

TRANSPORT & WORKS ACT 1992
APPLICATION FOR THE PROPOSED
NETWORK RAIL (ESSEX and OTHERS LEVEL CROSSING REDUCTION) ORDER

STATEMENT OF CASE ON BEHALF OF:

Francis Paul Braeckman
Department of Transport Reference: TWA/17/APP/05/OBJ/123

1. Introduction

- 1.1 This Statement of Case is submitted by Strutt & Parker LLP (S&P) on behalf of Mr Francis Paul Braeckman in connection with their objection made against the proposed Network Rail (Essex and Others Level Crossing Reduction) Order.
- 1.2 An original objection can be found in S&P's email to the Secretary of State for Transport of 10th May 2017, attached as **Appendix A**.
- 1.3 This Statement of Case is submitted in response to a letter dated 25th May 2017 from Angela Foster of the Department of Transport under rule 7(3) of the Transport and Works (Inquiries Procedure) Rules 2004.

2. Background

- 2.1 Mr Francis Paul Braeckman is one of three freehold owners of the land east of the M11 motorway, West of the railway line (Title Number EX803741)
- 2.2 All of the land at 2.1 is identified on the plan at **Appendix B**.
- 2.3 All of the land at 2.1 is occupied and farmed by P A Braeckman & Sons of which Mr Francis Paul Braeckman is a partner.

3. Impact of Order

- 3.1 The extent of the land to be lost to this scheme is hard to determine from the plans provided. This is partly due to the fact that all but one of the plots containing the new footpath have been labelled temporary use of land yet include a footpath. We estimate that at least 6658m² of land and interests may be compulsorily purchased for this proposal for which our client is entitled to the loss of value in respect of retained holdings as well as land taken. Notwithstanding public opposition to this proposal, Network Rail, as a partially public funded body, is proposing to incur costs to achieve these proposals. It is understood that the proposal will involve the extinguishment of existing public access, EX|25|7, albeit this has been closed for some time on the ground.

3.2 The area that we have highlighted in pink on the attached drawing no. (MMD -367516-E06-GEN-005), which can be seen at **Appendix B**, creates a new footpath on our client's land. This new route is also shown between points P083 and P088 on Sheet 13 found in Document NR8 of the Network Rail (Essex and Others Level Crossing Reduction) Order. We consider that this new footpath in its totality is an entirely unnecessary addition of over approximately 1.5km of public rights of way when there are sufficient alternatives within the existing public rights of way network. The proposed addition does not connect any of the users to existing public rights of way on the Eastern side of the railway line, it creates a whole new route. The proposed addition to the South East of the crossing joining EX|32|22 and EX|25|15 provides the necessary alternative rights of way to connect those users that would have crossed at E06 to the public rights of way network that they would have been accessing to the East of the railway line.

3.3 The area of footpath that we have highlighted in pink (**Appendix B**) proposes to connect EX/25/32 to EX/51/24 creating an entirely new public right of way that has never existed and never been shown to be required. We do not see why this should be acquired over our client's land as it is not in the public interest.

3.4 The guidance provided by the Department of Transport 'A Guide to TWA Procedures' states that "before confirming [compulsory purchase] powers, the Secretary of State will wish to be satisfied that there is a compelling case in the public interest for taking away a person's land or rights in land, and that all the land in question is required for the scheme" (paragraph 1.39 of Part 1). The first phase consultation does not provide a compelling case which is in the public interest.

4 Proposed Alternative

4.1 We believe there are sufficient alternative routes within the existing public rights of way network to ensure the public interest is maintained following the closure of E06 crossing as detailed in 3.2 above.

4.2 The general direction of all of the existing rights of way are west to east, the proposal is considerably large addition to the public rights of way network and is considered highly unnecessary. Footpath EX|51|13 runs the same direction as the proposed connecting the public rights of way network at Elsenham to the north at Ugley. With the closure of EX|25|7 it would be less damaging to my clients and a much simpler solution to further close EX|51|24, EX|25|37, EX|51|31 and EX|25|38 given the closure of the level crossing marked green and crossing E07 – Ugley Lane to the north. To the south the closure of EX|25|32 and EX|51|14 would simplify the proposed diversion. Clearly the proposed addition has never existed and never been shown to be required given the existing network and the proposal is over and above the closure order.

Edward Rout

From: Edward Rout
Sent: 10 May 2017 22:43
To: transportandworksact@dft.gsi.gov.uk
Subject: Network Rail Essex and Others Level Crossing Reduction Order
Attachments: Scanned from a Xerox Multifunction Device.pdf

Dear Sirs

We are instructed by Francis Braeckman who owns land affected by the proposal for E06 – Elsenham Emergency Hut Level Crossing.

We are instructed to object to the proposed creation of a new footpath in our client's field and we raise objections on the following points:

1. That the area that we have highlighted in pink on the attached drawing no. (MMD -367516-E06-GEN-005) creates a new footpath on our client's land. This new route is also shown between points P083 and P088 on sheet 13. We consider that this new footpath in its totality is an entirely unnecessary addition of over approximately 1.5km of rights of way when there are sufficient alternatives within the existing rights of way network. The proposed addition does not connect any of the users to existing rights of way on the east of the railway line, it creates a whole new route. The proposed addition to the south east of the crossing joining EX|32|22 and EX|25|15 provides the necessary alternative rights of way to connect those users that would have crossed at E06 to the rights of way network they would have been accessing to the east of the railway line.
2. The area of footpath that we have highlighted in pink which appears to be connecting EX/25/32 to EX/51/24 creates an entirely new right of way that has never existed and never been shown to be required. We do not see why this should be acquired over our client's land.
3. The general direction of all of the existing rights of way are west to east, this is considerably large addition to the rights of way network that due to the closure of the level crossing marked green 2 years ago is considered highly unnecessary. Particularly as route EX|51|13 runs the same direction connecting the rights of way network at Elsenham to that of the north at Ugley. With the closure of EX|25|7 it would be less damaging to my clients and a much simpler solution to further close EX|51|24, EX|25|37, EX|51|31 and EX|25|38 given the closure of the level crossing marked green and crossing E07 – Ugley Lane to the north. To the south the closure of EX|25|32 and EX|51|14 would simply the proposed diversion. Clearly the proposed addition has never existed and never been shown to be required given the existing network and the proposal is over and above the closure order.
4. My client is concerned that not only does the additional route provide very little amenity value given its proximity to the M11 but that it will encourage trespass on the railway line which could be more dangerous than the existing pedestrian crossing both to the trespasser and rail users. The order is a level crossing closure plan not a footpath improvement plan.

They have no objection to the closure of Level Crossings and fully understand the important safety requirements to do so.

We look forward to hearing the outcome of your consideration of this objection.

Yours faithfully

Edward

Edward Rout MRICS FAAV

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Partner

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Land Business

'WHATEVER HAPPENS, FARMING WILL NEED TO CHANGE'
What must rural businesses do to gear up for Brexit? We get the views of experts from across the agricultural sector.
Read the article >>



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E06 Elsenham Emergency Hut Proposal
Private: No existing or proposed rights

Public: Existing footpath rights removed, users divert to alternative Elsenham level crossing to the south
Infrastructure: Proposed fencing to tie into existing features east of the railway: Type F4 (approx length 1m),
Proposed fencing to tie into existing features on west side of the railway: Type F7 (length approx 1.5m)

E07 - Ugley Lane

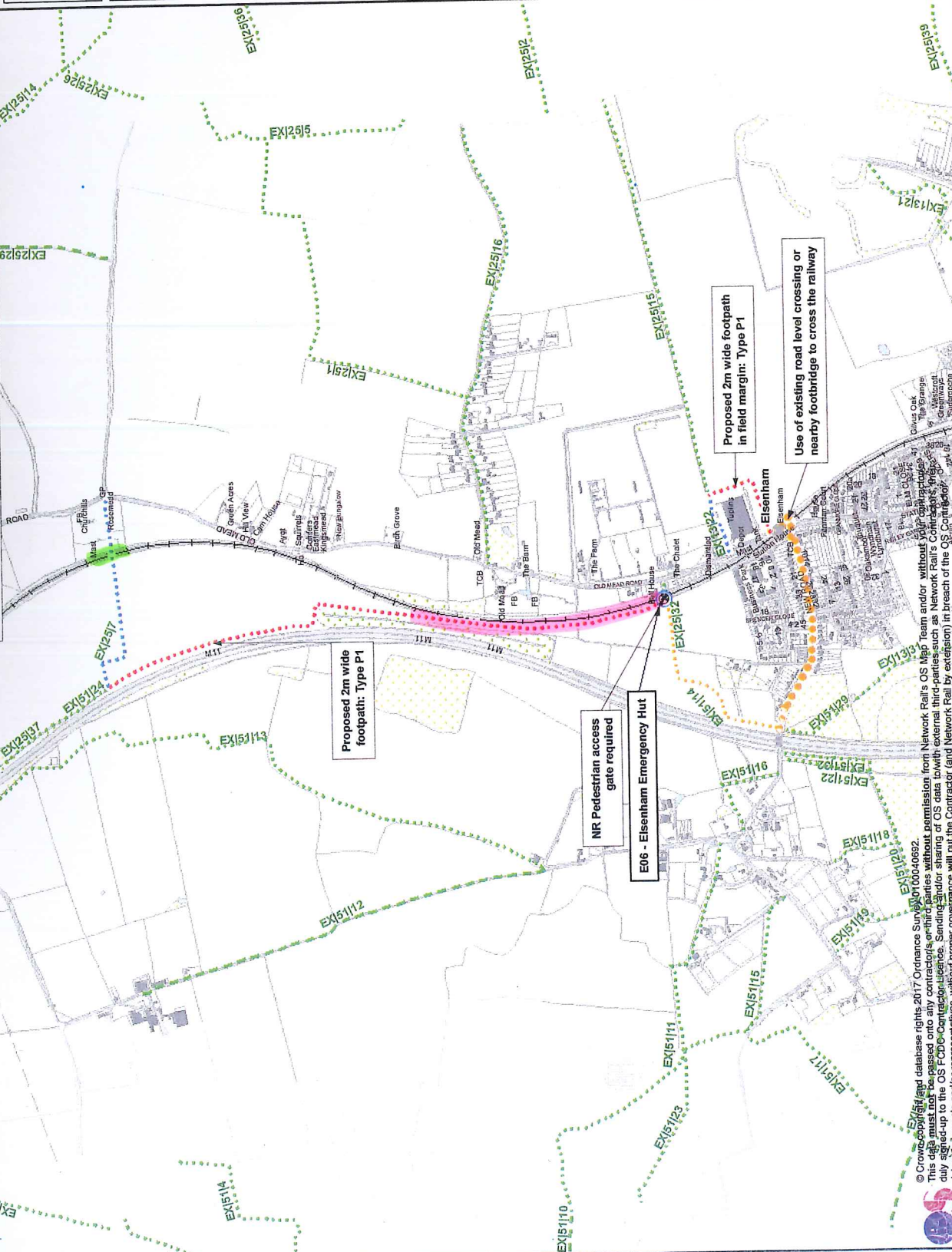
Proposed 2m wide
footpath: Type P1

NR Pedestrian access
gate required

E06 - Elsenham Emergency Hut

Proposed 2m wide footpath
in field margin: Type P1

Use of existing road level crossing or
nearby footbridge to cross the railway



SECTION 1: LEVEL CROSSINGS

- ⊗ Rights to be modified as part of this project
 - ⊙ Rights not modified as part of this project
- The above symbols indicate existing level crossing locations. The line colours are as per section 4 below.

SECTION 2: TYPE OF RIGHT OF WAY (excluding adopted highway)

- ⋯⋯⋯ Footpath (public)
 - ⋯⋯⋯ Bridleway (public)
 - ⋯⋯⋯ Restricted byway (public)
 - ⋯⋯⋯ Road / Track (private)
- The line styles above illustrate the type of right of way extant or proposed. The colour is as per section 4 below.

SECTION 3: PROPOSED USE OF ADOPTED HIGHWAY

- Footway Available
 - Verge Available (No Footway)
 - Carriageway Available (No Footway or Verge)
- Where the proposals may divert users onto an adopted highway, the above symbols denote where a footway is available, a verge only, or if neither a footway or verge is available and pedestrians would need to walk in the carriageway.

SECTION 4: PROPOSED STATUS CHANGE

- No change and not part of diversion
 - Use of existing right of way as part of diversion
 - Change of status to existing right of way
 - Closure of existing right of way
 - Creation of new right of way
- The above colours apply to sections 1, 2 and 3 above.

SECTION 5: ASSOCIATED INFRASTRUCTURE (indicative features)

- ⋯⋯⋯ Fencing (tie into existing)
- ⋯⋯⋯ Gates
- ⋯⋯⋯ Bridges
- ⋯⋯⋯ Footway
- ⋯⋯⋯ Future developments by Third Party projects where planning details are available
- ⋯⋯⋯ Railway

- The layout shown on this drawing is indicative and may be subject to change at detailed design.
- This drawing should be read in conjunction with the Essex, Southend-on-Sea, Havering, Hertfordshire and Thurrock Design and Guide (Ref. 367516/RPT024) which contains details of the infrastructure types referred to in this drawing.



Anglia Level Crossing
Reduction Strategy

Design Freeze Proposals

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MOTT MACDONALD

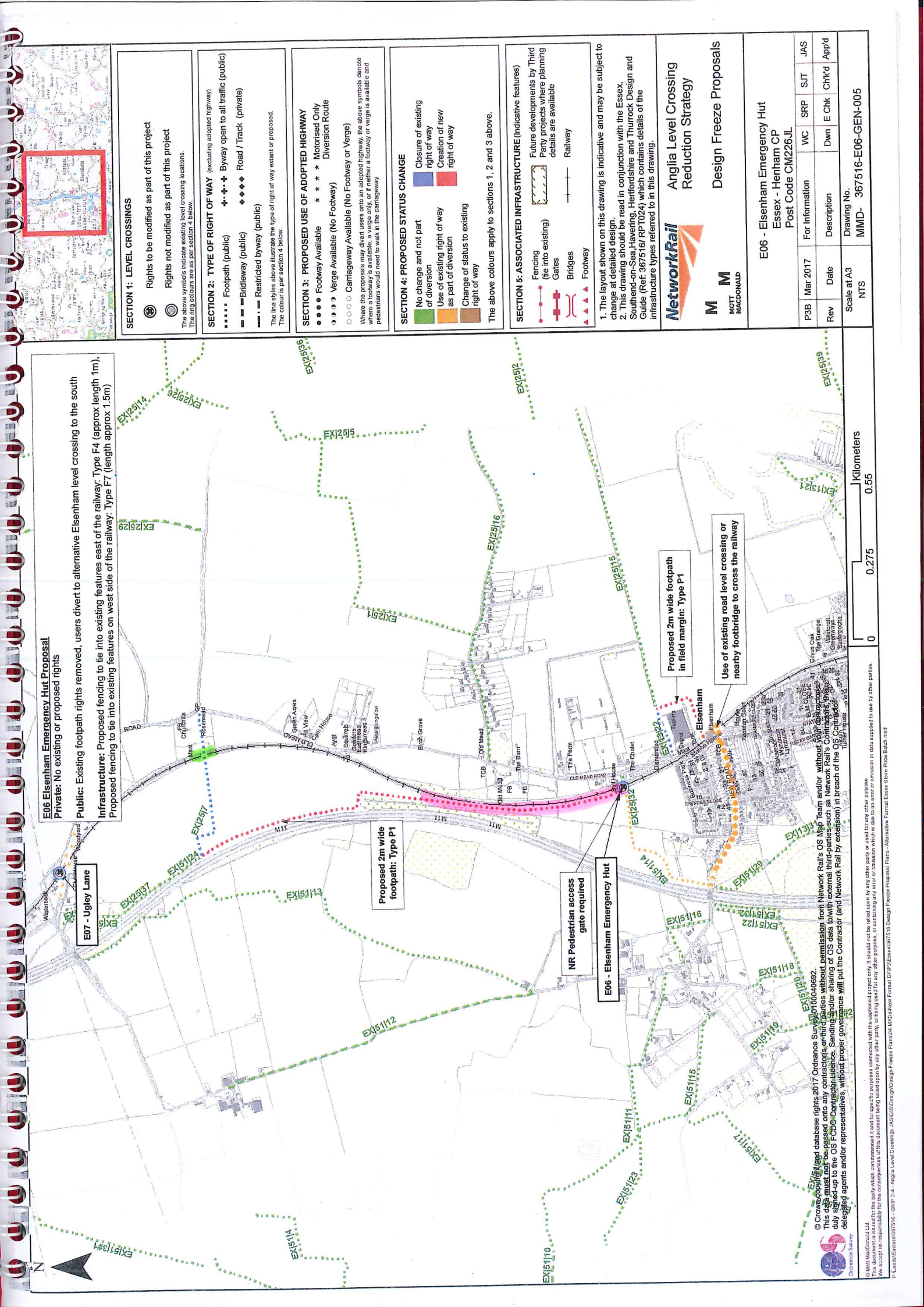
E06 - Elsenham Emergency Hut
Essex - Henham CP
Post Code CM226JL

P3B	Mar 2017	For Information	WC	SRP	SJT	JAS
Rev	Date	Description	Dwn	E Chk	Chk'd	App'd
Scale at A3	NTS	Drawing No.	MMD-	367516-E06-GEN-005		

0 0.275 0.55 Kilometers

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E06 Eisenham Emergency Hut Proposal
Private: No existing or proposed rights
Public: Existing footpath rights removed, users divert to alternative Eisenham level crossing to the south
Infrastructure: Proposed fencing to tie into existing features east of the railway: Type F4 (approx length 1m), Proposed fencing to tie into existing features on west side of the railway: Type F7 (length approx 1.5m)

SECTION 1: LEVEL CROSSINGS

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SECTION 4: PROPOSED STATUS CHANGE

- ⬜ No change and not part of diversion
- ⬜ Use of existing right of way as part of diversion
- ⬜ Change of status to existing right of way

- ⬜ Closure of existing right of way
- ⬜ Creation of new right of way

The above colours apply to sections 1, 2 and 3 above.

SECTION 5: ASSOCIATED INFRASTRUCTURE (indicative features)

- Fencing (tie into existing)
- Gates
- Bridges
- Footway

Future developments by Third Party projects where planning details are available

Railway

1. The layout shown on this drawing is indicative and may be subject to change at detailed design.
2. This drawing should be read in conjunction with the Essex, Southend-on-Sea, Havering, Hertfordshire and Thurrock Design and Guide (Ref: 367516/ RPT024) which contains details of the infrastructure types referred to in this drawing.

NetworkRail
Anglia Level Crossing Reduction Strategy
Design Freeze Proposals

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E06 - Eisenham Emergency Hut Essex - Henham CP Post Code CM26JL			
P3B	Mar 2017	For Information	WC SRP SJT JAS
Rev	Date	Description	Dwn E Chk Chk'd App'd
Scale at A3	NTS	Drawing No.	MMD- 367516-E06-GEN-005



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