

Sir,

My name is Philip Hodson
[REDACTED]

My submission is that Network Rail is demanding of the Minister of State for Transport an Unconstitutional Act according to the custom and constitution of England, in that it is seeking imposition of an Order by the Minister of State for Transport in over-ride of the communities which that Order affects.

I object to the Order on the following grounds.

I submit that there has, to date, been serious miscarriage of due process.

Allow me to summarise how Orders may be implemented.

English Law is based on the laws of King Alfred. He became King of Wessex in AD871. He made it a first duty to organise the laws of his kingdom, and did this by visiting the villages and peoples of his land, asking them about, and recording their customs, habits and behaviours. From this, he built the laws and orders of England.

The essence of our Laws' strength and acceptance among the People is that English Law contains the Voice, Will and Aspirations of the People. - Quite different from despotic systems of so much of the world. Originally, English Law was a rare and precious system of governance.

Rare for so long, English Law spread as a viable and admired form of government throughout the British Dominions. By 1913, British Dominions held sway over 412 million people, 23% of the world's population at the time. By 1920, they covered 24% of the Earth's total land area. (Source https://en.wikipedia.org/wiki/British_Empire). As a result, English political, legal, linguistic and cultural legacy is widespread.

The essence of English Law is its emphasis on gaining the consent of the majority of a community before enshrining orders and law. As a child, I had direct experience of this. In the late 1950's, in Southern Rhodesia, the Native Affairs Department employed teams of native commissioners who would spend weeks in the bush specifically to learn African ways so that English law might accommodate and include the local peoples' preferences and expectancies. My Godfather was a native commissioner. I realise now, I was privileged to witness the promulgation of English Law, by Britons intent on bringing good governmental practice to the regions.

Network Rail's Consultations.

That including the consent of communities to a government action is still influencing today's procedures is reflected by Network Rail's lists of efforts to "make consultation", these efforts declared on pages 37 and 38 of Network Rail's Statement of Case July 2017. But, what is very clearly missing, is the next stage, the most

essential stage, that of intent to include learnings from the consultations into any intended Order. These learnings of community aspirations have not been recorded in Network Rail's Statement of Case. There is no statement that Network Rail intends to include what it has learned into the orders it seeks.

Network Rail says it has complied with the Transport and Works Rules of 2006 but, without those inclusions of community aspirations into any proposed order, efforts to consult with communities become vacuous.

Network Rail has made Request to Close or modify Crossings

Page 39. Para 152. The Suffolk Level Crossing Order was deposited on 24th March 2017. It requested powers to implement changes at 24 crossings.

After the Order was submitted, the Department of Transport invited objections and representations, these to be submitted by 5th May 2017, only a month and a half after the Order was submitted!

But **The public have not been shown this order, and did not know what to object about. The very short timescale of a month and a half disabled the Newmarket community as a whole to come to understand what was happening.**

So, while I have no doubt that Network Rail has fulfilled its obligations by publishing its intent as required according to the Transport and Works Rules of 2006, by November 2017 the majority of the residents of Newmarket, still remained with no idea that their pedestrian rail crossing, S22 The Weatherby Crossing, is being considered for closure.

Following the instruction to submit objections by 5th May 2017, a small response of 23 letters of objection were received by 1 November 2017. Out of a population of some 20,000 town-residents this indicates that the residents of Newmarket have not been sufficiently consulted.

Although a small public response should have rung "alarm bells", there is no indication that Network Rail attempted to rectify this insufficiency of public awareness.

There were no explanatory meetings arranged by Network Rail in Newmarket. The nearest was in Bury St Edmunds in 2016, at an address, allegedly "difficult to find" for the few who did attend. At no time did Network Rail act as the native commissioners of Southern Rhodesia, by sending their representatives into the high-roads and by-roads of Newmarket town to speak personally with, to learn the customs, habits and aspirations of the community for their railway crossing.

For this, I allege that Network Rail has not done its public duty. If it has fulfilled requirements to satisfy the Transport and Works rules, then the Transport and Works rules are an insufficient measure, for the process has not been at all effective in informing the citizens of Newmarket.

In the circumstance of Network Rail failing to fulfil its public duty, I took actions to inform the public, soon to be assisted by Patricia Collins, (local resident), Michael Smy (local resident), and Dr Rachel Wood, governor of All Saints School near to the Crossing.

I wrote regular letters to the local press warning of the closure.

I commissioned and started to distribute leaflets to residents local to the Weatherby Crossing.

When I started distributing leaflets about the proposed closure on 17th November 2017 and thereafter, too many Newmarket individuals told me that they were not aware of impending closure of the crossing. I did, however, learn the views of many of those I leafleted.

This enabled me to word a petition which said:-

Most residents of Newmarket want or need the pedestrian Weatherby Railway Crossing to remain open.

Some 400 crossings are made each day on foot, 146,000 crossings a year.

Many are happy for a foot-bridge to accommodate prams and mobility scooters instead of a level crossing.

I, the undersigned below, petition for the Weatherby pedestrian rail crossing at Newmarket to remain open:-

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I started my petition on 9 December 2017 and together with Patricia Collins, gathered some 350 signatures by 9th January 2018. This represents a small reach into the community but compared with the, “only 23 objections received” as indicator of Network Rail’s reach into the community, Network Rail’s effort compares unfavourably to my petition.

Network Rail – As a Public Servant

Network Rail claims the Weatherby Crossing to be a Permissive Path. My understanding is that it is a Private Landowner who gives permission to use his paths, thereby making them “permissive”.

However, Network Rail is not a private landowner but a Public entity in which the utilities, buildings and grounds it manages are publically owned. Therefore, I propose that the crossing must be treated as in public ownership, a public way, and that rights to use this way have been earned by the Newmarket community through many years of walking the crossing without hindrance, in my view, meaning that there is Public Right of Way.

According to Blackburn with Darwen Council, on its website, Public Rights of Way may be closed but only if there is,
firstly, a nearer or more commodious route available to the public,
Secondly, if closure is in the interest of the landowner or public, and
thirdly, that the alternative route will not be less convenient or less enjoyable to the public.

Closing or diverting a public right of way

<https://www.blackburn.gov.uk/Pages/Closing-or-diverting-a-public-right-of-way.aspx>

- **Unnecessary highway**
- A public right of way may be closed if it can be deemed to be unnecessary and if there is a nearer or more commodious route available to the public.
- **In the interest of the landowner or public**
- Under section 118 of the Highways Act 1980, landowners may apply to divert a public right of way on their land if they can demonstrate that it is beneficial to move the path and **that the alternative route will not be less convenient or less enjoyable to the public.**
- **There is nothing about closing a public right of way on grounds of safety and accepting a less convenient alternative route in lieu.**

So:-

- Network Rail is a Public Servant tasked with providing sound transport and maintaining public utilities related to travel. One such type of public utility is a rail crossing, which, if it wishes to consider for closure, then Network Rail must provide nearer or more commodious routes to the public or alternative routes which will not be less convenient or less enjoyable to the public.
- At the Weatherby Crossing, Network Rail is not able to provide more commodious facilities by simple closure.

Further

- Excessive demands for risk avoidance and safety are not included as cause for closure of a public right of way, according to the Blackburn with Darwen Council website, so, are not cause for closure of this pedestrian rail crossing.

There needs to be moderation in the proportionate value we attach to risk. Zero Tolerance of any risk eventually causes severe social discomfort. By way of comparison, electricity is an unseeable force which spreads instantly through water and metal, which jumps gaps and has the capacity to kill. In today's mentality of zero tolerance of risk, electricity would never have been permitted.

- Common sense needs to be applied. The majority view of the Newmarket community is that this crossing is sufficiently safe as it is. That is what people have told me, with only very few exceptions. Before Network Rail furthers its claims of risk, Network Rail needs to get into the community to confirm that this is the view of Newmarket people.
- Most of the Newmarket community I have spoken to, tell me they may accept a bridge in lieu, but would prefer the present level crossing to remain. Again, Network Rail needs to get into the Newmarket Community to establish this, as well.

Network Rail - Achieving closures

There seems to be oversight about how government orders may be created and applied.

In war, the British government has in the past, requisitioned land and made other orders over the heads of the People, all this in the National Interest. But now, we are not at war. In normal times, it is the due process of English Law which must apply.

Under English Law, it is the matter of including the will of the Suffolk communities which the Minister of State for Transport is bound to include when making of any Order relating to railways in Suffolk.

Network Rail already says it has achieved closures. (Page 30 Para 110). It says some closures have been obtained through community consent, which shows Network Rail is not ignorant of the democratic need for a public body to obtain community consent. But then it says other closures have been obtained through the Highways Act of 1980, which seems to imply there has been over-ride of community assent.

Network Rail then says,

(Page 30 Para 110). Success of the closure programmes has depleted opportunities for proceeding by negotiation.

It now seeks a Transport and Works Act Order to enforce its intent to remove the remaining rail crossings.

My submission is that Network Rail is demanding of the Minister of State for Transport an Unconstitutional Act according to the custom and constitution of England, in that it is seeking imposition of an Order by the Minister of State for Transport in over-ride of the communities which that Order affects.

In summary, a Minister of State for Transport has prime duty to ensure any order he makes is in line with the spirit and essence of the English Constitution. Network Rail is asking of the Minister to engage in an enforcement Order which may be in over-ride of the community aspirations to which the Order applies. This is unconstitutional and not allowable.

Compensatory indication for the community of Newmarket upon closure of the Weatherby Crossing.

For this section, I use the cost of a single taxi fare from the middle of Newmarket High Street, (Greg's Bakery) to the junction of New Cheveley Road/Cricket Field Road. A taxi firm tells me this might be £4.00. Therefore a return journey is £8.00.

Computing the cost of lost opportunity to cross the Weatherby Crossing.

- 1) Let there be one Newmarket citizen who habitually makes a return crossing of the rails once yearly. With the crossing closed, he now has to take a taxi. The cost to him is now £8.00.

However, before the crossing was closed, this individual was free to make his crossing on any day of the year. He has now lost opportunity of 365 days annually. The cost of this lost opportunity to him is therefore $365 \times £8.00 = £2920$.

- 2) A second individual has been making return journeys of the Weatherby Crossing, once daily every day of the year. He also, has lost 365 opportunities to cross. The Opportunity Cost to him is also £2920.
- 3) Now, let us assume that the population of Newmarket, South of the High Street and encompassing the Weatherby Crossing, stands at 10,000 persons and that all these persons use the crossing. Each of them lose 365 opportunities annually to cross the rails.

The cost of losing the opportunity to cross the rails now stands at 10,000 persons x £2920 = £29,200,000 per annum.

However, the cost of lost opportunity is not the full cost.

Our person who is in the habit of crossing once-yearly, must now pay £8.00 to hire a taxi for his one return journey in the year.

The person who crossed every day of the year, must now hire a taxi for £8.00 x 365 days, = £2920.

For the purposes of illustration, let us assume half of the 10,000 persons cross once a year, the other half daily.

The total taxi costs are now 5000 persons x 365 days x £8.00 = £14,600,000

Plus: 5000 persons x 1 day x £8.00 = £40,000

Total fares cost:- £14,640,000 per annum.

The total compensatory claim can now stand at:-

recompense for lost opportunity to cross:-	£29,200,000
And Total fares cost of	£14,640,000
A total annual compensatory claim of	£43,840,000

However, this figure excludes the possible Inland Revenue charges issued to recipients. IF HMRC regards these payments as non- taxable, then there is no addition.

But if tax is payable, then the cost rises from between 20% and 40% depending upon current recipients' incomes.

Let us add an overall tax liability of 30% for the 10,000 residents.

Total annual compensatory claim could now be £13,152,000 tax plus £43,840,000 compensatory sum = **£56,992,000 annual compensatory sum at a return taxi fare of £8.00.**

On top of this again, is Network Rail's costs to administer this compensatory scheme for as long as the Weatherby Crossing remains closed.

Taxi fares are likely to increase annually, and so the compensatory sum will increase in line.

This Sir, ends my Prepared Statement.

I thank you Sir,