

TRANSPORT AND WORKS ACT 1992

WRITTEN PROOF OF EVIDENCE BY THE NFU

REGARDING THE APPLICATION FOR THE PROPOSED NETWORK RAIL
(ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER

REFERENCE TWA/17/APP/05/OBJ/034

DATE 20TH SEPTEMBER 2017

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1.0 Introduction

1.1 My name is Louise Staples, I am a Rural Chartered Surveyor for the NFU at the head office at Agriculture House, Stoneleigh Park, Stoneleigh, Warwickshire.

1.2 I hold a BSc (Hons) in Rural Enterprise and Land Management. I am a Member of the Royal Institute of Chartered Surveyors and a Fellow of the Central Association of Agricultural Valuers.

1.3 I have been the rural surveyor for the NFU since 2010 and lead on all Infrastructure Schemes/Compulsory Purchase across England and Wales. I have been involved with HS2 on behalf of NFU members since 2010 and gave evidence to House of Commons and House of Lords, Select Committees in 2014 and 2016 in regard to the Hybrid Bill for HS2 Phase 1.

1.4 I have appeared on behalf of NFU members at Development Consent Order (DCO) hearings in regard to the A14 Huntingdon to Cambridge Improvement Scheme in Cambridgeshire, Triton Knoll Electrical System Development in Lincolnshire and the Richborough Connection Project in Kent.

1.5. Before joining the NFU I worked for over 15 years in private practice for George F White and Clark Scott Harden in Northumberland for 8 years and Carver Knowles and John Amos in Worcestershire, Herefordshire and the Welsh Borders for 7 years.

1.6 My colleague Martin Rogers will be speaking as a witness and his qualifications are as follows:

1.7 Martin has held the post of flood risk management and access adviser at the National Farmers Union for 2 years, representing and advising NFU members on changes in policy in both subject areas.

1.8 He has a BSc (International) in physical geography, and an MSc in River Basin dynamics and Management with GIS from the University of Leeds.

1.9 He sits on key national rights of way policy groups including: the Rights of Way Review Committee and the Stakeholder Working Group for the implementation of the Deregulation Act.

1.10 He previously worked for four years at the Environment Agency as an environment officer dealing with water quality, flood risk management and waste management issues.

2.0 Background

2.1. The NFU was originally in contact with Christian Green of Hammer Associates in regard to the proposed Anglian Level Crossing closures. Christian Green was very good at keeping the NFU regional team up to date with what was happening and what Network Rail was proposing. Meetings were held at the NFU's Newmarket office.

2.2 The NFU then had members phoning the Newmarket regional office and speaking to their NFU county adviser. Our members were raising concerns over the proposed closures. Adam Scott the NFU County Adviser for Essex visited two public consultation events in Witham on 16 June 2016 and Colchester 17 June 2016.

3.0 The Consultation and Communication Process

3.1 The NFU submitted a general response to the first consultation carried out by Network Rail and responses were sent on 13th July regarding Colchester, Newport and Harlow. A standard response was received from Network Rail acknowledging receipt of the response and confirming that issues had been noted.

3.2. The NFU submitted further responses to the second and third round of consultations and again a standard response email was received. It stated "your comments have been noted and will be added to the consultation process for consideration".

3.3 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.

3.4 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.

3.5 Network Rail has in their 'Statement of Consultation', stated that the consultation strategy was developed to adhere to the statutory requirements from Rule 10(2)(d) of the Application Rules. Further it states that it has taken account of the following guidance and best practice procedures to develop a more wide-ranging approach to pre –application consultation. This included

- The department for transport (DFT) 'A guide to TWA Procedures' and
- The Government's 'Code of Practice on Consultation'.

3.6 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 simple recognition that they had received our comments, the NFU believes that Network Rail has not taken into account issues or concerns raised.

3.7 Further it is highlighted in paragraph 2.5 that if meaningful discussions with concerned parties are left until after an application has been made it can result in a public inquiry being held which is exactly what has happened with this scheme.

Communication

3.8 As stated above Network Rail's agents Hamer Associates pre consultation were actively consulting with the NFU regional office and two pre consultation meetings were held at Newmarket. The NFU were fully informed of what was happening with the two consultations running in June /July 2016 and followed by the second consultation in September /October 2016. The NFU then found out in December 2016 that Bruton Knowles were now acting as the agents for Network Rail. Andrew Prouse called the NFU to introduce himself and explain that Bruton Knowles were acting.

3.9 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.

3.10 Members were reporting to the NFU that the information held by Bruton Knowles seemed to be patchy and some members were reporting that any progress that had been made with Hamer Associates/Gatley Hamer had been undone. This was reported to Bruton Knowles in an email dated 16 February 2017.

3.11 A response was received from Bruton Knowles confirming the process had not started again but that it was just a continuation of the consultation. The response stated that anything reported to Network Rail, Ardent or their agents acting would have been logged and given due consideration. 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.

3.12 The NFU requested a meeting with Bruton Knowles on the 23 February 2017 due to the number of calls being received from members. A meeting was arranged for 28 February 2017 at our Newmarket office but on the morning of the meeting Andrew Prouse from Bruton Knowles called in to cancel the meeting. A colleague Rachel Carrington did ask if another date could be arranged for the meeting. The response received was that it was not really necessary to have a meeting as all the information was on the website. Due to the number of questions being raised by the NFU in consultation responses and in direct emails to the agents acting the NFU would have expected Network Rail to be requesting a meeting to solve outstanding issues.

3.13 The NFU tried again to hold a meeting with Bruton Knowles and an email was sent on 5th April 2017 there was no direct reply from Bruton Knowles but contact was made direct from Network Rail on 13 April 2017 requesting information on the individual member queries. A copy of the NFU response was sent to Jonathan Boulton at Network Rail and the NFU was informed that we would receive a response. The only response received as stated above was on the 8th September 2017 to letters dated 25th April and 5th May 2017.

3.14 After the NFU submitted a Statement of Case, 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 nor has there been any attempt to address any of the issues raised.

3.15 Network Rail and its agents Bruton Knowles have been holding meetings with our members in the last few weeks since the pre-inquiry meeting to try and agree proposals.

3.16 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 with 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.

4.0 Impacts on Agricultural Businesses

4.1 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.

4.2 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.

- 4.3. 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.
- 4.4. Land in the Anglian region is highly productive growing a variety of crops on rotation, including salad, vegetables, sugar beet and combinable crops. Frequency of access to land varies according to the crop being grown, and some land is subject to multi cropping and grows more than one crop per year. Agricultural and horticultural operations are weather related, so access requirements vary accordingly. 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. This can have significant logistical and financial impacts for the farm business.
- 4.5. Harvesting of crops can also be dependent on supplier requirements, so changes in supermarket demands can influence field operations and access requirements to land demonstrating the need for reliable access to land.
- 4.6. Vehicular access by farm traffic, including tractors and large machinery (for example sprayers, potato harvesters, combine harvesters and sugar beet harvesters), must not be compromised. Agricultural businesses can be acutely impacted by reduced, as well as a complete lack of, access to particular areas: in some circumstances the nature of machinery used demands the availability of a circular route, and removal of one access point to a land parcel will heavily impact on the logistics of these farm operations.
- 4.7. Access by HGVs to sugar beet pads is required and proposals must accommodate this. Providing suitable access routes for agricultural and horticultural traffic may help reduce unnecessary congestion for the public on local roads, and we are mindful that some of the proposed closures would obligate farm traffic to travel through villages and other small communities, or travel on busy A-Roads leading to significant traffic disruption.
- 4.8. In some circumstances the alternative route caused by the closure of level crossing is not suitable for agricultural machinery. In general, diversions for agricultural machinery are not suitable if they are:
- Narrower than 5m and not capable of taking loadings up to 60tonnes;
 - Contain underbridges which are under 5m high or 5m wide;
 - Contain junctions or corners which vehicles over 20m long could not use.
- In some cases we believe this has not been taken into consideration, therefore the full logistical and economic costs of the diversions caused by the closing of level crossings has not been fully taken into account.

- 4.9. 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.

5.0 Public Rights of Way

- 5.1 The NFU understands that through the proposals to close some level crossings Network Rail will create, divert or extinguish public rights of way.
- 5.2 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, does not have any public rights of way running across it.
- 5.3 Some of the proposed diversions for the rights of way are greater in length and are therefore a taking a considerable proportion of land out of production.
- 5.4 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.
- 5.5 This is just one example which shows that Network Rail has not carried out enough consultation with landowners and tenants.
- 5.6 A further example of poor consultation is that Network Rail after carrying out an initial round of meetings with landowners and discussing a route for a diverted footpath, has without any further consultation highlighted a new diverted route in some instances on plans enclosed with further consultations and even made changes to plans that have been submitted with the Order.
- 5.7. 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.

5.8. The NFU is also concerned about the suitability of some of the diverted routes for new public footpaths. For bio security reasons it is not suitable to divert a footpath to run alongside or near to a livestock building. The fact that some proposals have placed rights of way immediately adjacent, or in close proximity, to livestock sheds again demonstrates the lack of full consultation and dialogue between Network Rail and our members.

5.9 Other proposed diversions are onto parcels of land which are currently used for the turning out of livestock, thus increasing the risk of livestock worrying, or the spreading of disease transmitted by dog faeces such as neosporis. It is known that abortion due to *Neospora* has been shown in cattle, sheep and horses. The dog is one of the definitive host/carries. Therefore no footpaths should be diverted through livestock farms. Abortion from *Neospora* has become more prevalent in the last few years along with dog worrying. Multiple cases have been reported this year.

5.10 Some proposals to create or divert rights of way run across land which is currently entered into Environmental/Countryside Stewardship schemes, which would in turn deem the land ineligible for stewardship payment. As an example, in the Countryside Stewardship manual for option SW4 (12 – 24m watercourse buffer strip on cultivated land), it explicitly says the option 'cannot overlap a public right of way'. As such Countryside Stewardship schemes could be affected by the creation of new rights of way, or diversion of existing rights of way. This would have an economic impact on the farm holding.

- 5.11 Further any length of new footpath or bridleway to be created on agricultural land will have an economic impact on the farm business. As an example a farmer could make a gross margin of £556/ha per year for wheat and £824 ha per year for sugar beet. If a new footpath is to be located across an arable field and it is 3m wide and the length is 1 km the cost to the farm business for loss of crop could be £1,668 for wheat and £2470 for sugar beet over ten years..
- 5.12 Network Rail in many instances has not made it clear to landowners as to whether it is wanting to compulsorily purchase the interest over the land to create the footpath or actually purchase the strip of land. Further, no clarity has been provided on who would be responsible for the installation and ongoing maintenance of the newly diverted footpaths including the gates, stiles and fences.
- 5.13 There are a number of instances where there is potential for the right of way to be retained on Network Rail land rather than displaced onto our members' land. We note that in response to these suggestions, Network Rail has stated this would not be possible due to the 'topography' of the land, and not undertaken of safety concerns or a lack of width. In these circumstances, ground works should be taken to enable the right of way to run on Network Rail land, thus having a far smaller impact on productive agricultural land whilst retaining the right of way network.
- 5.14 Rights of way proposed to run alongside watercourses could limit the ability to gain access to abstracted water supplies. Furthermore many of the proposed changes occur on land situated within internal drainage boards (IDBs). Byelaws are often put in place to restrict or control activities which are conducted in or near watercourses. Network Rail has not made it clear to landowners whether there will be any restrictions on locating a new right of way next to an IDB drain. This could mean that were a footpath is to run alongside an IDB drain, it might have to be located further into the field therefore taking more land out of production than the suggested 2 or 3m. In some circumstances new rights of way running parallel to drains could create linear sections of land between the drains and the proposed right of way which are impractical and so will not be able to be farmed.
- 5.15 The NFU recently launched its Rural Crime Report which suggests that an increase in the rights of way network would result in farmers being at greater risk of becoming the victims of crimes such as fly tipping, fly- grazing, hare coursing and livestock worrying.
- 5.16 To illustrate this point, the Environment Agency's *Flytipping statistics for England, 2015/16*² recorded that in this 12 month period alone, 154,000 incidents were reported on footpaths and bridleways. This figure does not include fly-tipping incidents on other rights of way including byways open to all traffic and fly-tipping on agricultural land off the right of way network. 154,000 is not only a very large number, but statistics show that this figure continues to increase: the number of incidents of recorded fly-tipping incidents increased by 8% between

2014/15-2015/16 and by 3.2% from 2013/14-2014/15. The issue is so severe that footpaths and bridleways are now the second most common location for fly-tipping to occur after highways.

5.17 The same report by the Environment Agency reported that the most common size of fly-tipping is a 'small-van load' which on average costs £56 to clear (which legally has to be covered by the landowner). This equates to a total cost of £8.6million to clear fly-tipped waste left on footpaths and bridleways, before the costs of damage to crops and contaminated land are calculated. It is important to note that these figures derive from data reported by local authorities; a far higher number of fly-tipping cases will go unreported, making the real cost of fly-tipping on rural businesses far greater.

6.0 Conclusion

6.1 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.

6.2 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.

6.3 The NFU believes that due to the lack of meaningful consultation with farmers, 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.

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