreational walks would be in no manner diminished by reason of the proposed extinguishment and the creation of the routes to the west. The creation of the proposed routes to the east can be seen as nothing other than betterment of the network.
12. The proposal to create a **bridleway** cannot be justified, on any grounds, as an **alternative** to a public **footpath**. It is manifestly betterment. Similarly the proposal to create a cross-field footpath south of the railway line (D – E on the Objector's plan) can in no sense be considered an alternative to the routes which are to be extinguished and particularly so given the proposal to create a route running from the crossing to the Needle's Eye underpass (A – B on the Objector's plan), which gives the same utility as the route D – E. One merely duplicates the effect of the other. Neither route is an "alternative" to the routes to be extinguished, and on that basis there is no "requirement" for one of them, and certainly not two.
13. It is accordingly the Objectors' submission that the proposed creation of the routes to the east of the crossing is outside the scope and ambit of the Act, and that it is thus not necessary to consider the suitability and convenience of these proposed routes. Without prejudice to that submission, it is the Objectors' case that the proposed routes B to C and D to E are neither suitable nor convenient for use as public rights of way.
14. The route B to C is proposed to be created as a bridleway. The Objectors' evidence is that this route passes through land which is used for the testing of rifles and shotguns. The proposed bridleway would be adjacent to land used as an established and popular clay pigeon shooting ground. The land is particularly suitable for these uses, and has been so used for many years. Such use is wholly incompatible with use as a public right of way (whether a bridleway or footpath) and for these reasons alone the land is not suitable or convenient for such use. Furthermore, the proposed bridleway connects with the public highway at point C giving access onto a small but busy road with access across the railway by means of a narrow bridge.
15. The Statement of Matters dated 24<sup>th</sup> August 2017 states that it is necessary to consider the impact of the Order upon the landowner, and specifically any adverse impact on their ability to carry on their business. For the reasons outlined above, the imposition of a public right of way on the alignment B to C will have a seriously detrimental effect on the Objectors' ability to use their land for its current and intended purposes. If the Order were to be confirmed so as to create a public right of way on the B – C alignment the current use of the land over which the route passes,

and the adjoining land, would have to cease as the use of firearms on this land would be wholly incompatible with use of a right of way by the public. The effect on the Objectors' business would be substantial.

16. The route D to E passes across land currently used for commercial game shooting, an activity which is incompatible with recreational public access. The imposition of a route on this alignment will either endanger the public or restrict severely the capability of the land to be used for its current purposes.
17. The Objectors submit that Order should not be confirmed without amendment. It is the Objectors' position that no alternative right of way is required to mitigate the effects of closure, alternatively that the alternative routes to be created should be limited to those proposed to the west of the crossing and that the Order should be amended to remove the proposed routes to the east.

22<sup>nd</sup> May 2018

**Birketts LLP**

**Solicitors for the Objectors**