

**CLOSING STATEMENT  
ON BEHALF OF  
COLCHESTER BOROUGH COUNCIL ('CBC')**

1. CBC is supportive of travel by train. It recognises and does not dispute that Network Rail should endeavour to ensure train operators can, and do, run an efficient and safe service.
2. However, CBC maintains that some of the proposals are unnecessary or undesirable. Further, the proposals to close crossings on branch lines are premature.

**Procedure / Legal Matters**

3. As set out in opening, CBC does not wish to be drawn on the issue of the legality of using the Transport and Works Act 1992 ('TWA') procedure given the existence of statutory powers to close level crossings and having regard for the fact that the application (for a TWA) has been put before an Inquiry.
4. That said, on behalf of CBC, it is submitted that the SoS, in considering this matter and whether it is appropriate to make the Order, will undertake a balancing exercise of the following, non-exhaustive, items:
  - a. The costs and benefits accruing to Network Rail in making the Order;
  - b. The costs and benefits accruing to the Highway network in making the Order;
  - and
  - c. The costs and benefits accruing to the public in making the Order.
5. CBC therefore submit that, in deciding whether he may make the Order, the SoS must consider whether it is appropriate to do so having regard for matters other than the cost/benefit that accrues to Network Rail.
6. Of course, in reaching a decision, the SoS must satisfy himself that he has the sufficient information before him to make that decision.

**RE: Network Rail's Strategic Case**

7. Network Rail rely upon their strategic case for the various closures or alterations. This strategic case being threefold, namely: the operational efficiency of the network,

safety of both rail users and those interacting with it and the efficient use of public funds.

8. As a strategic aim these three points are recognised by the Council. However, upon cross-examination of Network Rail witnesses, Mr Brunnen and Dr Algaard<sup>1</sup>, it became apparent that:
- a. The case for closing many of the crossings on safety grounds offers, at best, little weight in support of making the Order. For many cases the collective risk as identified under the Fatality Weighted Index ('FWI') was so minor as to be almost negligible (the case of E51 Thornfield being a good illustration as it has an FWI in the amount of 0.00000935, or approximately 1 in 1 million years);
  - b. Indeed, it was accepted by both Mr Brunnen and Dr Algaard that safety risk was not a "key component" of the strategic case, there were other schemes where safety concerns were paramount. Of note, neither Mr Brunnen nor Dr Algaard could explain the weight or significance given to safety "gains" as part of the strategic case; this is particularly surprising in Dr Algaard's case as she admitted to approving the application for the Order prior to its submission.
  - c. CBC therefore submit that the weight that may be reasonably afforded to safety benefits to Network Rail in closing the various crossings is therefore lesser/limited accordingly.
  - d. The case for closing the crossings on operational efficiency grounds are unclear; Network Rail have not produced any evidence of the specific operational "gains" that may (reasonably) be predicted to arise from closing each of the crossings in question.
  - e. Dr Algaard further explained that the "ripple-effect" arising from an operational failure at one of the crossings in the proposed Order may have far-reaching consequences. Network Rail subsequently provided information to illustrate this "ripple effect" (document NR-[tba] "ripple effect note 17-12-18") – this concerned a mainline crossing however. Crossings E41, E51 and E52 are on a branch line. On the branch lines CBC assert that any "ripple effect" would be less pronounced – the relevance being that lesser weight may be given any operation benefits that may accrue by the closure of crossings.
  - f. In respect of those crossings on the branch line – of which E41, E51 and E52 are three, it is apparent that it is not a strategic priority, in the short to medium

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<sup>1</sup> It should be noted that, of Network Rail's witnesses, only Mr Brunnen and Dr Algaard were cross-examined by CBC as to Network Rail's strategic case.

term, to increase either line capacity (i.e. numbers of trains) or line speeds on the branch line. This is confirmed in the Anglia Route Study (NR24). It should be noted that all parties agree that once closed, the crossings will be lost forever. Therefore, the premature closure of any crossing on the branch line will only serve to detriment the local footpath (and Highway) network with no immediate operational efficiency gains accruing.

- g. It is unclear how Network Rail have balanced the cost-benefit to itself/its passengers to the cost-benefit elsewhere (i.e. the public at large). CBC submit that this is a significant failing in the application. This is notwithstanding the loss of amenity that would arise from closing the various crossings.
  - h. Furthermore, the cost-benefit analysis figures given for closing a number of crossings are by reference to a score; many of which fall in the band “reasonable” cost benefit (see, for instance E51 and E52). CBC aver that, in such cases where the costs benefit is only reasonable (i.e. less than 1.0) and not “positive” (i.e. more than 1.0) then the SoS may not be reasonably satisfied that there is a strategic case for the closure of these footpaths absent either a compelling case on strategic grounds and/or operational efficiency grounds.
9. It is CBC’s submission that the strategic case for closing crossings on branch lines is not as strong and, indeed, may be premature absent a compelling case as to why closing of crossings on branch lines will benefit both the rail network and transport system as a whole. CBC say that there is not a compelling strategic case for the closure of E41, E51 and E52 at the present time.
10. Further, and in any event, if SoS is satisfied that Network Rail’s strategic case is made out then the SoS then needs to make a determination in accordance with s5(6) of the TWA.

**RE: Crossings E41, E52 and E52 and the proposed alternative routes**

11. CBC do not agree that suitable alternative routes have been provided in respect of the closure of E41 (Paget), E51 (Thornfield) or E52 (Golden Square).
12. CBC address the specific crossings below.

E41 - Paget

13. The ALCRM score for E41 is C4; this means:
  - a. Individual risk rating of not higher than 1 in 1,000 but more than 1 in 5,000.
  - b. Collective risk rating of not higher than 1 in 1,000 but more than 1 in 5,000.
14. The FWI for E41 is 0.004566819 (or close to 1 fatality in 240 years).
15. The above scores are not indicative of a dangerous crossing – CBC say that Network Rail's case on safety grounds is limited accordingly.
16. There appears to be little benefit to network Rail in closing E41 now; namely no significant operational gain nor substantial financial gain. In short, any benefits to the rail network appear to CBC to be limited.
17. The Inquiry heard evidence that E41 is a well-used transport link within the community – not only as a direct route across the town of Wivenhoe but also as a general leisure and amenity route. The alternative proposed “pushes” pedestrians onto a busy High Street with a narrow bridge with a restricted footpath across an existing railway bridge. The Inquiry also heard evidence of “conflict” between turning buses into/from the bridge and other highway users – the propensity for such conflict will undoubtedly increase with pedestrians being diverted to it from another crossing that has been closed. Further, whilst not as lengthy as others within the application, in an urban setting the proposed alternative route is significantly longer than the current route it is intended to replace. The Inquiry heard evidence (Mrs Clark) that pedestrians may abandon walking as means of getting to services within Wivenhoe if E41 was closed. Therefore, the closure of E41 carries real risk of a reduction in the most sustainable form of travel (walking) with no material benefit(s) to the rest of the transport network now or imminently. Further, unnecessary harm/reduction in sustainable travel would arise if E41 was closed prematurely.
18. CBC say that, taking a holistic approach, greater benefit to the transport network rests with keeping E41 open. That is until such time as either E41 can be shown to be a constraint to supporting sustainable travel for the majority or, in the alternative, a solution is found to avoid the issues that arise with the proposed diversion onto and over the High Street Bridge.

E51 – Thornfield and E52 – Golden Square

19. Owing to their similarities these two crossings are taken together.
20. The ALCRM score for E51 is D11; this is a low score and means:
  - a. Individual risk rating not higher than 1 in 25,000 but more than 1 in 125,000.
  - b. Collective risk rating of not higher than 1 in 1,000,000 but more than 1 in 2,000,000.
21. The FWI for E51 is 0.000000935 (or close to 1 fatality in 1 million years)
22. The ALCRM score for E52 is D10; this is a low score and means:
  - a. Individual risk rating not higher than 1 in 25,000 but more than 1 in 125,000.
  - b. Collective risk rating of not higher than 1 in 200,000 but more than 1 in 1,000,000
23. The FWI for E52 is 0.0000040650 (or close to 1 fatality in 246,000 years)
24. In light of the above the case for closing crossings E51 and E52 on safety grounds is, CBC says, weak. On the flip side, the proposed alternative routes introduce a greater risk with the Highway (roads)[see Obj/195 – evidence from Essex Highways] and thus CBC say the case for not increasing safety risk elsewhere on/within the transport network (i.e. road) is stronger absent a material gain to the transport network generally.
25. CBC repeat that there appears to be little benefit to Network Rail in closing these crossings now; namely no operational gain nor significant financial gain. In short, any benefits to the rail network are, at their highest, limited.
26. Closing E51 and E52 now will lead to a loss of amenity which will not be offset by any improvements to the rail network now or imminently. Local residents, but also recreational walkers (i.e. The Ramblers), have identified the role that these crossings play not only in their community but as part of a wider transport network. The proposed alternatives are lengthy – they (CBC say) will not materially improve the footpath network. The proposed alternatives also introduce more pedestrians onto the road network (i.e. those that would otherwise be walking “cross country” being required to road walk in parts) – clearly such does not benefit the road network or pedestrians either.

27. In the round, there are no gains that, for the current time at least, Network Rail can “point to” that leads to a conclusion that the transport network will now benefit from the closure of crossings E51 and E52.
28. In summary, CBC say that a holistic approach requires crossings E51 and/or E52 to be kept open until either (or both) can be shown to be a constraint to supporting sustainable travel.
29. There is, CBC say, a further reason not to allow the closure of E51 and E52. CBC say that the hedgerows at E51 and E52 are “important” within the Hedgerow Regulations 1997 – Network Rail disagree. Network Rail say that CBC’s assessment is not in accordance with the Regulations – CBC refute this.
30. The assessment undertaken by CBC demonstrates that the hedgerow at E51 and E52 are ‘important’ in accordance with paragraphs 8 and 7 of Part II to Schedule 1 of the Regulations respectively. Those features which identify that the statutory criteria is met being marked with an asterisk [\*] on the assessments undertaken by CBC [see respective Appendices B to the proofs of evidence for Mr P Wilkinson [Obj-141] concerning E51 and E52].
31. Thus, CBC maintain that harm to ‘important’ hedgerows arises from Network Rail’s proposals (i.e. for an alternative route) and, with limited (if any) benefit to closing E51 and E52 now, such is a further reason for CBC to oppose the proposed closure of E51 and E52.

Planning and Conditions (E41, E51 and E52)

32. Whilst the case of *Samuel Smith Old Brewery (Tadcaster)* and the contents of Network Rail’s Planning Policy: Supplemental Note (doc NR:tba) are noted there is (unlike the Electricity Act) no “code” within the TWA concerning planning matters. Further, the DfT ‘Guide to TWA Procedures’ [see Appendix A hereto] does reflect the statutory test contained in s38(6) PCPA 2004 and the more recent (2013) DfT publication ‘TWA orders – a brief guide’ [see Appendix B hereto] does (at page 21) confirm that an Inspector “...will wish to hear evidence about the planning merits of the scheme...”.
33. Clearly, an Inspector cannot consider the planning merits without reference to relevant planning policy.

34. CBC have identified conflict with planning policy, not only in respect of CBC's Development Plan but also policies within the National Planning Policy Framework ('NPPF'). In progressing this application what Network Rail seek to do is put rail travel above/before pedestrians and cyclists – this is contrary to the NPPF.
35. Further, CBC say that the proposed closure of E41, E51 and E52 detracts from the most sustainable forms of travel (i.e. walking and cycling) whilst adding little, if anything, by way of improvements to the rail network. As above, the Inquiry has heard evidence of the introduction of risk, or conflict, onto roads.
36. Whilst conditions may be imposed<sup>2</sup> they will not overcome the loss of these crossings now and in respect of which there is no immediate (or even medium) term benefit of any materiality to the rail network. The closure of E41, E51 and E52 should not be endorsed now/approved as part of the proposed Order.
37. Notwithstanding the above, if the SoS is minded to close crossings E41, E51 and/or E52 then CBC would invite the imposition of appropriate conditions to/within the Order and refer the Inspector to CBC's representations regarding the same.

### **Summary**

38. CBC firmly believes that the interests of the rail network should not be considered in isolation to those of the wider transport network. A holistic approach is required.
39. The main railway line between London Liverpool Street and Norwich passes through the Borough. CBC recognises that this is an important line where there are frequent trains travelling at speed. CBC therefore acknowledges that the balance may be in favour of closing any crossings on the main line.
40. However, it takes a different view on the branch lines, namely:
- a. The Marks Tey to Sudbury line and,
  - b. the Colchester to Clacton line.
41. Network Rail have failed to produce evidence in support of the benefit that may (reasonably) be expected to accrue from closing crossings E41, E51 and E52 now or

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<sup>2</sup> Network Rail have agreed to the imposition of a condition concerning E51 and E52 to prevent harm to undesignated heritage assets. The parties have a "high level" understanding in respect of the thrust of such a condition but, at the time of writing, the wording of any condition had not been agreed. The Inspector will be updated as soon as wording has been agreed.

imminently. Further, these crossings have low FWI scores and with no confirmed plans/forthcoming investment to either increase train capacity and/or speed on these branch lines.

42. To close the crossing on the branch lines will be to the (significant) detriment to the amenity of the local community and the transport (i.e. highway and footpath) network in the vicinity of these branch lines.
43. Therefore, CBC resist the closure of branch-line crossings E41, E51 and E52. CBC say that there is no need to close, or merit in closing, these crossings now. That said, CBC accept that the case may change in circumstances whereby Network Rail can demonstrate that the closure of branch-line (footpath) crossings is preventing further investment on those lines and/or having an (unacceptable) impact on the main line network. As stated previously, CBC endorse a holistic approach which requires a consideration of the whole and not just the benefits/costs to a part.
44. CBC therefore invite the SoS not to permit the closure of crossings E41, E51 and E52 either alone or in combination - either by not making the Order or excluding these crossings from any Order made following Network Rail's current application.
45. Notwithstanding the above, if the SoS is minded to close crossings E41, E51 and/or E52 then CBC do invite the imposition of appropriate conditions to/within the Order and refer the Inspector to CBC's representations regarding the same.

Michael Harman

**HOLMES & HILLS LLP (Solicitors)**  
**For Colchester Borough Council**



A Guide to TWA Procedures

Front Cover

EXTRACT

**A TWA Guide to Procedures**

**Guidance on the procedures for obtaining orders under the  
Transport and Works Act 1992, relating to transport systems, inland  
waterways and works interfering with rights of navigation**

**Department for Transport**

**June 2006**

application as an ES might not actually meet the statutory requirements - for example, some of the information required by rule 11 might be missing. Strictly speaking, therefore, what the applicant submits as an ES only becomes such once all the requirements are met. However, for simplicity's sake, the guidance in this booklet refers only to the preparation and submission of an ES.

### **Planning Policies and Development Plans<sup>1</sup>**

1.28 In determining an application for a TWA order to authorise works, and any related application for deemed planning permission, the Secretary of State will have regard to, amongst other things, relevant national, regional and local planning policies. Therefore, in drawing up works proposals, prospective applicants should pay particular attention to relevant national policy guidance and development plan policies, including those in regional spatial strategies and local development documents. In line with the plan led system for determining planning applications, projects that conflict with relevant policies in the development plan are unlikely to be authorised, unless material considerations indicate otherwise.

1.29 Prospective applicants are advised to consult the local planning authorities and other statutory and non-statutory organisations with relevant responsibilities and expertise at the formative stage of a project. They should seek to work with the local authorities and other key consultees in taking forward their project - see Part 2 for more detailed advice on pre-application consultation.

1.30 Where a relevant development plan is in draft form and is subject to consideration at a public inquiry before being formally adopted, a prospective applicant may wish to consider whether there may be benefit in delaying making a TWA application until that process has been concluded. This is not essential, however, and there may be circumstances where the applicant would not be willing or able to await the outcome of a separate planning process. Any public inquiry into a TWA order application will consider the planning merits of the proposals having regard to relevant published policies and plans, whether formally adopted or in draft form. Applicants should nevertheless be aware that, in deciding whether to make a TWA order, the Secretary of State might need to take into account any relevant development plan which is adopted after the application is made. Depending on timing, this could result in the need for a reference back to interested parties after the close of any inquiry into the proposed TWA order.

<sup>1</sup> Under Part 2 of the Planning and Compulsory Purchase Act 2004, local plans, unitary development plans and structure plans have been replaced by local development documents.



Department  
for Transport

*Exhibit*

## Transport and Works Act orders A brief guide



July 2013



**Q6 Does the TWA order include planning permission?**

A TWA order does not in itself grant planning permission. But the organisation applying for the order can ask the Secretary of State to grant planning permission for any development described in the order.

The Secretary of State would only grant planning permission if he or she decided to make the TWA order. He or she would do so at the same time as the order was made, and may attach conditions to it. On the other hand, the organisation applying for a TWA order may apply for planning permission, separately, to the local planning authority (usually the district or unitary council).

Planning permission may not be needed for some kinds of work, such as replacing railway and tramway track on an existing transport system.

**Q7 What about listed building consent and other consents?**

Sometimes a scheme requires a listed building consent or a conservation area consent or another type of consent in addition to a TWA order. In that case, the organisation applying for the TWA order usually applies for these consents at the same time as they apply for the order.

Where the different (but related) applications require decisions from different Secretaries of State, the Government departments involved liaise to make sure the whole process is co-ordinated.

**Q8 What is involved in a TWA order application?**

Applications for TWA orders, and objections to them, must follow the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules. If you want a copy of the latest (2006) version of the Rules you can get one from

the address at the end of the Introduction), to the applicant, and to the person whose statement you are commenting on (if that is not the applicant). Alternatively, you may make additional comments in a proof of evidence (see Q30) or at the inquiry itself.

The purpose of this pre-inquiry exchange of statements of case is to allow everybody to familiarise themselves with the other side's arguments so that everybody is well prepared for the inquiry. This helps to make best use of time at the inquiry, which can then focus on the matters that are really in dispute.

If you consider that you have already set out your case in full in your objection letter, you could ask for your objection letter to be treated as your statement of case. But please bear in mind that the fuller the statements of case are, the more this helps the inquiry. **There is nothing to be gained from deliberately withholding arguments or evidence until the inquiry opens.**

#### **Q26 Does the inquiry deal with planning issues?**

If the TWA order application comes with a request for planning permission (see Q6), this is considered at the same public inquiry.

The inspector will wish to hear evidence about the planning merits of the scheme and about any conditions that should be set. His or her report will include conclusions and recommendations on whether or not planning permission should be given, and on what conditions should be set if permission is given.

#### **Q27 What about listed building consent and other consents?**

The inquiry may also consider any other related applications, such as an application for listed building consent or conservation area consent.