

# Cambridgeshire Level Crossing Reduction: Objection from South Yorkshire Pensions Authority



## 1 INTRODUCTION

1.1 We act for and this representation is made for and on behalf of the South Yorkshire Pensions Authority (the "SYPA").

1.2 **The SYPA objects to the Order in so far as it provides for the downgrading of crossing C28 and asks that this crossing is removed from the proposed Order.**

1.3 The legal effect of the proposed Order is currently unclear and may result in the current public highway access being removed. At the very least, there is uncertainty on the status of access rights which the SYPA currently enjoy. This may result in the SYPA being unable to access its property and will affect its property value. The SYPA accordingly requests that C28 crossing is not downgraded and the powers relating to this crossing are deleted from the proposed Order.

## 2 BACKGROUND

2.1 The SYPA owns land at Cross Drain Farm, in the Parish of Littleport served by the public highway Black Horse Drove and which will be affected by the proposed changes to crossing C28.

2.2 Black Horse Drove is a public road which runs approximately 240m west beyond the crossing C28 where it joins the property of SYPA and becomes private. The SYPA's landholding is registered under title number NK131283 and directly adjoins and is served by the adopted public highway Black Horse Drove.

2.3 The property of Cross Drain farm is currently unoccupied and in need of refurbishment. Agents instructed by the SYPA have been undertaking work throughout 2017 to progress suitable development proposals for this property in order to realise its value to the pension fund. As the property is currently unoccupied there has been limited need to take regular access to it over the crossing and the survey work done by Network Rail does not reflect the potential increase in use from bringing this property back into occupation.

## 3 REASONS FOR OBJECTION

3.1 The proposed Order would confer powers to extinguish all public rights at the crossing C28. The crossing would become a private user worked crossing for registered users.

- 3.2 Network Rail assert that the closure will not affect the rights beyond the crossing, however that right accrues through the status of the road as a public highway, there is no private access right in place. Network Rail has stated in its note<sup>1</sup> that the affected owners would be entitled to continuing access over the road “whether by private treaty or by operation of law” but has provided no explanation of where these rights accrue from, how they would be secured, which law they consider applies, where maintenance liability would lie or the extent of the rights. This statement is, therefore, a vague assertion which provides no comfort to the SYPA and does not in any way address the problem that its proposal is creating.
- 3.3 The crossing proposal states that rights would be maintained for owners of properties but does not specifically refer to the Highway Authority. As such, the Highway Authority would not appear to have rights to access the stretch of public highway beyond this crossing. Network Rail’s failure to include the Highway Authority in the proposed clarification demonstrates they have not properly thought through the consequences of the proposed closure.
- 3.4 Cambridgeshire County Council, as the relevant Highways Authority, has been imprecise in its views as set out in its letter<sup>2</sup> as regards the future status of this stretch of road. As things stand, CCC’s position is that the effect of the Order is likely to result in the stretch of road to the west of the level crossing no longer being a highway. This is an unsatisfactory position and affects the SYPA’s access to its property and in turn the value of that property.
- 3.5 Searches carried out on behalf of the SYPA have not established the owner of the subsoil of the road and we note that the CCC letter provides that it does not own the subsoil. The presumption in law is therefore that the owners either side of the current road own up to the midline – this does not include the SYPA who would have no right to cross another’s private property. CCC has advised that, in its view, the closure of crossing C28 is likely to extinguish this highway and has advised that affected owners seek an easement from Network Rail. We do not believe that Network Rail is in a position to grant such rights as they do not own the land concerned. Our clients’ are accordingly caught between NR and CCC who have failed between them to properly address and clarify the legal and practical impact of the proposal and who both appear to wish to try and make resolving this matter the responsibility of the affected landowners, at unnecessary expense and with uncertainty of the result to them.

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<sup>1</sup> Network Rail note 5 on C28 – Black Horse Drive dated 08 December 2017

<sup>2</sup> Dated 27 November 2017

- 3.6 The current situation means that access rights could be completely lost, with no proposals to protect the SYPA, simply stating that the compensation code will apply is inadequate.

#### **4 CONCLUSION**

- 4.1 The Transport and Works Act Order sought should not be made in its current form leaving the question of SYPA's access to its property unclear. The provisions permitting the downgrading of the C28 crossing should be removed and the current status of the Black Horse Drove road as public highway up to the boundary of the SYPA's property maintained.

**19 December 2017**

**Burges Salmon LLP**