

TRANSPORT AND WORKS ACT 1992

**WRITTEN PROOF OF EVIDENCE SUMMARY BY THE NFU
REGARDING THE APPLICATION FOR THE PROPOSED NETWORK RAIL
(ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER**

REFERENCE OBJ/ES/034 SUMMARY

DATE 20TH SEPTEMBER 2017

1.0 Summary

1.1 The primary concerns and issues of our NFU members are as follows:

- Closure of level crossings will compromise access to agricultural land by farm businesses, their employees and contractors. This concern is brought in part by a lack of clarity and transparency on the impact of these changes on private access.
- The economic impact to farm businesses, caused by the proposed closures to the crossings, has currently been completely underestimated.
- There are proposals to considerably increase the length of the rights of way network running across agricultural land through the creation, diversion or extinguishment of rights of way. This will have an economic impact on agricultural holdings.
- Once a crossing is closed, it is unlikely to be re-opened thus future opportunities for land use, development and neighbouring property may be restricted.
- The NFU believes that other solutions have not been considered before the closure or downgrading of the level crossings including use of lights, barriers, GPS, tunnels and bridges.
- The direct effects of closing and downgrading level crossings, including economic, logistical and safety implications have not been fully considered. Forcing agricultural machinery to take longer routes, often using longer stretches of public road, can have significant impacts on the farm business, their contractors and the rural villages and rural local roads and we believe this has not yet been taken into full consideration.

1.2 Greater consideration needs to be and should have been given to farmer and landowner responses to the consultations and to points made in meetings when on site. Only through this full engagement with landowners and other interested parties at an individual or local level can compromise arrangements be made to improve Network Rail's assets whilst not disadvantaging agricultural businesses and rural communities.

1.3 The NFU believes that due to the lack of meaningful consultation with farmers and landowners and the NFU as a key stakeholder and the lack of any agreement to proposals by Network Rail this Order should not be granted.

Consultations

2.1 The NFU submitted a general response to the first consultation carried out by Network Rail and responses were sent on 13th July and the NFU submitted further responses to the second and third round of consultations. Standard response emails were received. They stated "your comments have been noted and will be added to the consultation process for consideration".

2.2 No response had been received from Network Rail in regard to any of the issues raised in all of the consultations on behalf of our farming members before the pre inquiry held on 9th August 2017..

2.3 The only written response to date received from Network Rail was on 8th September 2017, after the date when it was confirmed an inquiry would be held, which was in regard to objection letters dated 25 April 2017 and 5 May 2017.

2.4 As stated in the 'A Guide to TWA Procedures' on page 30, paragraph 2.4 it is highlighted that engaging in constructive dialogue during formative stages of a project and being seen to be listening to objections can reduce the size of opposition. There has been no dialogue between Network Rail and the NFU on any of the issues raised in the consultation responses. Further it is stated in paragraph 2.5 that failure to carry out consultations or take into account issues or concerns raised increases the risk of the TWA application not succeeding. As Network Rail did not provide any response to the consultations, beyond recognition that they had received our comments, the NFU believes that Network Rail has not taken into account issues or concerns raised.

Communication

2.5 In January and February 2017 calls were received from NFU members stating that Bruton Knowles were carrying out farm meetings again and did not seem to have the details as to what had been discussed at previous meetings with Hamer Associates. New proposals/changes were being proposed and consulted on again in January 2017. There seemed to be very poor communication and this was causing confusion as to whether the process was starting from scratch. It was later confirmed that this was a continuation of the process, but the problem was that nothing was being reported back to our members and changes were being made on plans that had not been consulted on.

2.6 Despite attempts to hold a further meeting, it was until after the NFU submitted a Statement of Case, that a meeting was held with Network Rail at their office in Stratford on 21 July 2017. Matters were discussed regarding the issues for particular members but no response has been received from Network Rail or any attempt to address any of the issues raised.

2.7 The NFU believes strongly that Network Rail and the agents acting on its behalf have not been constructively engaging with landowners and farmers affected by the proposed level crossings or the NFU representing our affected members. We believe many issues could have been resolved before the creation of a public inquiry if there had been full consultation and dialogue between Network Rail and our members.

Impacts on Agricultural Businesses

- 3.1 The NFU recognises Network Rail's aims to improve safety on the network and increase the quality of service provided to its customers through a higher-speed rail network. However, the NFU's preferred option is for other solutions to be considered before the closure or downgrading of level crossings which we believe have not been fully considered up until this point. This includes the use of lights, barriers, GPS, tunnels and bridges.
- 3.2 The closure or downgrading of level crossings will have differing impacts on agricultural businesses depending upon farm type and size, and the specifics of the proposed closures.
- 3.3. Our members' primary concern is to ensure access to their farmland on a safe and timely basis, by their staff or appointed contractors, for agricultural and horticultural operations, and to transport harvested produce. Where livestock is grazed, access to land is required for husbandry purposes. Some of the proposals would lead to very lengthy diversions which would have disproportionate impacts on current farm practices.
- 3.4 Furthermore, some operations are labour intensive and require considerable numbers of people to gain access to land at particular times of year. Therefore increasing the distances which have to be travelled to access land can have significant logistical and financial impacts for the farm business.

Public Rights of way

- 4.1 The NFU is concerned that a lot of the proposals are to divert footpaths and bridleways on to productive agricultural land which is privately owned and which at present do not have any public rights of way.
- 4.2 Some of the proposed diversions for the rights of way are greater in length and therefore are taking a considerable proportion of land out of production.
- 4.3 As discussions and proposals have progressed from the first consultation to the final set of maps deposited with the Order, some rights of way have been upgraded from a footpath to a bridleway with a wider area of land being needed for the creation of a bridleway. The first some landowners have known about this is when looking at the plans enclosed with the Order.
- 4.4. Section 5(6) of the Transport and Works Act (TWA) states: *"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.”

Taking this into regard the NFU believes that the following needs to be taken into account when considering whether a footpath should be diverted along and over agricultural land.

- a) Data from the surveys carried out by Network Rail demonstrates very low usage or even no use at all of some footpaths. The word ‘required’ does not have any special meaning in the TWA, therefore we believe it is necessary to define ‘required’ through its definition in the Oxford English dictionary as to ‘need for a particular purpose’. The TWA does not obligate a new route to be created if it is not ‘required’.
- b) The NFU believes that many of the proposed routes are not required to be diverted across agricultural land as there is already an existing parallel or alternative route available which is not substantially less convenient.
- c) Many of the proposals for diverted footpaths put forward by Network Rail create circular routes which are not currently in existence. Network Rail only have powers to provide an alternative right of way and by applying for this Order through the TWA should not be improving or upgrading the right of way network.
- d) There are cases where a diverted footpath has been replaced by the creation of a bridleway on the plans submitted with the Order. The TWA does not allow for an upgrade and betterment should not take place.

