

**THE PROPOSED NETWORK RAIL (CAMBRIDGESHIRE  
LEVEL CROSSING REDUCTION) ORDER**

**Department for Transport reference TWA/17/APP/03/OBJ/12**

**Transport and Works Act 1992**

**The Transport & Works (Applications and Objections)  
(England and Wales) Rules 2006**

**CAMBRIDGESHIRE COUNTY COUNCIL**

**STATEMENT OF CASE**

## **1 Introduction**

- 1.1 This Statement of Case is made on behalf of Cambridgeshire County Council ('CCC') in respect of Network Rail's application to the Secretary of State for Transport (DfT) for an order made under the Transport & Works Act 1992 ('the Order') to close 29 public highway and private level crossings across the administrative county of Cambridgeshire. CCC is the relevant highway authority for the area concerned, responsible for the public rights of way and public road network.

## **2 Background**

- 2.1 NR commenced discussions with CCC over its proposals with a high level meeting in the summer of 2014, followed by a number of workshops and a significant amount of correspondence from September 2015 up to March 2017. Initially, 34 proposals were put forward. As a result of the consultations, 5 proposals have been withdrawn at various points. A chronology of events is provided.
- 2.2 The first workshop was held on the 30th September 2015, where CCC provided initial feedback. A further meeting was held on 13<sup>th</sup> January 2016. The first round of public consultation was then announced close to going live on the 8<sup>th</sup> June 2016. There was very little contact between the meetings and first public consultation. CCC responded to this consultation on the 7<sup>th</sup> July 2016. Traffic censuses were undertaken between 18 – 26<sup>th</sup> June 2017 on some crossings with very little notice and no consultation with CCC. On the 15<sup>th</sup> June 2016 CCC complained to Mott MacDonald, NR's contractor, that the methodology was inappropriate and requested additional surveys on existing routes and road traffic assessments ('RTAs') relating to proposed alternative routes. Information about how the census was going to be used was also requested. A full response was received on the 14<sup>th</sup> March 2017. CCC understands that only additional two RTAs were carried out, details of which have not been shared with CCC to date.
- 2.3 Several of the public footpaths and a bridleway crossing were found to have been obstructed for operational purposes during the census and consultation period, without formal closures, causing considerable confusion and creating difficulties for CCC in chasing NR for answers.
- 2.4 Further workshops were held at CCC's request with officers on the 26<sup>th</sup> July and 1<sup>st</sup> August 2016, and with relevant Councillors on the 9<sup>th</sup> August 2016 to discuss the public feedback. A second public consultation was held from 7<sup>th</sup>-28<sup>th</sup> September 2016, during which CCC received complaints from a member of the public and from the Open Spaces Society about further obstructed footpath crossings at C08 Ely North, C16 and C17 Prickwillow. A press article was also released about the obstructions and proposed closures in the Cambridge News.
- 2.5 NR's Diversity Impact Assessment Scoping Report ('DIA') was received on the 7<sup>th</sup> October, to which CCC responded on the 9<sup>th</sup> November raising concerns about the methodology and implications for the assessments for each proposal on the user groups and communities affected. NR held a further workshop with CCC on 11<sup>th</sup> October 2016 to discuss feedback from the second round of public consultation. Full results of the traffic census undertaken in June were received on 16<sup>th</sup> October 2016.

- 2.6 Due to the large scale of the proposed TWAO and impact on the highway network and local communities, CCC's position on it has been agreed through its Committee process rather than through delegation to officers. It takes three months to reach Committee, due to the lead time for consultation first with senior officers, then Member Spokespersons ('Spokes', now 'Lead Members' Briefing'), and then to Committee. In agreement with NR, who advised that they would find it helpful to have a formal response from CCC, the report was left to the last possible opportunity in order to include the most recently negotiated position on each crossing before NR finalised design for the draft TWAO. However, it was recognized that that position would continue to change as negotiations continued.
- 2.7 The first paper was presented to Spokes on the 1<sup>st</sup> November 2016, and was then presented to the Highways & Community Infrastructure Service & Policy Committee ('HCI Committee') on the 7<sup>th</sup> December 2017. On the same day, NR issued further changes to eight of the proposals. As consideration of these was too late to include in the report, a further paper had to be taken to HCI Committee on the 17<sup>th</sup> January 2017. Member concerns about one of the proposals resulted in further officer consultations with the local community and another paper being presented to HCI Committee on the 25<sup>th</sup> February 2017. CCC's formal response was finally signed off and sent to NR on the 21<sup>st</sup> March 2017.
- 2.8 The draft Order was deposited for public consultation on the 14<sup>th</sup> March 2017. CCC made a holding response to the Secretary of State on 19<sup>th</sup> April 2017 in accordance with s239 Local Government Act 1972, as it was not able to respond within the required timescale due to purdah for local elections. CCC's full response was made on the 28<sup>th</sup> July 2017, following its passage through CCC's democratic process and ratification at its Council meeting on the 18<sup>th</sup> July 2017.
- 2.9 CCC's position set out below is current as at CCC recognises the benefits to the public purse and the inquiry process for as many as possible of CCC's objections to be resolved before the inquiry. The difference in the timescales needed to obtain decisions through CCC's democratic process compared with NR's TWAO programme and the statutory TWAO process have made it difficult to synchronise CCC's position and to provide the required documentation. CCC therefore reserves its right to change its position from that presented in this Statement of Case, and will provide any such changes in writing as quickly as possible.

### **3 Legislation & Guidance**

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#### Legal Framework

- 3.1 Applications to change the highway network where no development is in question are usually made to the relevant local highway authority under section 116 Highways Act 1980 ('HA80') (stop up or stop up and divert any highway), section 118 HA80 (extinguish a public footpath, bridleway or restricted byway) or section 119 HA80 (divert a public footpath, bridleway or restricted byway).

3.2 Applications to change the highway network where development is involved are made to the local highway authority under section 257 Town & Country Planning Act 1990 ('TCPA90') concerning public footpaths, bridleways and restricted byways, and to the Secretary of State under s247 for any highway, for example stopping up and creating a combination new roads and footpaths.

3.3 There are particular provisions in the HA80 enabling the extinguishment or diversion of public rights of way over level crossings. These are made to, and processed by, the relevant local highway authority under sections 118A and 119A of the Highways Act 1980 respectively. Section 118A(1) reads:

This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath [F3, bridleway or restricted byway] in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up.

3.4 S119A(1) reads:

This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath[F3, bridleway or restricted byway] in their area which crosses a railway, otherwise than by tunnel or bridge, should be diverted (whether on to land of the same or of another owner, lessee or occupier).

3.5 Sections 118(A)(4) and 119A(4) require that the Secretary of State or council 'shall not confirm an order unless he is satisfied that it is expedient to do so having regard to all the circumstances, and in particular to—  
(a)whether it is reasonably practicable to make the crossing safe for use by the public, and  
(b)what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.

3.6 S119A(6) provides that the diversion orders may make provision requiring the operator of the railway to maintain all or part of the path created by the order, and ss19(A)(7) sets out the terms by which any necessary works must be undertaken, including certification by the highway authority.

3.7 This draft TWAO has been made under section 6 of the *Transport & Works Act 1992* ('the TWA'), and the *Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006* ('the Applications Rules') apply.

3.8 Section 1 of the TWA provides that:

1-(1) The Secretary of State may make an order relating to, or to matters ancillary to, the construction or operation of a transport system of any of the following kinds, so far as it is in England and Wales—

(a) a railway;...

3.9 Schedule 1 to the TWA provides that the matters to be considered within Section 1 of the Act above are: ...

4--The creation and extinguishment of rights over land (including rights of navigation over water), whether compulsorily or by agreement.

3.10 The key legal test is that:

5-(6) 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—

- (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.

3.11 Representations are to be taken into consideration as follows:

10-(2) Subject to the following provisions of this section, the Secretary of State shall not make a determination under section 13(1) below to make an order without first taking into consideration the grounds of any objection in respect of which rules under this section have been complied with.

3.12 The Applications Rules set out how applications for a TWAO are to be processed, whilst the *Transport & Works (Inquiries Procedure) Rules 2004* 'the Inquiries Rules' prescribe how objections to a TWAO are to be heard.

*Changes to the DM&S – Legal Event Modification Orders required*

3.13 When any changes are made to PROW recorded on the DM&S through a public path or other order, an highway authority is required, under s53 Wildlife & Countryside Act 1981, to make a subsequent 'legal event modification order' ('LEMO') to make the changes legally effective on the actual record. The initial order is not sufficient in itself.

*Widths & Grid References*

3.14 Schedule 1 of the Public Path Order Regulations 1993, the Town & Country Planning (Public Path Order) Regulations 1993 and the Wildlife & Countryside Act (Definitive Maps & Statements) Regulations 1993 require that order making authorities include widths for all new routes being recorded. DEFRA Circular 1/09, Annex C, paragraph 9, relating to public path and rail crossing orders, states firmly that the width of a path should be included in the any public path order schedule. The Planning Inspectorate Rights of Way Advice Note 2016<sup>1</sup> reaffirms this requirement:

4. Both public path orders and rail crossing orders involve the express creation of new rights of way. As such, the width of the new way should be determined as part of the order making process. Where an order is received without a specified width, the Inspector may, where appropriate, use his power of modification to add one. If this is not appropriate, the Inspector may refuse to confirm the order.

3.15 Schedule 1 of the same regulations require authorities to include Ordnance Survey grid references ('OSGRs') in all orders. CCC's policy for new routes is a minimum of 2m for footpaths and 4m for bridleways in accordance with national practice. The national minimum that is generally accepted for a BOAT is 5m.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/516940/public\\_advice\\_note\\_16\\_Widths\\_6th\\_revision\\_April\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/516940/public_advice_note_16_Widths_6th_revision_April_2016.pdf)

### Guidance

3.16 The Department for Transport's ('DfT') *Guide to TWA Orders* envisages that the Transport & Works Act ('TWA') will only be used where new transport schemes and works are planned. Section 1.14 of the *Guide* cites:

'... the following matters are unlikely to be approved in TWA orders on policy grounds,

- provisions relating to the carrying out of a scheme where the primary object of the order could be achieved under other legislation - for example a road bridge or tunnel across a river where requisite authority could be given under the Highways Act 1980; and
- proposals which could more properly be dealt with under other existing statutory procedures - for example the closure of an inland waterway or public right of way where no associated new works requiring a TWA order are proposed

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## **4 Policy Context**

4.1 CCC's Business Plan 2017-18 sets out the Authority's strategic vision for the county of Cambridgeshire. <sup>2</sup> CCC's Strategic Priorities are:

- Developing the local economy for the benefit of all
- Helping people live healthy and independent lives
- Supporting and protecting vulnerable people

4.2 Following on from these, CCC's Strategic Outcomes are that:

- Older people live well independently
- People with disabilities live well independently
- People at risk of harm are kept safe
- People lead a healthy lifestyle
- Children and young people reach their potential in settings and schools
- The Cambridgeshire economy prospers to the benefit of all Cambridgeshire residents
- People live in a safe environment

4.3 CCC has similar duties and responsibilities regarding the safety, accessibility and sustainability of the highway network as NR does with the rail network. The changes proposed principally, and significantly, affect the highway network for which CCC is the Highway Authority ('HA'). The majority of the proposals concern public rights of way, with 6 public carriageways and 4 private roads also being affected, with associated implications for the wider highway network.

4.4 CCC's approach to the management of its highway assets, including public rights of way, is contained in its Highway Infrastructure Asset Management Plan ('HIAMP')<sup>3</sup>.

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<sup>2</sup> <https://www.cambridgeshire.gov.uk/council/finance-and-budget/business-plans/>

<sup>3</sup> <https://www.cambridgeshire.gov.uk/residents/travel-roads-and-parking/transport-plans-and-policies/transport-delivery-plan-and-highway-policies/>

The latest version was adopted in February 2017. The HIAMP refers to CCC's Rights of Way Improvement Plan ('ROWIP'), which sets out in more detail how CCC will manage and improve the public rights of way network<sup>4</sup>. The ROWIP is a statutory requirement for all highway authorities under the Countryside & Rights of Way Act 2000 ('CROW Act'). Cambridgeshire's ROWIP was first adopted in 2006, and a revised version was published in 2016. Appendix 8 of the HIAMP sets out CCC's policy on the adoption of non-motorised user ('NMU') routes, whether this be outright new routes or new routes that would arise through diversions under the Highways Act 1980 or Town & Country Planning Act 1990.

4.5 CCC's ROWIP forms part of Cambridgeshire's Local Transport Plan 3 ('LTP3') (see footnote 4), and contributes towards the delivery of the Council's main outcomes set out at 4.2 above. The strategic objectives of the LTP are:

1. Enabling people to thrive, achieve their potential and improve quality of life
2. Supporting and protecting vulnerable people
3. Managing and delivering the growth and development of sustainable communities
4. Promoting improved skills levels and economic prosperity across the county, helping people into jobs and encouraging enterprise
5. Meeting the challenges of climate change and enhancing the natural environment

4.6 There are clear links between the ROWIP Statements of Action and the LTP objectives, which can be seen at Table 1 of the ROWIP, p3. The ROWIP has eight Statements of Action ('SOA') with accompanying 'Guiding principles' ('GPs'):

- *SOA1 Making the countryside more accessible (community cohesion)*  
GP1: Countryside access provision should be physically accessible to the widest possible range of people. Management and improvement of the existing Cambridgeshire Rights of Way network should aim to increase that accessibility, while new countryside access provision should generally be planned to avoid imposing restrictions. Where an existing path may not be fully accessible to those with limited mobility due to limits imposed by external constraints, such route limitations should be effectively communicated to users.
- *SOA2 A safer and health-enhancing activity*  
GP2: Countryside Access provision should be safe for users and encourage healthy activities. Where significant potential conflict with motor traffic or railways can be demonstrated, then measures to reduce risk will be considered. Where rights of way are subsumed within urban development, then planners will be encouraged to ensure that path design is open and unthreatening and suitable for regular exercise. Safety-critical path infrastructure will be regularly inspected.
- *SOA3 72,500 new homes*  
GP3: New development should not damage countryside provision, either directly or indirectly. New settlements should be integrated into the rights of way network, and improved provision made for the increased population. Where appropriate,

<sup>4</sup> <https://www.cambridgeshire.gov.uk/residents/travel-roads-and-parking/transport-plans-and-policies/local-transport-plan/>



development should contribute to the provision of new links and/or improvement of the existing rights of way network.

- *SOA4 Knowing what's out there*  
GP4: Up to date, accurate, comprehensive and integrated access information should be made available to all users of countryside access provision
- *SOA5 Filling in the gaps*  
GP5: Countryside access provision should build on the platform of the historical network to meet the needs of today's users and land managers
- *SOA6 Better land management*  
GP6: Management and improvement of countryside access should consider the needs of land management, conservation, heritage and concern about rural crime.
- *SOA7 Develop definitive map and other records*  
GP7: The Definitive Map and Statement should be an accurate, comprehensive, up-to-date and accessible record of the public rights of way network in Cambridgeshire. Proposals for legal changes to the network should be resolved subject to availability of resources.
- *SOA8 A better countryside environment*  
GP8: The countryside access experience in Cambridgeshire should be straightforward, enjoyable and inspiring.

4.8 The LTP and ROWIP work in harmony with the Cambridgeshire Health & Wellbeing Strategy 2016-17<sup>5</sup>, which promotes priorities to support and improve the physical and mental health of the county's communities. The Health and Wellbeing Board comprises services across the NHS, district councils, the county council, children's and social care, and elected representatives. Maintaining and developing the rights of way network supports most of the Priorities of the Strategy. The key Priorities relevant to the highway network are:

- *Priority 2 Support older people to be independent, safe and well*, which encourages older people to stay active and links to ROWIP SOA1, SOA2, SOA4, SOA5 and SOA8.
- *Priority 3 Encourage healthy lifestyles and behaviours in all actions and activities while respecting people's personal choices*, which promotes physical activity and also links to ROWIP SOA2, SOA3, SOA4, SOA5 and SOA8.
- *Priority 4 Create a safe environment and help build strong communities, wellbeing and mental health*, which recognises the strong link between physical and mental health. Rights of way and access to green space is an important, free source for people. This Priority also relates to ROWIP SOA1, SOA2, SOA3, SOA4, SOA5 and SOA8.
- *Priority 5 Create a sustainable environment in which communities can flourish*, which acknowledges the importance that good transport planning, green spaces and the built environment play a vital role in determining health and wellbeing, together with the benefits that these bring to the local economy. This Priority has the following three aims:

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<sup>5</sup> <http://cambridgeshireinsight.org.uk/health/hwb>



1. Develop and maintain effective, accessible and affordable transport links and networks, within and between communities, which ensure access to services and amenities and reduce road traffic accidents.
2. Ensure that housing, land use planning and development strategies for new and existing communities consider the health and wellbeing impacts for residents in the short and long term.
3. Encourage the use of green, open spaces including public rights of way, and activities such as walking and cycling through the provision of safe, continuous networks.

Priority 5 links to SOA1, SOA2, SOA3, SOA5, SOA6 and SOA8

- Priority 6 *Work together effectively* explains how the different services in the County will work together to achieve these priorities through solution-building and partnership working. The Priority recognises that there are many other organisations who can contribute to achieving these goals, and Network Rail, as custodian of one of the major transport networks, is in a pivotal position to do so. The Priority relates to SOA1, SOA2, SOA3, SOA5, SOA6, SOA7 and SOA8
- 4.9 Applications to CCC to change the highway network are processed under two policies:
- i) 'Public Path Order applications to divert or extinguish public footpaths and bridleways', adopted in 2010, and
  - ii) 'Adoption of NMU routes' identified at 4.4 above.
- 4.10 Under the Adoption of NMU routes policy, every application is scored against a set of criteria. Of particular interest here is the second set of criteria relating to diversions. The purpose of the policy is to enable a common approach to be applied to all the proposals to create new NMU routes, including cycle routes, and to ensure that the proposals are affordable in terms of long term asset management.
- 4.11 CCC has provided guidance to planners and developers relating to public rights of way for many years. This includes expected boundary treatment for alternative routes. The *Guidance for planners and developers* is available on CCC's website, and the link was provided to NR early in the process.

## 5 Common Ground

- 5.1 CCC recognises NR's strategic reasons for the proposed Order as part of its wider Anglia Level Crossing Reduction Strategy ('ALRCS'), and, in accordance with CCC's Strategic Priorities set out in its Business Plan 2017-18, it supports, in principle, the ambition of increasing public safety, improving journey times, and developing the transport network to accommodate growing demand and to encourage more sustainable travel choices.
- 5.2 CCC's position is that NR must have sound justification for any diminution of the highway network on grounds of safety, efficiency and long term impact on public

health. CCC is, in principle, willing to accept the loss of some routes, where the case is proved on these grounds and where it is acceptable to communities. However, good alternative routes need to be provided that: are reasonably convenient and at least as enjoyable for users; maintain or encourage good health habits; do not add unreasonable liability to the HA; and do not put users more at risk than on the existing routes. CCC believes there needs to be a balanced approach if the two organisations are to work in partnership towards improving both transport systems for the benefit of the public.

- 5.3 CCC does not object to the following proposals, provided that the alternative solutions agreed are carried out in full and that detailed designs are agreed in writing by CCC.

C01	Chittering
C02	Nairns No. 117
C09	Second Drove
C10	Coffue Drove
C12	Silt Drove
C14	Eastrea Cross Drove
C15	Brickyard Drove
C28	Black Horse Drove
C30	Westley Road

#### TTROs

- 5.4 CCC notes that, by virtue of article 32, Part 4 of the proposed TWAO, NR is responsible for making any such Temporary Traffic Regulation Orders ('TTROs') as are required. CCC welcomes the provision that NR will be required to consult CCC as the Traffic Authority on such orders.

## **6 Points of Principle Not Agreed**

- 6.1 Whilst acknowledging the common strategic aims of NR's draft TWAO, CCC is concerned that it is in large part an asset-reduction exercise for NR that provides little demonstrable benefit to users of the highway network, and does not necessarily improving safety but nonetheless increases liability for the highway authority. In a number of cases there are significant disbenefits to local communities and users. CCC wishes to raise a number of general principles that it finds are of significant concern.
- 6.2 CCC observes that there is no new scheme or works in this case as required by s1 TWA. The only works relate to closing or diverting public rights of way or road crossings. Such 'works' are usually the result of an actual scheme to build a new transport system or route, not 'works' as set out by the TWA in themselves. The proposed Order concerns principally public rights of way ('PROW'). Specific provisions under s118A

and s119A for the extinguishment and diversion of PROW were inserted into Highways Act 1980 by the TWA in 1992, because the government recognised that special powers needed to be provided for rail operators (see 3.3-3.6 above). These provisions contain appropriate tests to ensure that the PROW concerned are properly considered, with provisions to protect highway authorities in terms of ongoing maintenance liability and to ensure that the changes are accurately effected on the Definitive Map & Statement ('DM&S') (the legal record of PROW). The TWA contains little in the way of such provisions.

- 6.3 CCC is thus gravely concerned that use of the TWA would circumvent these provisions in the interest of goals that afford, on balance, limited safety improvements and principally assist NR's own asset liability at the cost of the public's rights and broader well-being, and at the cost of the highway authority's liability.
- 6.4 CCC recognises that the Inspector can only consider the matters before him under the provisions under which the Order is made. However, given that this Order will create a potential precedent, CCC considers that it is in the interest of all stakeholders concerned that they are able to have confidence in the ultimate decision, and that the possibility of challenge (at further expense) is avoided. Therefore, CCC would respectfully request that:
- a) Analogous tests to those provided in the Highways Act are applied, in accordance with the *Guide* at p105;
  - b) That additional provisions are included that require: detailed design by agreement with the HA; an extension of time for certification to 56 days; and the accurate recording of the changes on the DM&S, as set out at 3.13 above; and
  - c) That, in addition to the requirement for commuted sums, dealt with at 6.14 below, NR reimburses CCC for its time in agreeing the detailed design; certification; and LEMOs as set out at 3.2, 3.5 and 3.13 above.
- 6.5 Another consequence of seeking changes to the highway network through a TWAO is that NR has been able to avoid paying fees to CCC that would be associated with usual applications under the Highways Act 1980. CCC notes that NR cited in its letter to the Ramblers' Association on 15<sup>th</sup> November 2016 that a benefit of using a TWA would be that: 'The workload on highway authorities is reduced. Network Rail prepares all the paperwork and runs the consultation events.'
- 6.6 CCC disputes this. The workload on highway authorities is considerably increased rather than reduced. CCC has not been able to programme the work arising due to lack of a detailed project plan, whilst the significant problems arising from the lack of consultation, poor communication, and inadequate methodology have meant that officers have had to be proactive in endeavouring to rectify these problems. The fact that it is a new process has also incurred many more officer hours and the cost of legal advice. Further, NR has not accounted for the requirements of local government democratic procedures, whereby officers have had to present and re-present the Authority's proposed position on the proposals no less than seven papers through its committee system, a lengthy process not aligned to NR's funding cycle under which

the project was conceived. Further, resourcing for a major transport project and public inquiry is significant, and would not have been necessary to the extent now required had individual applications been made under the HA80, or alternatively had adequate time and resource been allocated.

- 6.7 For a project of this size, CCC would normally have commissioned a dedicated project officer. However, due to the lack of transparency over the project making it difficult to predict how much time would be involved, and because CCC has not been able to recover its costs, this has not been possible. Time has been diverted to the above problems, and it has not been able to dedicate the usual amount of attention that it would to individual public path order proposals, potentially affecting the quality of the outcome with the associated long term implications for users and CCC. At a time of severe local authority cuts in funding, this has also adversely affected the delivery of other work.
- 6.8 HA80 diversion order applications to CCC currently cost £4,240 ex VAT. At worst case scenario, 29 individual applications to CCC under the HA80 would have cost NR £123,000 plus advertising and officer travel costs. It is estimated that the cost to CCC will now be well over £150,000 by the end of the project, if no costs are recovered. Inevitably, NR will have had to spend considerably more in processing this TWAO application than would have been the case had they processed the applications through the highway authority. This process, therefore, does not make anywhere near the savings that NR claims.
- 6.9 For all the above reasons, CCC considers that its ability to engage with the TWAO process and ensure the best outcome for users and communities has been significantly prejudiced. Some mitigation could be achieved in the delivery phase if NR were to recompense CCC for its time agreeing detailed design and undertaking certifications and legal work (see 6.24 below). CCC already has an agreement with the Department for Transport ('DfT') to fund officer time spent working with Highways England on the delivery of the A14 road scheme, and on 21<sup>st</sup> March 2017 asked NR to discuss a similar agreement for the delivery of NR's TWAO in order to enable the Authority to recover its costs associated with that part of NR's scheme. NR only responded to this request at the meeting with CCC on 16<sup>th</sup> August 2017, asking CCC to provide written reasons as to how this would benefit the project. CCC will be responding to NR shortly.

### Maintenance – acceptance of new routes

- 6.10 CCC will not agree to take on any new routes before commuted sums, as-constructed asset records, Technical Agreement In Principle, and certification have been agreed. This is comparable to what has been agreed with DfT for the A14 scheme, and to what happens for public path order applications under the Highways Act 1980 and the Town & Country Planning Act 1990 ('PPO applications'). The reasons are set out in more detail below.
- 6.11 Article 16(1) of the draft Order provides for NR to maintain the new routes and works for a period of 12 months. Article 16(11) provides that the new highways are to be completed to the reasonable satisfaction of the HA, and are to be maintained by and at the expense of NR for 12 months from their completion, after which they are to be maintained at the expense of the HA. CCC has to respond within 28 days of receiving a request for certification that it is satisfied with the works, or else the new highways will be treated as complete.
- 6.12 With PPO applications, it is usual for the highway authority to inspect the proposed alternative route with the landowner and to agree the suitability of the route, and any works that might be necessary. The TWAO process means that officers have not been able to visit many of the proposed new routes with the landowner to assess practical issues. Therefore CCC objects to article 16(1) and 16(11) on grounds that these provisions are insufficient to ensure that the new assets will be adequate for the purpose and ongoing maintenance. CCC requests that a new clause be inserted into article 16 to enable CCC to make pre-works inspections with NR to agree the works and design prior to construction. Technical approval in principle ('AIP') to the Design Manual for Roads & Bridges and other design principles agreed with CCC must be agreed before NR proceeds with any works.

### Certification of new routes

- 6.13 The 28 days set out in article 16(11) is insufficient for the highway authority to undertake the necessary inspections and administrative work. This would equate to more than one site a day, and the sites are spread wide across the county, with many requiring a long walk to reach them. As the programme of works is not known, and taking into account CCC's experience with NR during this TWAO process and other schemes to date, CCC does not wish to be committed to requirements it may simply not be able to meet. Therefore CCC considers it reasonable to request that the 28 days be amended to 56 days.
- 6.14 CCC also notes that there is provision for arbitration in article 40. Whilst this provision is acceptable in itself, CCC is concerned that articles 16(11) and 40 are insufficient to explain the mechanism as to what happens if CCC reasonably refuses to certify because the works are unsatisfactory. Therefore CCC objects to article 16(11) and request that it be expanded to clarify the mechanism.

### Commuted sums

- 6.15 Normally with rail crossing path diversions under the Highways Act, NR would be liable to maintain the new routes in perpetuity. The TWA covers compensation for private

landowners, but is silent on compensation and ongoing maintenance provision for highway authorities, except for the limited provision in article 16(1). NR held an initial meeting with CCC regarding commuted sums on the 17<sup>th</sup> January 2017. As this matter affects all the highway authorities concerned with NR's three orders, principles were agreed at a meeting of the regional Rights of Way ADEPT including Suffolk, Essex, Hertfordshire and Cambridgeshire County Councils shortly afterwards. These principles are that it is reasonable to require NR to pay commuted sums for:

- The ongoing maintenance of new structures, length of network and associated new street infrastructure in excess of the amount of CCC's existing assets.
- 1x replacement of PROW bridges plus remedial works @ 25% cost of initial works
- Other structures to the Structures ADEPT formula, e.g. steps and ramps

6.16 CCC therefore **objects** to this element of the Order and requests that NR agrees with CCC the commuted sum packages before any construction work commences. This request relates to the request at 6.9-6.11 above for an additional provision relating to detailed design, as, if this does not take place, inadequate commuted sums may be agreed, the cost for which would be borne by CCC.

#### Infrastructure & design principles

6.17 NR's design guide is set out at NR12 of its Application. It was based on discussions that took place in October 2016. Unfortunately, several routes and therefore design had not been agreed at that stage. There are thus a number of issues that need resolving.

#### *Gaps, gates, stiles*

6.18 BS5709:2006 sets out the order of preference for infrastructure on PROW. It is based on the principle that access should start with the least restrictive, being a gap; then a gate, and lastly a stile. Stiles are obstructive not only for wheel-chair users but also for those with hip and knee problems, and for dogs. CCC has been working for decades to remove stiles on the network in accordance with the BS and Equality Act 2010. There is a long-standing problem with the use of stiles on NR's crossings where gates would resolve accessibility and safety issues. NR verbally stated that it would not be using any stiles in the delivery of this scheme, but CCC wishes to ensure that is the case through the detailed design provisions outlined at 6.9-6.11 above.

#### *Surfaces*

6.19 CCC requests that the following design principles be agreed:

- Where private crossings are closed and agricultural traffic is diverted to public roads or rights of way, the latter are to be brought up to standard in order to enable them to take the immediate additional wear and tear. Passing places on narrow roads may need to be installed.
- Where byways are diverted or will be subject to additional wear and tear, they should be built to a Forestry Commission track-style specification or follow the 'Best of Byways' guidance.

- 6.20 CCC therefore **objects** to crossing closures C27, C33, C34 and C35 and the proposed alternative routes on this basis and requests that NR agree with us these design principles through the provisions outlined at 6.9-6.11 above.

#### *Fences and landscaping*

- 6.21 Fencing has been included in some of the proposals in the Order, and it is proposed to divert several paths over new routes adjacent to existing railway fencing. It is not clear at this stage where it is proposed to locate the fencing. CCC has, in discussion, requested that any fences are located a minimum of 0.5 metres away from the legal boundary of all new routes. This is because placing a fence on a path boundary soon starts to cause maintenance problems. The highway authority is not responsible for fencing, but it is CCC's experience that NR and other landowners do not maintain the vegetation that quickly grows up/out from it, restricting access. Machinery cannot tackle vegetation wound around fencing, requiring expensive handwork. This causes an additional burden on the highway authority. The clearance of overhanging vegetation would also be a NR responsibility that could be enforced by the highway authority (HA80 s154) – this increased burden on NR could be avoided if fencing placed further back. Further, if the fencing is immediately to the highway and then falls into disrepair, then there would be potentially an increased burden on NR, because CCC as the highway authority would be obliged to serve notice on NR under s165 HA80. However, if there was a gap between the highway and the fence, it is likely that CCC would be less inclined to pursue such an action.
- 6.22 Similarly, any landscaping planting should be set back a minimum of 2m from the legal boundary of all new highways, in accordance with CCC's *Guidance for developers & planners*<sup>6</sup> to prevent obstruction and an unnecessary enforcement burden on CCC.

#### *Haul routes*

- 6.23 As a general principle, PROW should not be used as haul routes for works, due to the arising wear and tear of the surface (which is an offence under s1 Criminal Damage Act 1971). Any proposed use should be agreed with CCC in advance, in order to establish to existing condition and agree any mitigation works that might be necessary. If NR propose to continue use of any of those haul routes for their own ongoing maintenance access, CCC may require NR to upgrade the routes to be sufficient for the purpose.

#### Legal issues

##### *Widths & Grid References*

- 6.24 Highway authorities are required to include widths and OSGRs in all public path orders, as noted at 3.14 above. Although Schedule 2 column (4) in the TWA0 is entitled 'Status and extent of highway', this only deals with the start and end point by letters annotated on the plans. 2.4.2-2.4.3 of the Design Guide at NR12 of the Application cites that new footpaths are to be 2m wide, and bridleways 3m. However, the Design

<sup>6</sup> <https://www.cambridgeshire.gov.uk/residents/libraries-leisure-&-culture/arts-green-spaces-&-activities/definitive-map-and-statement/>



Guide is not a legal event sufficient for the purposes of the DM&S. Neither the TWAO nor the Design Guide contain any proposed widths or OSGRs. CCC therefore **objects** to the lack of widths and OSGRs in the TWAO, and requires that they be inserted into Schedule 2 column (4), in order to enable it to comply with its statutory duties. CCC further **objects** to the proposed 3m width for bridleways. This is inadequate; CCC policy is 4m, particularly if routes are to be fenced on one or more sides. The British Horse Society prefers 5m.

#### *Changes to the DM&S – Legal Event Modification Orders required*

6.25 As noted at 3.13 above, when changes are made to PROW recorded on the DM&S through a public path or other order, order making authorities are required to make a 'legal event modification order' ('LEMO') to make the changes legally effective on the DM&S. Therefore every change arising from NR's TWAO will require a LEMO. These Orders also have to contain widths and OSGRs, and so CCC again **objects** to this missing information in the Order.

6.26 Further, it is CCC's policy to recover its costs from applicants for the LEMOs arising from PPO applications, in accordance with its published Schedule of Charges<sup>7</sup>. CCC therefore requests that NR are similarly required to pay for the legal orders required at the market rate. There is precedence for this with Highways England paying for all LEMOs arising from the current A14 scheme.

#### *BOATs – UCRs status*

6.27 At Schedule 14 of the draft Order it is cited that two unclassified roads ('UCRs') are to be redesignated as byways open to all traffic ('BOATs') (crossings C27 Poplar Drove in Littleport and C30 Westley Bottom Road in Westley Waterless). CCC does not believe that this is legally possible, because a BOAT is legally a public carriageway, defined by section 66(1) of the Wildlife and Countryside Act 1981 as:

"a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used".

6.28 As the two UCRs in question are public carriageways, the only real difference between the two categories relates to maintenance liability, whereby highway authorities are not obliged to maintain BOATs for mechanically propelled vehicles. As private vehicular rights will still remain over both crossings, it is difficult to see what benefit the change in status would bring. It is understood that the objective is to prohibit public vehicles with more than two wheels from using the crossing, which would be achieved through the application of a Traffic Regulation Order ('TRO') on a UCR. Even if the status were changed to a BOAT, a TRO would still be required.

6.29 Changing the status would require more LEMOs, and is, in CCC's opinion, legally and administratively unnecessary. Therefore CCC **objects** to these redesignations as a point of principle and requests that they be removed from the Order.

<sup>7</sup> <https://www.cambridgeshire.gov.uk/business/highway-searches/>

- 6.30 Notwithstanding that CCC disagrees with the proposal to downgrade these two UCRs to BOAT status, should the proposal proceed CCC would also point out that a width has not been specified for the areas to be downgraded and to which a TRO will be applied. This needs to be done.

#### Planning conditions

- 6.31 NR has applied to SoSdFT for planning permission for certain works under Rule 10(6) of the TWA Rules 2006 (Tab NR10 in NR's Application). CCC **objects** to NR's request that approval for detailed design and external appearance for footbridges be approved only by the local planning authority ('the LPA'). First, there is also a bridle bridge being proposed. Second, such standard bridges are not normally subject to planning permission. Thirdly, obtaining planning permission will not necessarily make a bridge acceptable to the HA, and all structures must ultimately be approved by the HA. If the condition is needed, it should be amended to:
- 'No development for a footbridge shall commence until written details of its design... have been submitted in writing for prior approval by the highway authority and may then be submitted in writing to and approved by the local planning authority.'
- 6.32 Similarly, CCC **objects** to the request for landscaping approval due to the reasons set out at 3.13-3.14 above. The condition should be modified to say that the location of any proposed boundary treatment, including planting and fencing, for all routes should be agreed in writing with the HA before submission to the LPA.
- 6.33 CCC further requests a condition requiring that no development shall commence until haul roads affecting public rights of way have been agreed in writing with the HA, for the reasons cited at 3.15 above.

#### *Archaeology*

- 6.34 CCC wrote to the Department for Transport ('DfT') on the 13<sup>th</sup> January 2017 setting out its position with regard to archaeology, ecology and flood mitigation in relation to the applicant's Environmental Screening Request (Document C).
- 6.35 In the CCC's response of 13<sup>th</sup> January 2017 to the applicant's Environmental Screening Request (Document C), CCC said that on archaeological grounds it did not recommend an EIA, nor alterations to the locations of proposed scheme features. However, it said that mitigation was required to ensure that the significance of historic environment assets is conserved, in line with government guidance. The measures required were shown on a spreadsheet provided with the response. This request does not appear to have been addressed, and so CCC now requests that a planning condition be included in the Order as follows:
- **CONDITION: Written Scheme of Investigation for Archaeology Works**  
No development shall take place until a written scheme of investigation (WSI) for an archaeological programme of works has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI which shall include:

- The statement of significance and research objectives;
  - The programme and methodology of site investigation and recording
  - The nomination of a competent person(s) or organisation to undertake the agreed works
  - The programme for post-excavation assessment and subsequent analysis, reporting, publication & dissemination, and deposition of the resulting archive.  
***This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.***
- Developers will wish to ensure that in drawing up their development programme, the timetable for the investigation is included within the details of the agreed scheme.
  - **Reason:** To ensure that the significance of historic environment assets is conserved in line with NPPF section 12.

#### Ecology

- 6.36 CCC previously advised Mott MacDonald, working on behalf of Network Rail, on 18<sup>th</sup> January 2017 that *“Appropriate mitigation will need to be included within the design of the scheme address potential impact on River Lark and Associated Habitats County Wildlife Site (C16/C17), River Great Ouse County Wildlife Site (C22) and protected species (particularly Otters, Water Vole and breeding birds)”.....*
- 6.37 CCC welcomes the two ecological conditions that have been included within the proposed conditions, but is disappointed that these only relate to impact to (i) breeding birds and (ii) unexpected discovery of a protected species during the works. They do not consider sites, habitats or species that will be affected by the proposals, for which mitigation strategy must be developed and agreed prior to commencement of works.
- 6.38 An additional condition is therefore requested to be included to secure the production and implementation of an Ecological Design Strategy (in accordance with British Standard BS42020:2013) to ensure an adequate mitigation scheme for all protected species, priority species/habitats and wildlife sites impacted by the proposal will be agreed prior to commencement of works. This should include additional surveys (as required) and long-term monitoring of the scheme and action for remedial works (if required).
- 6.39 CCC would suggest the following wording for the condition:
- **CONDITION: Ecological design strategy (protection, mitigation, compensation & enhancement)**  
 No development shall take place until an ecological design strategy (EDS) addressing mitigation, compensation, enhancements and restoration for wildlife sites (including River Lark and Associated Habitats County Wildlife Site & River Great Ouse County Wildlife Site) , protected species (including Otters, Water Vole and breeding birds) and priority species / habitats and has been submitted to and approved in writing.
  - The EDS shall include the following.

- a) Purpose and conservation objectives for the proposed works.
  - b) Review of site potential and constraints.
  - c) Detailed design(s) and/or working method(s) to achieve stated objectives.
  - d) Extent and location/area of proposed works on appropriate scale maps and plans.
  - e) Type and source of materials to be used where appropriate, e.g. native species of local provenance
  - f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development
  - g) Persons responsible for implementing the works, such as Ecological Clerk of Works
  - h) Details of initial aftercare and long-term maintenance (for the duration of the operation of the station).
  - i) Details for monitoring and remedial measures.
  - j) Details for disposal of any wastes arising from works.
- The EDS may include off-site compensation measures.
  - The EDS shall be implemented in accordance with the approved details and all features shall be retained in the manner thereafter.

## **7 Individual Crossing Objections**

### **7.1 C04 No Name No. 20, FP10 Meldreth**

CCC **objects** to the proposed closure of this popular crossing, as the alternative route is less safe for users than the existing route, and involves a lengthy diversion. NR points out there has been deliberate mis-use or user error, but NR's online summary of risk assessment does not identify any incidents.

7.2 The alternative route takes users past active poultry farm units, bringing them into conflict with busy HGV movements, and onto a narrow, unlit footway on Station Road near the summit of bridge. The width would not allow users to pass side-by-side without stepping into the carriageway, and would particularly affect wheelchair and pushchair users. The lack of a good footway is a known problem to local residents. It removes a pleasant off-road countryside circular route linking to Bury Lane byway and other footpaths. The path also links directly to the Bury Lane Farmshop. The majority of responses in the public consultations objected to closure, together with the County Councillor, the Parish Council and the MP.

7.3 CCC considers that the existing route is safer than the proposed route, and that more could be done to make the crossing safer if required, such as a whistleboard and miniature crossing lights and enable retention of the path.

### **C07 No Name No. 37, FP4 Harston**

7.4 The existing footpath enables a safe off-road walking, linking with a multi-user path in the verge towards the village of Newton. It is accessible to all, as there are only gates

on the railway crossing. It links to a popular nearby path leading to the Wade monument.

- 7.5 Whilst the benefit of the additional utility link in the road verge towards Newton is welcomed, overall the proposed solution is unsatisfactory, because it takes away an easy country path, replacing it with a considerably less enjoyable, more complex path that cannot be used by all abilities. It is significantly worse for the less able, due to the introduction of five major hazard points where there was previously only one, namely the railway crossing. The new hazards comprise two long (6m) flights of steps and three crossings over a byway and a busy B road, including on-road walking at a dangerous pinch point over the railway bridge.
- 7.6 The area is likely to see an increase in demand for countryside access, due to a large new housing development in Hauxton just to the north of Harston and a 500 unit care home. CCC requested a bridleway link on field-side of hedge north of road linking directly to BOAT 3 Harston (Donkey Lane) as mitigation for loss of the countryside path. This would support section 106-funded countryside access from the major Cambridge Southern Fringe development north of Hauxton.
- 7.7 Closure of this path could result in a negative impact on user behaviour away from physical activity, with associated impact on mental health.
- 7.8 The alternative would involve significantly greater asset liability due to the steps and additional length of off-road and verge path. There are no recorded incidents on this crossing. CCC **objects** to this proposal.

#### C08 Ely North Junction, FP11 Ely

- 7.9 This path is the gateway to the countryside north of the growing city of Ely. The path network has been cited in recent large housing developments as an important amenity. The proposed width of 1.5m for the northernmost section of the proposed alternative does not comply with the County Council's adopted policy for diverted paths, which is an unobstructed 2m. Fencing means that maintenance would be constrained, costing CCC, as set out at 3.13 above. The proposal achieves 20% in CCC's NMU Adoption scoring criteria (the threshold is 70%).
- 7.10 CCC therefore **objects** to the proposal as it stands. Should the width issue be resolved, CCC will withdraw its objection. The proposed retention of the dead-end eastern section represents an additional maintenance burden but CCC reluctantly agrees to retain it on the basis of its public benefit for local ecological and historical interest, and dog walks. This is on the proviso that the width issue is resolved, and that the extent is agreed on the basis of consultation with local users, as cited to NR in CCC's letter of 21<sup>st</sup> March 2017.

#### C11 Furlong Drove, BOAT 33 Little Downham

- 7.11 CCC **objects** to the proposed closure of this BOAT, as the alternative involves long and unpleasant diversions of up to 1.5km for vulnerable users on narrow roads with heavy haulage. The BOAT is a pleasant off-road route which afford equestrians a rare 2km gallop. It also forms part of the long distance promoted path known as 'The Hereward

Way', and runs between Little Downham and Welney at the Washes. No incidents have been recorded at the crossing. CCC is aware that the Trail Riders Fellowship ('the TRF'), the British Horse Society ('BHS') and the Ramblers' Association all object to closure of the route.

- 7.12 CCC Accident Investigation's initial comments are that the alternative on-road route is unsuitable for equestrians because the road is so narrow; the verges are unsuitable refuges due to variability in width and uneven surfaces, which could result in horses pitching their riders into the ditches or the road. They are also likely to be startled by heavy agricultural haulage. The alternative eastern route in particular is less safe than the existing route. The pedestrian lines on the alternative road level crossing at Main Drove go into rail infrastructure on either side, and there is no refuge. The crossing also needs work to better forward visibility as it is on a bend.
- 7.13 CCC would prefer the crossing to be formalised with a Traffic Regulation Order ('TRO') to retain connectivity for all NMUs and motorcyclists. The crossing could be realigned to make it perpendicular and thus safer to cross.
- 7.14 If the SoSDfT decides against CCC's position, CCC considers that it would be reasonable for BOAT 33 to remain at that status to the north of the railway, and for proposed bridleway link to be upgraded to BOAT to retain connectivity for motorcyclists, with or without a Traffic Regulation Order ('TRO') over this section. In order to retain connectivity and avoid the creation of a cul-de-sac on the southern side, CCC in earlier consultations requested a link from the southern section to run west and join with BOATs 34 and 35, but NR considered this was not possible. CCC requests that this be reconsidered.

#### C13 Middle Drove, March

- 7.15 CCC does not object in principle to public rights being downgraded to bridleway status, and welcomes the retention of the miniature warning lights and telephone. However, it is concerned to protect its ability to access the highway on either side for maintenance purposes. CCC therefore **objects** to the lack of provision in the Order of private rights of access for CCC for future maintenance purposes, and requests that CCC is granted these rights as a registered user.

### C16 Prickwillow 1, FP17 Ely

- 7.16 The proposed closure of this crossing and alternative using steps down the steep flood bank will significantly increase maintenance liability for CCC, because (i) of the introduction of two flights of steps and (ii) the fact that, currently, CCC's mowing contractor can drive over the crossing and continue along the bank. With the crossing closed and the steps in place, this will no longer be possible. Whilst it will be acceptable for the contractor to retrace his steps on the southern side, it is unreasonable to expect this on the northern side due to the long distance of several kilometres to the nearest ramped public access. This will significantly hinder maintenance and increase the time spent on the job. CCC has consistently requested that a ramp with private rights of access be provided in mitigation. It is apparent from the Order and proposed works on p39 at NR12 that this has not been provided.
- 7.17 Therefore, whilst CCC does not object to the closure and diversion of public rights via steps, it does **object** to the proposal on grounds of unreasonable increase in maintenance burden on the HA, and requests that the Order makes provision for a maintenance ramp with private rights of access to be built as near as possible to the steps on the northern side.

### C17 Prickwillow 2, FP57 Ely

- 7.18 The issues with this proposal are the same as for C16 Prickwillow 1, FP17 Ely. CCC **objects** to the proposal on grounds of unreasonable increase in maintenance burden on the HA, and requests that the Order makes provision for a maintenance ramp with private rights of access to be built as near as possible to the steps on the northern side.

### C20 Leonards, FP101 Soham

- 7.19 CCC **objects** to this proposal on the basis that the alternative route is not a suitable replacement because:
- The majority of users travel from the south, making circular routes with South Horse Fen Common and the popular 'Wicken Walks'. People walk to the pub in Wicken to the south-west. The alternative route is two and a half times as long for these users (rising from 200m to 555m).
  - Local opinion is that the enjoyment of these users would be significantly affected by the closure.
  - NR has recently invested in the crossing with new gates, and the County Council has recently installed two new bridges, none of which could be reused on the new route. Closure would therefore represent a waste of resources at a time of scarce public resource.
  - There are no recorded safety incidents. It is a long, straight stretch of line. The crossing is close enough to the Mill Drove road crossing that footpath users may be able to hear the automated warning sounds from the road crossing when a train is approaching.
  - In addition, the Ramblers consider that the approach along FP114 would be unattractive, as it traverses a heavy clay field.



- 7.20 Should the Secretary of State allow the proposal, CCC would offer an alternative solution that would make the proposal more acceptable to the County Council and stakeholders.

C24 Cross Keys, FP50 Ely

- 7.21 CCC has welcomed the response to objections from the public to the proposals for C10 Second Drove, Ely, C23 Adelaide and C24 Cross Keys, which needed to be viewed as a package due to the impact of the wider network. The improved solutions negotiated were vital in order to ensure that this important amenity for the well-being of local residents was retained. The mitigating solutions already require two additional steel/timber footbridges, which CCC will have to take on. CCC is surprised to note in the proposed Order plan (Folder 2, Sheets 9-12) that a third bridge 14m long is proposed where an existing private culvert is available nearby. This represents an unacceptable additional liability for CCC. CCC therefore **objects** to the proposal and requests that the route be amended to run over the culvert.
- 7.22 CCC has pointed out that the proposed changes will divert users to BR25 Ely as part of the circular route. The associated railway crossing is currently poorly surfaced and has a heavy vehicular gate that cannot be used by equestrians, and generally increases safety risk. CCC has requested that NR undertakes works to ensure that the crossing is easily accessible and safe to use by all users.

C25 Clayway, FP11 Littleport

- 7.23 The proposed closure of this path legally amounts to an outright extinguishment, as the alternative route is purely on an existing road. It represents the loss of a valued route regularly used by health groups. There are few public rights of way in the area, and so closure would have a considerable diminution of enjoyment for users and a potentially significant impact on healthy activity in a deprived area. CCC is concerned that if the route is extinguished, it could quickly impact on health activities in the area. For example, if the leader decides they are no longer attracted to lead walks, the whole group could cease to meet.
- 7.24 A previous attempt to close this path in 2006 in connection with the nearby housing development was unsuccessful, with the Inspector holding that the alternative road route and crossing was less safe than the existing route as it put users into direct conflict with road traffic. It also held that work could be done to make the existing crossing safer. Although NR proposes to create additional footway to reduce on-road walking, pedestrians would still have to share vehicular road space over the busy crossing.
- 7.25 There are no recorded incidents for the crossing, and CCC considers this to be a strong case where the existing access could be improved, as access is via a stile which could be changed to a gate allowing quicker exit from the railway. This is particularly important given that the route is well-used by local heartbeat groups. CCC therefore **objects** to the proposed extinguishment, and requests that mitigating improvements are made to make the crossing safer.

- 7.26 CCC would observe that Plot 30 appears to be very near the road, and that the land required for a 2m footway would appear to be on private land, as it is not already highway (cf plot 27 on Sheet 13). CCC also notes that the level crossing light on Plot 29 on Sheet 13, which is due to be used for the creation of the footway, currently obstructs the proposed route and will need moving.
- 7.27 CCC further notes that there is an anomaly between the legal line of FP15 Littleport and the walked route P045-P046, to which NR intends to create a connecting path. If the SoSDfT approves this proposal, CCC requests that the Order is amended to delete the section of FP15.

#### C27 Willow Row Drove, BOAT 30 Littleport (and C26, Poplar Drove, Littleport)

- 7.28 CCC welcomes the work that NR have undertaken with CCC to date to agree a solution for C26 Poplar Drove and C27 Willow Row Drove crossings and rights of way. is aware that the Trail Riders Fellowship ('TRF'), an acknowledged user group, object to the closure of BOAT 30, as it provides them with access to an extensive byway network, which would be lost.
- 7.29 CCC acknowledges that there is no reason why these users should be so singled out, particularly as access for motorcyclists is being retain at the adjacent C26 Poplar Drove crossing. CCC therefore considers it reasonable to request that the BOAT simply be diverted over the line of the proposed bridleway link, with a Traffic Regulation Order ('TRO') made, prohibiting 4x4 vehicles from using it. The TRO would ensure that maintenance liability for CCC could be controlled, and that unauthorised access to adjoining farmland could be prevented. The TRF confirmed to CCC that this would mitigate their concerns sufficiently to withdraw their objection. CCC wrote to NR with this proposal on 21<sup>st</sup> March 2017, and would welcome further discussion with NR to agree the solution. In the meantime, CCC **objects** to this proposal and requests that the proposal is modified as set out above.
- 7.30 In addition, CCC notes that the resident of The Bungalow adjacent to the Poplar Drove Crossing has raised concerns about the safety of users of the crossing, as he has observed the gate being left open by private users on a regular basis. Under NR's proposal, the vehicular gate at the Poplar Drove crossing would be locked and access given only to registered key holders, with a bridlegate installed alongside to allow public access for non-motorised traffic and motorbikes. If Willow Row Drove crossing is closed to all users, this would generate additional agricultural traffic along Poplar Drove, which could pressurise non-motorised leisure traffic. It could also increase the incidence of the gate being left open, putting lives at risk, affecting other user journeys, and increasing the potential for collateral damage to The Bungalow, should a collision occur. Therefore, if this proposal is carried through, CCC requests that NR responds to these concerns and considers additional safety measures.

#### C29 Cassells, FP1 Brinkley

- 7.31 FP1 Brinkley is a pleasant off-road country path linking directly to FP11 Little Wilbraham, popular with local walkers and rambling groups. The proposed closure of this path legally represents an extinguishment, as the alternative route is primarily on

the existing road or adjacent to it. There is an embankment between the road and NR's land where NR propose to create a new section of path, and it is not clear whether steps will be required or not. If so, this would significantly alter the accessibility of the route, as it is a gated crossing. If NR owns all of plot 07, it could put a ramp in to maintain a similar level of accessibility under the Equality Act 2010.

- 7.32 Brinkley Road is a UCR but it carries traffic to a busy junction leading to the A11 trunk road. It has been the site of 6 accidents since 2011, with a further accident on Brinkley road itself. Whilst CCC has been willing to consider extinguishment of the path due to its short length, in the interest of NR's strategic objectives, this is dependent on there being a satisfactory safe alternative. CCC has repeatedly requested NR to consult CCC's Highways Development Management team due to concerns about the safety of pedestrians in the road and additional infrastructure that would be required. NR has not done so to date.
- 7.33 The section concerned is completely unlit. There are already pedestrian markings on the road crossing. Whilst this infrastructure is NR's responsibility, if pedestrians are diverted to the road their safety becomes CCC's liability. Speed reduction measures would be required as users would have to cross at the level crossing where there is a kink in the road.
- 7.34 It is not clear what the status of the path on NR's land would be. The status must be definitive public highway. A permissive path would not be acceptable, as the rights could be withdrawn at any time.
- 7.35 CCC currently considers that the safest route is the existing footpath, and therefore **objects** to this proposal on grounds that the alternative route is not satisfactory. CCC requests NR to ask CCC's Accident Investigation Team to undertake a full road safety audit, and to work with CCC to identify if a satisfactory design can be agreed that meets CCC's safety and asset maintenance requirements.

### C33 Jack O'Tell private crossing, Waterbeach

- 7.36 Closure of this private crossing severs the landowner's link to his yard and means that agricultural traffic would have to use the highway network, which would result in a long diversion. The Order plans do not show the alternative routes. CCC considers that there would be a significant adverse impact on the local highway and PROW network, resulting in an increased HA liability. The highways concerned are small fen roads, and are in a poor condition due to nature of subsoil and existing traffic. Therefore additional heavy agricultural machinery will exacerbate the problem and CCC's liability.
- 7.37 Existing farm traffic is known to run off Long Drove carriageway, causing deep hazards to the edge of the road and users. Increasing the volume of private farm traffic onto this road likely to increase number of claims against the HA, again increasing the burden on CCC. Carriageway patching would be required to bring up to standard, and four passing places would need to be created to take additional passing traffic.

- 7.38 Part of the alternative route would be over FP17 Waterbeach, causing damage to the route which again increases HA liability. Sharing the route with agricultural traffic would also diminish enjoyment for pedestrians.
- 7.39 CCC is disappointed that NR has not, until 14<sup>th</sup> June 2017, responded to requests to discuss the matter. It is hoped that a meeting can be arranged in July to move the matter forward. In the meantime, CCC **objects** to this proposal on grounds that the alternative routes are unsatisfactory and have a disproportionately negative impact on the highway network and CCC maintenance liability.

#### C34 Fyson's private crossing, Waterbeach

- 7.40 The issues are largely the same as for C33 Jack O'Tell, except that no public footpaths would be affected. CCC therefore **objects** to this proposal on grounds that the alternative routes are unsatisfactory and have a disproportionately negative impact on the highway network and CCC maintenance liability. CCC requests that NR agrees mitigation measures with CCC to enable CCC to remove its objection.

#### C35 Ballast Pit private crossing, Waterbeach

- 7.41 The issues are largely the same as for C33 Jack O'Tell, except that Public BOAT No. 14 Waterbeach would also be affected. This byway surface is soft and additional traffic would impact upon its condition and public enjoyment, which would put additional resource pressure on highway authority to resolve. The surface would require improvement to CCC's satisfaction.
- 7.42 CCC is aware that the proposed new town at Waterbeach could result in this BOAT 14 being incorporated into the development in due course. However, this is some years away, and so the highway network will still require the mitigating improvements in the meantime. CCC therefore **objects** to this proposal on grounds that the alternative routes are unsatisfactory and have a disproportionately negative impact on the highway network and CCC maintenance liability. CCC requests that NR agrees mitigation measures with CCC to enable CCC to remove its objection.

## **8 Individual Crossing Holding Objections**

#### C03 West River Bridge, FP7 Little Thetford

- 8.1 This path is located on a high bank above the Old West River, and is part of Fen Rivers Way long distance promoted route. The proposed alternative diverts the path down under the railway bridge at river level. CCC has repeatedly requested flood data in order to enable us to fully analyse the implications and agree any mitigation required. CCC has no mechanism to provide a warning to users if the river is in flood. People may take a risk in the water or be faced with long diversions, as there are very few crossing points over the river.
- 8.2 Surface improvements must be made under the railway bridge to enable it to withstand flooding and pedestrian use. Any required mitigation infrastructure must

be installed to CCC and Environment Agency ('EA') approval, and commuted sums may be required.

- 8.3 CCC therefore makes a **holding objection** until such time as these issues are resolved, and reserves the right to object if a solution cannot be found.

#### C21 Newmarket Bridge, FP24 Ely

- 8.4 This path is located on a high flood bank on the eastern side of the River Great Ouse. CCC has repeatedly requested flood data in order to enable the Authority to fully analyse the implications and agree any mitigation required. It is also not clear from the description of proposals on p40-41 of the design guide at NR12 how users are expected to descend and ascend the bank to the underpass. Any required infrastructure must be installed to CCC and EA approval, and commuted sums may be required. CCC has no mechanism to provide advance warning to users if the river is in flood. People may take a risk in the water or be faced with long diversions, as there are very few crossing points over the river.

- 8.5 CCC therefore makes a **holding objection** until such time as these issues are resolved, and reserves the right to object if a solution cannot be found.

#### C22 Wells Engine, FP23 Ely

- 8.6 This is a popular long distance, double-designation promoted path, the Fen Rivers Way and the Ouse Valley Way. It is located on a high flood bank on the western side of the River Great Ouse, which flows from Huntingdon to Ely and beyond to the Washes. The Fen Rivers Way runs along the River Cam from Cambridge to King's Lynn, joining the Great Ouse at Little Thetford to the south of Ely. The routes support rural tourism and the local economy. The Fen Rivers Way between Cambridge and Ely is particularly popular, with often walking the 16 miles one way and then catching the train home.

- 8.7 The proposed alternative diverts the path down under the railway bridge at river level. CCC has repeatedly requested flood data in order to enable the Authority to fully analyse the implications on users, health and well-being, and tourism, and to agree any mitigation required. Any required infrastructure must be installed to CCC and EA approval, and commuted sum may be required. CCC has no mechanism to provide advance warning to users if the river is in flood. People may take a risk in the water or be faced with long diversions, as there are very few crossing points over the river.

- 8.8 CCC therefore makes a **holding objection** until such time as these issues are resolved, and reserves the right to object if a solution cannot be found.

#### C31 Littleport Station, Station Road, Littleport

- 8.9 The purpose of this proposal is to assist in enabling NR's King's Lynn-Cambridge 8-Car Scheme through the closure of the private barrow crossing in the station, used by passengers to access the platforms. Pedestrians would be diverted to CCC's highway underpass. NR proposes to achieve this by making a TRO prohibiting vehicles from using the underpass (see at Sch15 of the draft Order (TR003-TR004, Sheet 14)). CCC

supports the 8-car scheme, as it will play an important role in the development of the local economy.

- 8.10 However, CCC observes that no traffic impact assessment has been provided to justify the closing underpass to vehicles, particularly with regard to the projected future growth of Littleport. Intensification of use of the station and the planned growth of Littleport requires complementary infrastructure to be provided if the underpass is to be closed to vehicles. CCC therefore makes a **holding objection** to this proposal, and requires that the assessment be provided to enable CCC to undertake the necessary analysis.
- 8.11 CCC also notes that the planning permission ref 16/01729/F3M for a new car park adjacent to the railway, approved by East Cambridgeshire District Council on the 3<sup>rd</sup> March 2017, obviates need for proposed Traffic Regulation Order. This is because, if the planning permission is implemented, the development will provide the safe pedestrian walkway required by CCC for the NR scheme. Further, the proposed raised walkway is not a permanent solution to the drainage problem, and positive drainage is required. CCC therefore requests that, if the planning permission is implemented, NR does not implement the TRO, and that NR agrees the drainage solution with CCC before any works commence. CCC requests that this be inserted into Request for Planning Permission as a **planning condition**.

## 9 Summary

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- 9.1 In summary, the Cambridgeshire Order, as drafted, would result in:
- Three total path extinguishments, replaced with on-road walking;
  - Diversions resulting in a cumulative increase in length of path network of over 7km and associated maintenance;
  - Extinguishments and diversions resulting in 7.7km of on-road walking, cycling or horse-riding;
  - Extinguishments resulting in an additional 20km of diversion for vehicles;
  - An increase of more than twice the number of existing bridges (9 instead of 4) and associated maintenance liability;
  - Six new flights of steps up to 7m long and one culvert;
  - At least 258m of additional street infrastructure and associated liability; and
  - The diversion of agricultural traffic onto 27km of highway and associated additional wear on the network, and the increased potential for congestion and traffic management issues.
- 9.2 Whilst the proposals would clearly benefit NR's asset management, it is not, in general, clear how they would directly improve transport services. However, the disbenefits associated with the proposed changes are more evident. CCC's principal concerns relate to the impact of closures on public health and well-being (physical and mental), and the associated cost to the public purse; the net increase in safety risk for NMUs arising from 'diversion' of many routes onto roads with additional crossing points; the significant transfer of risk and asset liability to CCC from NR; and the cost to the Authority involved in responding to and implementing the Order. CCC would have preferred to have been

able to work with NR for longer to agree solutions, whether for the immediate GRIP stage or future stages<sup>8</sup>. Consequently, CCC is objecting 15 of the 29 proposals. CCC would welcome continued working with NR to resolve these objections prior to inquiry.

- 9.3 CCC acknowledges that this is the first time that the TWA has been used for the proposed purpose. It has identified a wide range of in-principle problems with the draft Order, leaving CCC no option but to object to these points. CCC trusts that these issues can be resolved, not only in the interest of local users, communities and highway authority liability but in the broader interest of future schemes, and hopes that NR will continue to work with CCC to improve the wider transport network for all.

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<sup>8</sup> 'GRIP' is the Governance for Railway Investment Projects