

IN THE MATTER OF THE PUBLIC INQUIRY PURSUANT TO THE NETWORK RAIL APPLICATION
FOR AN ORDER UNDER THE TRANSPORT AND WORKS ACT 1992

RE: THE NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER 201X

LEGAL AND GENERAL SUBMISSIONS OF ESSEX COUNTY COUNCIL
STATUTORY OBJECTOR (195)

The Law.

1. Network Rail Infrastructure Limited ("NR") applies pursuant to section 6 of the Transport and Works Act 1992 ("the 1992 Act") for an Order under sections 1 and 5 of that Act. The date of the application is 31st March 2017. There is no Environmental Statement (screening decision letter NR11) despite three Councils requesting one.
2. At the consultation stage there were 69 level crossings within the proposal. At the time of the application the number of level crossings within the application totalled 61 as 8 had been removed. It is understood that E56 Abbots has now also been removed from the application leaving 60.
3. At the outset it must be stated that whilst NR has put forward their application on several bases the main thrust is directed towards safety. The first stated benefit of closure is "*Improving the safety of level crossing users, railway staff, and passengers.*" NR has singularly failed to put forward a compelling safety case, or indeed any case at all, for any of the individual crossing closures to which ECC objects that safety is, or has been, an issue at any of these crossings. Safety must be an issue in order for it to be "improved". It must surely be obvious that to put forward a safety argument NR should produce rational and compelling evidence to illustrate that safety is an issue.
4. The relevant sections of the 1992 Act are identified as follows:

Section 1 — Orders as to railways tramways etc.

- (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;

Section 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.

Section 13.— Making or refusal of orders under section 1 or 3.

(1) Where an application has been made to the Secretary of State under section 6 above, or he proposes to make an order by virtue of section 7 above, and (in either case) the requirements of the preceding provisions of this Act in relation to any objections have been satisfied, he shall determine—

- (a) to make an order under section 1 or 3 above which gives effect to the proposals concerned without modifications, or
- (b) to make an order which gives effect to those proposals with modifications, or
- (c) not to make an order.

(2) Where an application has been made to the Secretary of State under section 6 above and he considers that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order (but this subsection is without prejudice to subsection (3) below).

(3) The power of the Secretary of State to make a determination under subsection (1) above includes power to make a determination in respect of some only of the proposals concerned, while making a separate determination in respect of, or deferring consideration of, others (and accordingly the power to make an order under section 1 or 3 above includes power to make two or more orders on the same application).

Section 48(2) - Footpaths, bridleways and restricted byways over railways.

(1) This section applies where—

- (a) a public right of way over a footpath, bridleway or restricted byway crosses a railway or tramway otherwise than by a tunnel or bridge,
- (b) the operator of the railway or tramway has made a closure or diversion application in respect of the crossing, and
- (c) in the opinion of the Secretary of State the crossing constitutes a danger to members of the public using it or likely to use it.

(2) The Secretary of State may by order require the operator to provide a tunnel or a bridge, or to improve an existing tunnel or bridge, to carry the path or way over or under the railway or tramway at or reasonably near to the crossing to which the closure or diversion application relates.

5. ECC will submit that if the representations by NR as to the necessity of closure of the level crossings on the basis of the danger they present to the public are accepted by the Inspector then an order under s.48(2) of the 1992 would be appropriate, and indeed necessary, in all the circumstances.
6. NR accepts that the provision of an alternative route must be convenient and suitable (Design Guide NR12-ECC at page 3).
7. Whilst NR has selected the TWAO process by which to make this application there is criticism amongst objectors that an alternative statutory provision should or could have been used. An example is found within the initial objection by OBJ/16 Paul Gyton. OBJ/142 Essex Local Access Forum object strongly to the use of the TWAO procedure and having raised this directly with NR have received no response. A more detailed analysis is found in the original objection of OBJ/29 Wivenhoe Town Council who make some very relevant observations on the generalised nature of the application which does not *"include any rationally argued case for the closure of each individual crossing"*. Further they note, *"that each individual case should be considered on its own merits as would happen with when a single footpath closure is proposed under the normal procedure of the Highways Act by the County Council"*. The Ramblers (OBJ/148) also object to this statutory provision being used as it cogently and skilfully argued in their legal submissions. ECC adopts the legal submissions and arguments of The Ramblers.
8. A brief overview of alternative methods by which a footpath can be diverted or extinguished are as follows.
9. Section 116 of the Highways Act 1980 gives power to the Magistrates' Court to authorise the stopping up or diversion of a highway. By definition, in s.328 and s.329 a highway includes a bridleway or footpath.
10. Section 118 of the Highways Act 1980 provides a procedure for stopping up of footpaths and bridleways. Section 118(1):

"Where it appears to a council as respects a footpath [, bridleway or restricted byway] in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way".

This course of action cannot be used as the PROW's are clearly still in use.

11. Section 118A applies specifically to stopping up of footpaths and bridleways crossing railways. Section 118(1) -

“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 [, bridleway or restricted byway] in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up”.

12. Section 119 Highways Act 1980 provides a procedure for diversion of a footpath or bridleway. Both s.118 and s.119 Highways Act 1980 set out stringent criteria to be applied when considering whether to make an order. Specifically, s.119(6) provides:

“The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

(a) the diversion would have on public enjoyment of the path or way as a whole [...]

13. The TWAO procedure has, by comparison, a very limited test, i.e. is an alternative route provided. It does appear, however, that NR accept that the alternative has to be convenient and suitable.

14. Section 119A Highways Act 1980 provides a specific provision for the diversion of a footpath or bridleway which crosses a railway. Section 119A(1) -

“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 [, 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)”.

15. It should be noted that when the Highways Act 1980 is used for rail crossing path diversions then NR would be liable to maintain the new routes in perpetuity. The TWAO application does not provide for any compensation to be paid to ECC or a maintenance liability extending beyond 12 months. This means that any financial obligations upon NR end after a maximum of 12 months.

16. Section 247 of the Town and Country Planning Act 1990 allows the Secretary of State, by order, to authorise the stopping up or diversion of any highway, if satisfied that it is necessary to do so in order to enable development for which planning permission has been granted to be carried out. Section 257 provides power to Local Planning Authorities to make orders authorising stopping up or diversion of a footpath or bridleway to enable development for which planning permission has been granted to be carried out.
17. Section 1(2) of the Level Crossings Act 1983 requires the Secretary of State when making a Level Crossing Order to consider "*the safety and convenience of those using the crossing*". This clearly encompasses rail users and right of way users.

Case Law.

18. In order to avoid duplication and repetition the cases referred to The Ramblers Association (OBJ/148) in their statement of case are adopted and not repeated here. ECC concurs with the Ramblers Association that whilst not binding the principles enunciated in the cases below are worthy of consideration and analysis by the Inspector during the Public Inquiry.
- The Council of the London Borough of Harrow, Harrow School Playing Fields (Footpath no 57) Diversion Order 2013 (Planning Inspector ref: FPS/M5450/4/1) and The Council of the London Borough of Harrow, Harrow School Playing Fields (Footpath no 58) Diversion Order 2016 (Planning Inspector ref: FPS/M5450/4/3).
 - KC Holdings (Rhyl) Ltd v The Secretary of State of Wales and Colwyn Bay Borough Council [1990] JPL 353;
 - Vasiliou v The Secretary of State for Transport [1991] 2 All ER 77;
 - The Ramblers Association v Kent County Council [1990] 154 JP 716;
 - Gravesham Borough Council v Wilson and Straight [1983] JPL 607.

Submissions on the Order sought.

19. This document outlines a number of general submissions, for example, on the consultation. The NR consultation document is referenced NR5-ECC and produced as required by Rule 10(2)(d) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. The document split the periods of consultation activity into three phases:
- June 2016 – presentation of initial options;
 - September/October 2016 – presentation of preferred options (one for each crossing);

- December 2016 – information update on ten crossings stated to be those where changes to the solution might significantly affect the public. These were crossings E02 Camps; E03 Sadlers; E04 Parndon Mill; E11 Windmills; E20 Snivellers; E27 Puddle Dock; E28 Whipps Farmers; E45 Great Bentley Station; E46 Lords No.1 and E52 Golden Square. Two of these crossings were to remain open (E03 Sadlers and E27 Puddle Dock).

20. Page 2 of the consultation document sets out the benefits that the Anglia Level Crossing Reduction Strategy ("ALCRS") will help provide. This is having stated that the Closure Programme is based around safety criteria. It is noted that the first benefit of the ALCRS is said to be to "*improve the safety of level crossing users*". There is no evidence within the NR documentation to indicate that safety is an issue at any of the seven individual crossing closures to which ECC objects. There are no examples of accidents at any of the level crossings within the ALCRS and none outlined within any of the NR documentation submitted.

21. In respect of the benefit to reduce delays to pedestrians and other highway users it is clear from the planned alternative routes and the statements of case of the objectors that delays to pedestrians using the current crossings will increase. Users having to resort to their cars or public transport on the loss of short convenient level crossings will undoubtedly increase road delays. Similarly, it is not clear what delay is said to be caused to road users by the existence of pedestrian level crossings necessitating their closure.

22. In respect to improving journey time reliability for all railway, highway and other rights of way users it is again unclear what effect the current level crossings have upon journey times. The same observation is true of the benefit to deliver a more efficient and reliable railway. It is very difficult to see, and NR have certainly not demonstrated, how closure of level crossings will improve the reliability and efficiency of the railway.

23. The remaining four benefits which are stated to be provided are undoubtedly financially driven by NR. It is therefore submitted that the safety issue is being presented as the driver for this order when in fact it is being used as a vehicle to save money. In reality this application is cost driven. The NFU (OBJ/034) at paragraph 3.4 of their statement of case make the same observation.

24. Whilst the consultation document spans some 277 pages it is clear from the objectors' responses in the first instance that a significant number of people were not aware of the consultation or application for a significant time. Of those objectors who have submitted statements of case the following two examples are illustrative of this point.

Objector	Comments
NFU (OBJ/034)	<p>Landowners concerns not listened to during the consultation period and engagement has not been constructive. Lack of contact from NR. The amended proposals were only published on the day of the consultation event depriving landowners of any time to consider the proposal and raise considered concerns with NR at the event. NR have failed during the consultation to fully consider the impact upon farmers of their proposals.</p> <p>ECC NB. The upshot of failing to consult properly is that the relevant concerns have not been heard, considered or incorporated into the proposals.</p>
Rob Cann (OBJ/192)	<p>Mr Cann became aware of the proposals when the notice appeared on the level crossing in March 2017. He was not aware of any consultation prior to this date and could not access any consultation documentation on the NR website.</p>

25. Whilst page 20 of the consultation document sets out the engagement with the general public it is clear than the level of flyers dropped to addresses in proximity to the level crossings being consulted on was woefully low. 20,200 flyers were delivered in round 1 which equates to flyers to an average of 293 households per level crossing (calculated by dividing 20,220 by 69). In round 2 29,800 were delivered averaging 432 households per crossing. In December 2016 the figure was 3300 for ten crossings (in the seven packages) averaging 330 households per crossing. OBJ/109 Mulvey is dated 9th May 2017 and states that he only recently became aware of the proposals to close his local crossing. This is some considerable time after the consultation had finished. He states that the notices were only posted on the crossing in March 2017 (presumably at the same time as the application was made) and that many of his neighbours were similarly oblivious to the application. There are no examples of any objector saying that they received notification of the consultation by receipt of a flyer.

26. Similarly, many users of the crossings reported no flyer attached at the site of the level crossing or that incomplete information was posted. An example of this is found in OBJ/69 Camp who notes that the plan showing the alternative route was missing and

despite pointing this out to the NR employee who was affixing the notices this has not been remedied.

27. It is notable that many of the objectors voice their concerns that NR have already made their decisions and that the closures are a fait accompli. They felt that NR were simply paying lip service to their objections and concerns. An example of this is found in the original objection of OBJ/27 Daryl Williamson who describes the conversations with NR and Mott Macdonald at one of the public consultation events and concludes that the public who engaged in the consultation have been completely ignored. Another example is found in OBJ/70 Great Bentley Parish Council who in their original objection note that despite attending two public consultation events and making every attempt to engage NR representatives that they felt that NR have not fully taken on board their comments and concerns. OBJ/159 Saffron Walden Footpaths note that *"Despite a 'consultation' we detect no changes from pre-conceived plans. Network Rail seem impervious with a high-handedness borne of having absolute power"*. OBJ/189 Wivenhoe Town Council appends a letter from local MP Bernard Jenkins. Mr Jenkins MP also submits an objection under OBJ/187. This states that the way NR has approached the proposal has caused a great deal of local upset. He says, *"There has been a distinct feeling that Network Rail have approached the proposed closure with a view that the crossing will close, no matter what the outcome of the public consultation"*.
28. This submission notes a small example of the many objectors who share these views. It must surely be a concern for the Inspector during the Public Inquiry that NR have approached this application and the consultation with no intention on listening to the views of anyone, let alone taking into account concerns and suggestions of objectors, and have an uncompromising fixed view of how they will implement the closures. There seems to be no recognition that the outcome will be anything other than what they have proposed in their application. This blinkered approach and the view formed by objectors that NR will simply ignore anyone in their way is extremely concerning.
29. The consultation document notes that promotion of the consultation was made via banners, plans and summary sheets however there is no information on where these were displayed or made available. The photograph at page 64 of the consultation document suggests that these may have been deployed during the public information events. There is no information as to whether banners or information was displayed at places where the general public would frequent, for example, local libraries, doctor's surgeries or shops/supermarkets. Certainly no objector notes learning of the consultation from any of these types of locations.

30. Page 24 contains the "findings from the consultation" and it is notable that even where all those who have responded have proposed a route to be determined as "other" that none of these proposals are seriously considered by NR to see if they would provide suitable alternatives. For example, E51 Thornfield Wood had 16 responses of which 75% proposed an "other" route yet NR state that Red/Blue are the preferred options. They are the preferred options of NR but not of those who responded to the consultation questionnaire. 71.5% of those who responded disagreed or strongly disagreed with the proposals (page 28 of consultation document). In round two this figure increased to 73% (page 34 of consultation document).
31. Further the Government guidance on the TWA procedure states at paragraph 2.13 that the applicant should consult with land owners prior to publication of any scheme in relation to the application particularly where issues of compulsory purchase may arise. This is also important for compiling the book of reference. NR's book of reference (NR9-ECC dated March 2017) shows a number of landowners listed as "unknown". Further a number of land owner objectors raise significant issues in respect of their contact and engagement with NR. The lack of proper inquiry and consultation with land owners means that in many cases "on the ground" surveys have not been carried out. This has resulted in NR failing to properly survey the land over which they make their proposed alternative routes. OBJ/084 NFU Essex say *"there are also a number of landowners affected by closures or path re-routing that have not been contacted directly"*. The extreme impact in respect of economy and safety of new PROW across farmland is starkly outlined in their objection demonstrating the vital nature of proper consultation with landowners, and in particular, farmers.
32. There has been insufficient engagement with owners and occupiers of land likely to be affected by the proposals but not subject to compulsory purchase.
33. Failure to engage properly with the public and landowners has led to unnecessary hostility, distress and anxiety and resulted in a public inquiry for which there are 195 objectors. As an example, OBJ/85 Hutley only found out about the proposals when a notice was posted on their land. They were not contacted by NR at all (see page 15 of OBJ/034 statement of case) and therefore had no opportunity to engage with the consultation at all. Despite claiming that the landowner was unknown there had been dialogue between the very same landowner and NR over many years concerning a badger sett and works to the railway line.
34. OBJ/69 Camp had to write to NR to inform them that they had not served the notices on the correct owner of the land.

35. The Design Guide (NR12-ECC) confirms that the existing programmes and initiatives include the ALCRS and the National Level Crossing Closure Programme ("NLCCP") which is *"based around safety criteria"*. This document does not appear within the NR papers for the Public Inquiry and neither is it to be found on NR's website.

Safety

36. The Office of Rail and Road Strategy for regulation of health and safety risks – 4: Level Crossings document is part of the application documentation (NR14). The report acknowledges that *"Britain's mainline is among the safest in Europe in terms of unsafe events that have happened, and is outperforming other EU countries in managing risks at level crossings"*. It states that *"Railway businesses must manage level crossing risk effectively using their own safety management systems"*. It states that in particular, *"we want to:*

- *Ensure better, more effective risk management by the railway businesses, which work together to produce risk assessments drawn up by competent people who have a proper knowledge of the risks and of the application of controls associated with crossings, as well as a good understanding of the behaviour of users and their perception of risk;*
- *Encourage crossing closure and ensure that all risk assessments consider this first, in line with the principles of prevention, prioritising those crossings that present the highest risk"*.

37. There are no adequate risk assessments within the NR application or paperwork and none readily discoverable on the NR website. The "Transforming level crossings" document referred to in this report is NR17. This document accepts that *"Great Britain can demonstrate a very good safety records at level crossings in comparison to the rest of Europe, indeed ours is one of the best level crossing safety records of any major rail network in the world"*. The document states that *"we will work with local authorities, government and communities to sensitively close level crossings where there is an alternative and practicable diversionary route available"*. NR cannot sensibly stand by their assertion that many of the lengthy diversions taking users onto busy roads are practicable diversionary routes.

38. The majority of crossings, if not all, that this application is concerned with fall within the definition of passive crossings. Paragraph 5 of the Transforming Level Crossings document states *"Footpath crossings account for the largest share of the level crossing estate, but a lower proportion of the risk in relative terms"*. It asserts that the *"majority*

of the FWI (Fatalities and Weighted Injuries) risk resides at those locations with the highest usage and the greatest number of services. i.e. those crossings with the greatest traffic movement. For that element of the level crossing portfolio, the only effective control is closure [...]. Closures via bridging, underpass or diversion is the only viable option in managing risk holistically". It must be possible to assess which crossings pose a higher risk based on the criteria identified by NR themselves. However, there are generalised assertions which have no basis in fact.

39. The All Level Crossing Risk Model ("ALCRM") data does not appear to form part of the application by NR presumably because it undermines the "safety" mantra in respect of the majority of level crossings within the application. Analysis of the ALCRM data shows that one of the crossings (E30 Ferry) does not appear within the data and the other six record nil incidents of misuse, near misses or accident in the year prior to the last assessment. These are clearly low risk crossings. It appears that an accurate, meaningful risk assessment procedure has been overlooked in favour of a blanket assertion that level crossings are dangerous per se and should all therefore be closed where possible. The ORR document (NR14) notes that the *"closure of level crossings requires attention to many factors, including the practicalities of replacing them with bridges or underpasses..."* The document does not mention that it is acceptable to replace the closure with alternative routes of disproportionate length which present risks far in excess of those posed by the level crossing itself. In any event it appears that the fatality rate for pedestrian level crossings over the last ten years is 0.017 fatalities per crossing (paragraph 11). This equates to 0.17 per year. This is contradicted by the NR statement of case at paragraph 5 which places the figure at 2.95. If this figure is for all types of level crossing within the Anglia route (some 858) it is not clear why the figures do not correlate and would suggest that crossings which are not pedestrian crossings present a greater risk. Paragraph 19 of the NR statement of case notes that there are 353 footpath or bridleway crossings on the Anglia Route.
40. The client requirements document (NR18) at paragraphs 1.1.1 and 1.1.2 give an insight into the somewhat cynical tactics that are to be employed by NR to "get their way". For example, targeting little used crossings first and highlight the cost driving factors that underpin this application. The idea is then to *"start with little used crossings and work up to the major crossings"*. The choice of use of TWA orders is also done in order to avoid legal challenges (i.e a public inquiry on each application) to individual applications and the "risk" that Magistrates' may not grant the application. This is repeated at paragraph 2.1.1 *"altering public highways is a risky business when one objection, if not withdrawn, could trigger a public inquiry"*. The use of TWAO application is business driven and chosen to avoid the more usual application route via the Highways Act 1980.

41. NR Road Safety Audits ("RSA's") are contained within NR16. In general, the risks affecting road safety are highlighted as:

- Non-motorised users being diverted to alternate level crossings or grade separated crossings where they might be exposed to live traffic by;
 - Walking along existing footways;
 - Walking in existing grassed verges; or
 - Walking in the carriageway on rural roads;
- The interface with non-motorised users and agricultural vehicles on the PROW's; and
- The access points off the public highway for occasional use by large agricultural vehicles.

42. In the RSA Revision A (December 2015) document items were raised with crossings to which ECC objects, namely, E30 Ferry, E31 Brickyard, E38 Battlesbridge, E43 High Elm and E52 Golden Square. The response states, for each of these crossings except E43 High Elm, *"the Audit Team did not identify any road safety related issues associated with the scheme"*. Even a glance at the photographs taken by ECC and appearing within their statement of case makes this assessment incredible. In respect of E43 High Elm, a wide, high speed road (Ten Penny Hill) with a posted 50mph limit, the NR RSA the summary of risk is stated *"Pedestrians will be vulnerable to collisions with vehicles if required to cross the road twice to continue their journey. It is recommended that a suitable compacted footpath is provided on the north east side of Ten Penny Hill to avoid pedestrians having to cross the busy road twice"*.

43. In the RSA Revision B (November 2016) document items were raised with crossings to which ECC objects, namely E48 Wheatsheaf and E51 Thornfield Wood. No road safety issues were identified in respect of E48 Wheatsheaf or E51 Thornfield Wood (blue route). A problem was identified with E51 Thornfield Road (red route) at the Jupes Hill Road bridge. It was noted that pedestrians would have to walk in the carriageway and that although traffic flow was low the speeds were excessive with visibility restricted by a road bridge. These factors may result in collisions between pedestrians and vehicles. It is recommended that a suitable footway is provided (although it would be hard to see how this could be achieved) or that the blue route is used.

44. ECC relies upon the statement of case dated 18th July 2017 and documents submitted on 20th September 2017 pursuant to the directions of the Inspector at the Pre-Inquiry meeting.

45. The broad heads of objection can therefore be noted thus:

Rights of Way.

- (i) The alternative proposal/route is contrary to ECC's Rights of Way Improvement plan ("ROWIP") published in July 2009 and in particular theme D (to provide continuous, high quality rights of way which promote health and social benefits to local communities) and theme E (providing an accessible network that meets the needs of all users). This is set out in full at page 2 of the statement of case dated 18th July 2017.
- (ii) In respect of theme D the assessment leading to the ROWIP highlighted the lack of continuous paths. It can be seen that the NR proposals reduce the number of continuous paths in existence and create dead-ends in certain proposals. In many cases current PROW's would be extinguished and users forced onto ROW's which are far less suitable. Providing safe, direct means of crossing the railways will be lost in many cases.
- (iii) In respect of theme E the assessment highlighted issues including steep steps and slopes, dangerous road crossings and roadside verges not kept clear. The proposed routes suggested by NR will take away perfectly safe crossings which are suitable for all types of users and create more routes which include the type of issues highlighted.
- (iv) It is to be noted that the submissions to be made by ECC on this subject coincide with the submissions made by the Ramblers Association. In the spirit of co-operation and the desire to avoid duplicity it is not intended to repeat their submissions however the Inspector is requested to accept that ECC adopts the arguments in respect of the benefits of access to existing historic PROW within their statement of case. The Ramblers objections to the level crossings which are relevant to ECC are found in their statement of case thus:
 - E30 Ferry – paragraphs 42;
 - E31 Brickyard Farm – paragraph 43;
 - E38 Battlesbridge – paragraph 44;
 - E43 High Elm – paragraph 32;
 - E52 Golden Square – paragraph 24.
- (v) ECC was required by the Countryside and Rights of Way Act 2000 to produce a 10-year strategy for improving access to the countryside through rights of way. It is particularly pertinent that the plan (which must tie with the Local Transport Plan for Essex) is required to provide an assessment of the accessibility of the rights of way for blind, partially sighted and disabled persons. The alternative routes proposed by NR take no account of the needs of these users and indeed the routes would be impossible, in many cases, for any of these individuals to

use. The aim of the Government to make better provision for these identified groups is completely ignored by NR. Accessibility issues for members of the public over the age of retirement is expected to be higher than the national average in Essex. When considering general health issues the level of obesity in Essex is over 20%. The inappropriateness of the suggested alternative routes means that the likelihood of users resorting to vehicles instead of walking must rise when one applies common sense. The general questionnaire responses showed that currently 8% of the Essex population use the ROW network to travel to work. The loss of suitable PROW should the order be made could adversely impact upon this figure.

- (vi) Loss of amenity. The Government guidance on the TWA procedure at paragraph 2.15 recommends that "*applicants should seek to avoid where possible (or have compelling justification for) carrying out works on environmentally sensitive sites, or so near to them that they are adversely affected, including in particular Areas of Outstanding Natural Beauty. E48 is proposed to be designated as an AONB and H09 Fowlers is a SSSI and nature reserve*";
- (vii) Inconvenience of proposed alternative route;
- (viii) Safety concerns over the proposed alternative route;
- (ix) There is no evidence provided by NR that safety is a real issue at any of the level crossings. There is just a general observation by NR that level crossings are unsafe. Of course it is accepted that a level crossing used incorrectly could result in danger to the user. However risks must be assessed based on evidence and likelihood. It is submitted that using a level crossing is no more inherently dangerous than failing to take care when crossing a road. ECC submit that crossing a road is more dangerous than crossing a railway at a level crossing;
- (x) Diversity Impact Assessments. Where are these and what do they say?

Commuted sums:

46. Whilst ECC objects to the closure of specific crossings a general objection is made to the closure of all level crossings where commuted sums have not been agreed. ECC's statement of case dated 18th July 2017 makes clear that until written binding agreements are received from NR then ECC cannot withdraw their objections and limit the representations to the seven crossings detailed below. ECC also reserves the right to make further objections having considered the representations of other objectors both in writing and orally during the currency of the Public Inquiry. At the date of the pre-Inquiry meeting there were 195 objectors registered.

ECC objections to seven individual crossings:

47. The ECC statement of case dated 18th July 2017 makes objections to nine individual crossings however it is understood that E42 Sandpit has now been withdrawn by NR from the application. ECC withdraws its objection to E56 Abbots thereby reducing the number of objections to seven individual crossings.

48. Attention is drawn to the fact that ECC strongly objects to closure on the basis of safety and that closure of these level crossings results in loss of connectivity and amenity to the local community. This is expanded upon in the witness statements of representatives of ECC.

E30 Ferry & E31 Brickyard.

49. It is clear on perusal of NR's papers and plans that the proposed alternative routes have been identified from a "desktop" assessment of the individual areas. The proposals suggest that Google maps has been used to conduct the surveys rather than "on the ground" analysis. This is brought sharply into focus when considering the photographs within ECC's Road Safety Assessment. The provision of a new footpath across the station car park brings obvious risks to pedestrians. In respect of E31 Brickyard it can clearly be seen in the photograph of Ferry Road (RSC2) that the verge upon which pedestrians would be required to walk is wholly unsuitable. It is not wide enough for more than one person to walk at one time with no room for pedestrians to pass another pedestrian. During the summer months this problem would be exacerbated by the growth of the foliage lining the road. There would be no alternative for wheelchair user other than the road itself. Data shows that there have been 7 personal injury incidents in the vicinity of this crossing in the last three years. ALCRM data does not include Ferry crossing. ALCRM data shows Brickyard Farm crossing is on a 75mph maximum line and was last assessed in June 2016. In the year prior to assessment there were nil incidents or misuse, near miss or accidents.

50. NR25 contains the census information for each crossing and E31 Brickyard Farm was assessed over a 9-day period in July 2016. In total 102 pedestrians (not including railway staff) were noted, 2 horseriders and 12 cyclists. It is submitted that a 9-day snapshot is insufficient to give an accurate picture of usage over the year.

51. Relevant objectors are OBJ/148 Ramblers; OBJ/172 The Environment Agency; OBJ/176 David Atkins. For E31 these four object and OBJ/16 Paul Gyton.

E38 Battlesbridge.

52. There has been one personal injury collision in the last three years. The photograph (RSC3) in the ECC Road Safety Assessment shows that the current VRS sits atop a

steep embankment. An able-bodied pedestrian walking on the embankment side of the VRS would be in danger of falling down the slope and there is simply no possibility that any pedestrian with mobility or disability issues could use this verge. If a pedestrian were to use the road side of the VRS they would be in extremely close proximity to the roadway. It is presumed that there is a VRS in this location due to the risk/likelihood of vehicles leaving the carriageway. ALCRM data shows Battlesbridge crossing is on a 50mph line was last assessed in February 2015. In the year prior to assessment there were nil incidents or misuse, near miss or accidents.

53. NR25 contains the census information for each crossing and E38 Battlesbridge was assessed over a 9-day period in July 2016. No users were recorded.

54. Relevant objectors are OBJ/148 Ramblers; OBJ/151 National Grid and OBJ/176 David Atkins.

E43 High Elm.

55. There have been two personal injury collisions in the vicinity of this area in the last three years. Photo RSC4 shows the width of the road which it is intended pedestrians will have to cross as an alternative route. The road is subject to a 40mph limit and it is proposed that traffic islands will be installed however no information is given as to the size or signage that will be employed on the traffic islands. There is an obvious concern that traffic islands will not provide safe egress for pedestrians who will be at risk from being "clipped" by vehicles. If the traffic islands are not suitably illuminated there is a risk that they will be struck by vehicles during the hours of darkness. There is no suggestion provision partially sighted users who would have the greatest difficulty locating the traffic islands. ALCRM data shows High Elm crossing is on a 75mph maximum line and was last assessed in August 2016. In the year prior to assessment there were nil incidents or misuse, near miss or accidents.

56. NR25 contains the census information for each crossing and E43 High Elm was assessed over a 9-day period in July 2016. In total 22 pedestrians (not including railway staff) were noted.

57. Relevant objectors are OBJ/17 M Hanlon; OBJ/99 Terry and OBJ/Nina Murton; OBJ/148 Ramblers and OBJ/176 David Atkins.

E48 Wheatsheaf.

58. Photograph RSC8 shows that part of the proposed alternative route would require pedestrians having to try to access a high sloped verge on a winding country road.

Whilst there is a flatter verge on the other side this would mean crossing the road at the site of a blind bend. There is a risk of pedestrians having to walk in the road with the attendant risk of collision with vehicles. This would be especially dangerous during the hours of darkness. In winter this would render this section highly dangerous from as early as 3:30 in the afternoon. A different part of the proposed alternative would require users to cross a wide ditch (RSC9). Even the able-bodied would be at risk of falling with subsequent injury and would render the route impassable to anyone with mobility, disability or visual impairment. ALCRM data shows Wheatsheaf crossing is a 60mph maximum line and was last assessed in November 2016. In the year prior to assessment there were nil incidents or misuse, near miss or accidents.

59. NR25 contains the census information for each crossing and E48 Wheatsheaf was assessed over a 9-day period in July 2016. In total 27 pedestrians (not including railway staff) were noted.

60. Relevant objectors:

61. OBJ/034 The NFU. Page 14 of their statement of case outlines their objections to the application;

62. OBJ/85 Mr R Hutley (landowner). A statement of case was submitted by this objector raising concerns including those over safety and loss of amenity by the proposals;

63. OBJ/125 Andy and Gill Moffatt's original objection states that the crossing is safe and their family and other residents regularly use the crossing. Additionally, the proposed alternative route would create a PROW along the back of their property with the increased security risks that this would bring. They point out that as the land is currently private anyone loitering can be challenged and this right will be lost if the way were to become a PROW;

64. OBJ/127 Wrabness PC submitted a statement of case. ECC adopts the submissions within their statement and the same are not repeated here. Importantly the submission notes that this level crossing is within the area currently proposed to be designated an AONB. It also outlines the conflict of the proposals within the application with several Government strategies designed to promote health and wellbeing, for example, the DfT Cycling and Walking Investment Strategy;

65. OBJ/148 Ramblers;

66. OBJ/158 Robin Cole. The original objection notes similar safety concerns to OBJ/125 Mottat. In addition, they are currently in negotiation to purchase land from OBJ/85 Hutley which would result in the proposed PROW going through the middle of their garden.

67. Other objectors are OBJ/176 David Atkins; OBJ/184 Kate Kincaid and OBJ/191 Helen Fulbeck.

E51 Thornfield Wood.

68. There has been one personal injury collision in the vicinity in the past three years. Photograph RSC10 shows the route that users would have to take which would necessitate walking in the roadway due to the high and sloped grass verges on either side of the carriageway. The road is also frequently used by agricultural vehicles and the risk of injury by being struck by a vehicle is clearly high. Use of this route during the hours of darkness would be extremely dangerous. Additionally, there would be the need to cross a humpback bridge with, as NR acknowledge, "*limited forward visibility*" (Design Guide NR12-ECC p.42). The photograph clearly shows a bridge which is dangerous for pedestrians and extremely dangerous for disabled or partially sighted users. A user in a wheelchair would not be visible to a vehicle coming in the opposite direction. The proposed works to ensure pedestrian safety are to clear vegetation from road across bridge and to cut back vegetation on the approach to the bridge. Common sense dictates that this would not ensure user safety on this bridge. ALCRM data shows Thornfield Wood crossing is a 50mph maximum line and was last assessed in January 2016. In the year prior to assessment there were nil incidents or misuse, near miss or accidents.

69. NR25 contains the census information for each crossing and E51 Thornfield Wood was assessed over a 9-day period in July 2016. In total 19 pedestrians (not including railway staff) were noted.

70. Relevant objectors are OBJ/65 Earls Colne PC; OBJ/86 Dr Stephen Tompson; OBJ/141 Colchester Borough Council; OBJ/148 Ramblers; OBJ/176 David Atkins and OBJ/178 Bruce Emerson.

71. Dr Thompson (OBJ/86) presents a full and detailed statement of case. ECC adopts the submissions made by Dr Thompson and does not repeat the same here.

72. Colchester BC (OBJ/141) has submitted a statement of case objecting to the closure of E51 Thornfield Wood. ECC adopts the submissions made by Colchester BC.

E52 Golden Square.

73. There has been a single personal injury collision in this vicinity in the last three years. Photograph RSC11 shows a similar scene to that at E51. Whilst the verge is flatter it is very narrow and clearly not accessible to pedestrians as a viable or safe option and the preponderance of agricultural vehicles along this route is also concerning. Further along the road (RSC12) pedestrians would be required to step into the road to join the route from behind a boundary hedge. The verge is similarly unsuitable for pedestrians to use and the road at this point has a 40mph limit. During the hours of darkness this route would clearly be very dangerous for any pedestrian. Disabled or partially sighted users would be unable to use this route at all. In common with E51 Thornfield Wood there is a humpback bridge on the alternative route (Design Guide p.43). The comments regarding E51 in respect of this bridge are repeated. The proposals are wholly inadequate. ALCRM data shows Golden Square crossing is a 50mph maximum line and was last assessed in January 2016. In the year prior to assessment there were nil incidents or misuse, near miss or accidents.
74. NR25 contains the census information for each crossing and E52 Golden Square was assessed over a 9-day period in July 2016. In total 3 pedestrians (not including railway staff) were noted.
75. Relevant objectors are OBJ/10 G J McCoyd; OBJ/12 I Andrewartha – no statement of case is filed however the original objection notes the risk to the safety of users would be far greater on the alternative route and describes this proposals as a “*retrograde step in terms of safety*”; OBJ/86 Stephen Thompson; OBJ/141 Colchester Borough Council; OBJ/148 Ramblers; 151 National Grid and 176 David Atkins.
76. Dr Thompson (OBJ/86) presents a full and detailed statement of case. ECC adopts the submissions made by Dr Thompson and does not repeat the same here.
77. Colchester BC (OBJ/141) has submitted a statement of case objecting to the closure of E52 Golden Square. ECC adopts the submissions made by Colchester BC.

ECC evidence.

78. In addition to their statement of case ECC has submitted a substantial file of evidence for the consideration of the Inspector at the Public Inquiry. This submissions document does not seek to outline the evidence in full but instead to highlight the salient points.

All of the witnesses will be attending the Public Inquiry to give evidence. The evidence can be summarised as follows:

79. Alastair Southgate – Transport Strategy Manager. Mr Southgate gives valuable insight into the ECC long term transport strategy and stated aim to improve connectivity and support economic growth. He also highlights the ECC document “The Future of Essex” outlining working with partners across Essex, including NR, to develop a single vision for Essex. (OBJ/195/W1/1 appendix 2). His evidence demonstrates the measured approach that ECC has taken. ECC does not seek to put forward a blanket objection to the closure of all level crossings but identifies those locations where the level crossing has a value to the local economy or local community that outweighs any potential strategic benefit for rail services. The seven level crossings identified are those where the closure has significant negative impact on the Rights of Way network or on the local community and where NR’s proposed alternative is not considered to be appropriate. Mr Southgate outlines the Local Transport Plan for ECC and identifies the relevant policies relevant to the TWAO application. These are summarised in OBJ/195/W1/2 appendix 1. He also identifies that it is vital that the proposed crossing closures do not simply pass risk and cost from NR to ECC.
80. Helen Baker – Definitive Map and Records Officer. Ms Baker outlines ECC’s statutory responsibility in respect of PROW’s. ECC maintains and updates the Definitive Map of Public Rights of Way. This document gives the definitive evidence and status of a PROW. It describes the paths shown on the map and contains particulars as to the position or width of a way and any conditions or limitations upon it, such as a stile or gate. This is the conclusive evidence of a PROW. ECC also maintains the Highway Records.
81. Ms Baker exhibits the Combined Statement Plans for ECC which have been produced as composite plans with the purpose of providing context of the Public Highway and the PROW network in the vicinity of each proposed closure to which ECC has lodged an objection. These are found at OBJ/195/W2/2 appendix 1. These include a black and white OS base overlaid with the PROW network, the alternative routes of the PROW’s as proposed by the TWAO application and the extent and status of the local highway network accompanied by a coloured key. It is anticipated that these will prove invaluable to the Inspector during the Public Inquiry. Ms Baker highlights the reasons for the specific concerns at each crossing in paragraphs 13 to 23 of her statement. Ms Baker concludes that in respect of E38 Battlesbridge and E48 Wheatsheaf the alternatives merely represent a transfer of risk from one authority for rail (NR), to the Highways Authority (ECC), and a detriment to the public. In respect of E43 High Elm, E51 Thornfield Wood and E52 Golden Square the evidence shows significant and severe

damage to the connectivity and enjoyment of the PROW network and cuts off access to AONB, Country Parks and other vital connections.

82. Robert Lee – Public Rights of Way and Records Analyst. Mr Lee has inspected the PROW's in the vicinity and affected by the seven individual crossings to which ECC objects and his site inspection reports are found at OBJ/195/W3/2 appendix 2. The objections are on the basis of loss of amenity, inconvenience of the proposed alternative route and safety. Mr Lee notes that during his inspections he could not access some private land as this was not facilitated by NR.

83. At paragraphs 6 to 10 of his statement Mr Lee outlines the issues over limitations that were placed upon him and ECC PROW engineers when trying to access private land to facilitate inspections. He also raises concerns that the assessment of the land over which alternative routes will pass has been conducted by NR largely as a "desktop" exercise, a completely inadequate methodology for surveying, in part due to NR's lack of consultation with and negative dealings with landowners. Their assessment has not been thorough or fair. He highlights that NR proposing alternative routes based on their flawed and incomplete assessments shows a fundamental lack of understanding of and respect for the PROW network, those who use it and those who are legally obligated to protect it.

84. It is worthy of note that objectors also raise this issue. By way of example OBJ/003 Peter Hope notes in his statement of case that in respect of E19 Potters (which is not one of the closures to which ECC objects) that the proposed alternative route is not suitable as it is waterlogged. He states that even after two months without rain the path is still impassable. This is precisely the type of problem that cannot be identified or assessed by a desktop exercise.

85. At paragraphs 11 to 16 Mr Lee outlines general observations arising from the site inspections. These revolve around the inspection of the seven crossings revealing that they are all in good condition, clearly signed and with supporting infrastructure. They provide safe crossing points in direct and marked contrast with the proposed alternatives. Mr Lee also highlights that the sections of highway along which users would have to pass have a suggestion by NR that the road speed should be reduced. There is no certainty that this will happen in the same way that there is no certainty that vehicle drivers will adhere to the speed limits. This places additional strain on police to enforce the speed limits in contrast with the relatively simpler matter of controlling the speed of a train. Mr Lee views this as disingenuous on the part of NR in seeking to imply a future speed reduction and consequential safety improvement which may not be

realised or capable of effective enforcement. Finally, Mr Lee observes that the verges which NR propose form the part of some of the alternative routes are simply non-existent and would force users into the carriageway or mean that they need to keep crossing the carriageway to access available verges.

86. Mr Lee outlines his detailed objections to the individual seven crossings at paragraphs 17 to 45 and it is not proposed to expand upon them further here as they will be examined in full during the Public Inquiry. These are complimented by his site inspection reports found at OBJ/195/W3/2 appendix 2 and provide a valuable insight into conditions on the ground. In conclusion Mr Lee outlines the impact that the proposals, by their negative or impractical impact would have on local enterprises such as pubs, eateries, retailers and accommodation providers.

87. Gary White – Public Rights of Way and Records Manager. Mr White provides a detailed analysis of the work that is required to maintain the PROW including the allocation of budgets. He highlights the concern of ECC regarding the scale and intensity of un-programmed works proposed by NR. He notes that the approval and certification process that will be imposed on ECC will be detrimental to the public purse in terms of officer time and the inevitable resultant delay in the planned delivery of PROW works programmes. Mr White outlines the deficiency of NR in their statement of reasons to effectively consider the financial and resource implications on ECC as Highway Authority. Whilst NR have indicated that they would be keen to agree a commuted sums calculator to alleviate the financial burden imposed upon ECC by the use of the TWAO process the Order is silent as to how ECC could seek to secure such sums. The public purse is left vulnerable and ECC seeks amendment to the Order to require NR to pay commuted sums to ECC.

88. It is noted that OBJ/042 Sustrans raise similar issues in respect of increased financial burdens upon them in their statement of case.

89. Additionally, article 15 of the Order only provides ECC with 28 days to respond having received a request for certification that it is satisfied with the works or else the new highways will be treated as complete. The use of the TWAO application means that ECC have not had the opportunity to inspect the proposed route with the landowner as would be done under Public Path Order applications. It is respectfully suggested that the Order is amended to allow for a process whereby ECC could agree with NR the works and design prior to construction. Further, 28 days is completely insufficient if, for example, 54 applications for certification were to be received at once. A suitable approach is outlined in paragraphs 14 to 16 of Mr White's statement coupled with the master folio

drawings at OBJ/195/W4/1 appendix 1. Mr White also raises issues in respect of arbitration (paragraph 17) and the definitive map (paragraph 18). The DEFRA Rights of Way Circular 1/09 is also exhibited at OBJ/195/W4/2 appendix 2.

90. Laurence Seager – Road Safety Engineer. Mr Seager has reviewed the NR Stage 1 Safety Audit and NR Design Team response. Mr Seager then provides a summary of each crossing and includes outstanding road safety concerns that are held by ECC. The ECC Road Safety Audit is found at OBJ/195/W5/2 appendix 1.

91. Andrew Woodhouse – Country Park Manager for Hadleigh Park. Mr Woodhouse raises concerns over the poor quality of work undertaken by NR in the cutting of vegetation close to E31 Brickyard. The work was undertaken by NR to improve sight lines at the crossing following a near miss in May 2014. Despite numerous contacts with NR, Mr Woodhouse is still waiting, to this day, for NR to remedy the issues, including tree stumps left high. It is a feature of the NR application that they seek to rely on verge vegetation clearance as part of their assurance that alternative routes will be safe for users. The failure by NR has also caused delay for Hadleigh Park in using their own tractor in the area.

Network Rail Evidence

The representatives who have submitted evidence will be cross-examined at the Public Inquiry by ECC and those objectors who wish to do so. It is not proposed to examine in detail the content of these proofs of evidence as to do so would result in extremely lengthy submissions. However, a limited number of observations for each representative are made as follows:

92. Mark Brunnen – Head of Level Crossings (NR27/1-3). A large proportion of this statement covers safety at level crossings and the risk analysis systems employed by NR. However, there is no analysis provided of the crossings to which the application relates and only a generalised view. At paragraph 5.2 it is stated, whilst considering the Networks NPS, that one of the purposes is to “*address safety problems*”. Again, no specific safety problems in respect of the relevant level crossings is provided. If there are safety problems at any of the relevant crossings then surely, in the voluminous mountain of paper created in this application, NR would have highlighted the same. Indeed, one would have expected NR to highlight the actual safety problems. Further, the proof indicates a further consideration that NR have is to safety of their staff at level crossings. There is no mention in any of the documentation of incidents of injury or death of NR employees at any level crossings.

93. In this vein paragraph 7.7 provides a table of fatalities over the 6000 level crossings over the last ten years. The figures are 10 (2007/8), 12 (2008/9), 13 (2009/10), 6 (2010/11), 4 (2011/12), 9 (2012/13), 9 (2013/14), 11 (2014/15), 4 (2015/16) and 6 (2016/17). At first glance this would seem to be an extremely small number per year over 6000 crossings. The DfT statistics for road deaths show that for the year 2016 there were 448 pedestrian deaths on Britain's roads. This was up 10% from 2015¹. It would appear from this tiny snapshot that crossing a road brought infinitely more risk of death than crossing a railway in 2015 and 2016.
94. Attention is drawn to the proofs of evidence of Sue Dobson and Katherine Evans (ELAF) OBJ/142 which outlines similar issues and the contradiction and tensions between NR's objectives and this application.
95. It is also claimed that "distracted" users are more vulnerable when crossing the railway. It would certainly be common sense to assume that those using mobile phones or wearing headphones are at more risk simply because they might not be concentrating as hard whilst crossing. However, the number of fatalities in the last two reported years of 4 and 6 would seem to contradict this assertion as one would expect the trend to be rising rather than falling (the three previous years being 9,9 and 11).
96. In appendix two there is a summary of deaths at crossings in recent years. Whilst it is often clear to see that user error might have resulted in a particular fatality this cannot be conclusive. It is entirely possible that some of the fatalities may have been suicides and the presence of a level crossing cannot be then blamed for reducing safety as a suicidal person could enter the tracks at any point along a line or indeed at a station.
97. Eliane Algaard – Director Route Safety and Asset Management (NR28/1 & 3). This proof of evidence focuses on the costs implications to NR and therefore the costs savings to be had by closing level crossings. It also highlights a £4m fine imposed on NR for a criminal prosecution emanating from possessing knowledge and failing to act upon it. The driver for this application is financial. This representative also covers the consultation process.
98. Nigel Billingsley – Equity Partner at Bruton Knowles (NR29/1 & 3). This representative outlines the process of sending and siting of notices and liaising with landowners and other interested parties. Issues of compulsory purchase and compensation are also covered. The process by which land owners were identified, contacted, informed and

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/648081/rrcgb2016-01.pdf

kept informed is detailed. It is noted that numerous objectors are extremely critical over this aspect of the application and how it has been handled.

99. Andrew Kenning – Senior Project Engineer (NR30/1-3). Mr Kenning is the author of the Anglia Level Crossing Reduction Strategy. He states his role is *"to ensure that the proposed changes to the level crossings on the Anglia Route (which I refer to as "the project") are fit for purpose (in terms of the users), that they are designed to the appropriate standard (i.e. that any new or diversionary routes are suitable for adoption by the highway authority), and that the changes meet the needs of the operational railway"*.
100. Daniel Fisk – Route Level Crossing Manager (NR31/1-3). Mr Fisk clarifies the maintenance and inspection costs to NR in respect of level crossings. Whilst taking on board the concerns of objectors that no case has been presented by NR to show specific concerns at the relevant level crossings within the application he states *"As set out in the Proofs of Evidence of Mark Brunnen and Eliane Algaard, Network Rail is not seeking to close the level crossings in the Draft Order and divert users to other crossing points because of specific safety concerns relating to each individual crossing. There is a general need to reduce the number of crossings to improve safety and efficiency"*. It would be more correct to say that there is a general need to reduce the number of crossings to save costs. The particular identification of level crossings is therefore made on the basis of those which are easiest to close as alluded to within these submissions. The proof at paragraph 31.13 states that the crossing at E31 Ferry has an ALCRM score of C4 and is stated to be not sighting compliant however the table at 31.8 contains contradictory information and has four "yes's" showing it is sighting compliant. Crossings E38 Battlesbridge (ALCRM D8), E43 High Elm (ALCRM C7) and E48 Wheatsheaf (ALCRM D7) all have compliant sighting and no records of misuse or user error at these crossings. E51 Thornfield Wood has an ALCRM score of D11, is sighting complaint and has no record of deliberate misuse or human error. E52 Golden Square has an ALCRM score of D10, is sighting complaint and has no record of deliberate misuse or human error. It is far from clear why these crossings have been selected for inclusion in the application except as a cost benefit to NR.
101. Sue Tillbrook – Projects Director Mott MacDonald (NR32/1-3). This representative addresses the development of each proposed alternative route. When addressing the test to be applied by the Inspector pursuant to the TWA it is stated *"the DfT Guide to TWA Procedures states that if alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users. This is the basis on which alternative routes have been identified and*

assessed". It is pointed out, poignantly, that the test under the Highways Act 1980 that "any proposed diversion must be suitable and it must also take into account 'public enjoyment of the footpath as a whole' does not apply".

102. The contents of the individual crossing analysis will patently be the subject of cross examination by ECC during the Public Inquiry. It is painfully obvious that all of the concerns including extremely lengthy diversion routes and real risks to users safety from the proposed routes bringing them into conflict with vehicles is brushed aside and clearly not given due consideration. This proof of evidence gives credence to the views of many of the objectors that NR have made up its minds and simply does not give adequate, or any, consideration to very real concerns for users safety if the application is successful.

Objectors Evidence

103. This document seeks to provide the Inspector with generalised submissions and is not an in-depth examination of the evidence of objectors. The evidence of the Objectors largely expands upon their initial objections and statements of case. Generalised observations have been made on these in this document. As the evidence of the objectors is supportive of ECC's position it is not referred to in detail within this document. To do so would be to put forward the case of the objectors rather than that of ECC.

104. However, attention is drawn to the evidence of The Ramblers (OBJ/048) in their proofs of evidence dealing with E30 Ferry (Gordon Bird), E31 Brickyard Farm (Gordon Bird), E38 Battlesbridge (Katherine Evans), E43 High Elm (Jeffrey Coe) and E52 Golden Square (Margaret Hobby) for valuable information and observations as to the unsuitability of the alternative routes proposed.

105. Similarly, the rebuttal evidence from NR relevant to ECC is within the rebuttal statement of Sue Tilbrook and makes no concessions but largely refers to her proof of evidence. It highlights the intransigent nature of NR's view of this application.

Conclusions.

106. It is a feature of the proposed alternative routes that they replace a short safe convenient crossing of the railway with a lengthy diversion which moves the user away from pleasant woodland and rural walks along established PROW to lengthy road walking and crossing through urban areas.

107. General observations upon the letter from NR to ECC dated 6th September 2017 regarding the responsibility of NR in respect to the assertion *"It is also legally responsible for safety on and around the railway, including at level crossings, not only for those using the railway, but members of the public who may otherwise come into contact with it. Network Rail is thus obliged to protect the public from the dangers of the railway so far as reasonably practical."* Further *"As is recognised by the ORR in its Level Crossings Policy, the removal of level crossings is the most effective way to achieve this objective, removing the interface between trains and highway users entirely"*. Whilst it is obvious that closing a crossing would remove the interface this takes no account of the fact that persons might, in the absence of a practical or appropriate alternative, seek to cross a railway line in any event.
108. It is also clear to ECC that the risk of harm and danger to safety of those using the crossings to which they object is relatively slight. The alternative routes would appear to move persons from the relative safety of crossing at the current level crossing and the slight risk of contact with a train into the far more likely position of being struck by a vehicle on the alternative route. The guarding from being exposed to a very slight risk to an alternative which greatly increases a risk of injury or death must be a primary consideration. This is a common theme throughout the evidence of ECC and the other objectors for the vast majority of proposed closures and not just those to which ECC objects.
109. This is a flawed application which flows from financial drivers but dressed up towards the far more emotive topic of safety. NR's own evidence shows that safety is not an issue at the vast majority of crossings within the application. It will not escape the Inspector's attention that a very large number of objectors have highlighted this issue. The entire approach to the application has been one of blanket closures with little or no regard given to the voices and views of the objectors and the communities from which they come. There has been no proper or adequate consideration of each crossing from the ground but rather a reliance on a desktop based methodology which proves to be unsuitable for purpose. The Inspector is invited to reject this application for all of the crossings save for those to which there has been no objection by any party.

ALISON LAMBERT
Gough Square Chambers
Counsel for ECC
10th October 2017