

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

PROOF OF EVIDENCE ON BEHALF OF:

Level Crossing – E16, Maldon Road

Landowner: Mr A R Smith

Parish: Margaretting

Plots: 6 and 8

Department of Transport Reference: TWA/17/APP/05/OBJ/139

1. Introduction

- 1.1 This Proof of Evidence is submitted by Strutt & Parker LLP (S&P) on behalf of Mr A R Smith in connection with their objection made against the proposed Network Rail (Essex and Others Level Crossing Reduction) Order.
- 1.2 An original objection can be found in Mr Smith's letter to the Secretary of State for Transport of 4th May 2017.
- 1.3 A Statement of Case was submitted on 4th July 2017.
- 1.4 We ask that the Inspector considers the contents of point 1.2 and 1.3 above.
- 1.5 Subsequent to that a letter was received from Network Rail on the 6th September 2017 and a copy is attached at **Appendix I**.

2. Questions

As a result of the letter received from Network Rail (**Appendix I**) we would like to ask the following questions of Network Rail at the public inquiry:

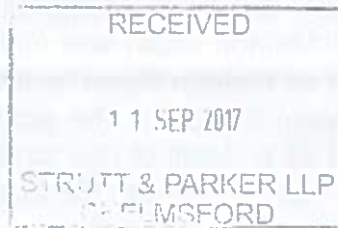
- 2.1 In Network Rail's point 2 of their letter of the 5th September 2017 they state "a bridleway has been provided at the request of users and Essex County Council". We ask that Network Rail explain who these users are and provide evidence of this and also provide evidence of the request from Essex County Council.
- 2.2 Under point 3 of their letter they state "the new bridleway allows users to connect with onward public rights of way". We ask Network Rail to explain this point further as the "onward public rights of way" that their proposal would connect to are all footpaths and not bridleways.

- 2.3 Under point 6 of their letter Network Rail state "the option could use third party land but as per the southern side of the Maldon Road it would require the loss of agricultural land". We ask Network Rail to explain how they have considered the importance of the agricultural land. The land that their proposal affects, being the land owned by our client, is good quality arable land currently in cultivation and cropping. The land that they have dismissed as an alternative has not been cropped for as long as anyone can remember and is not even farmed for a hay or silage crop but we understand for at least the last few years has simply been topped with a mower annually to keep it clean and tidy. This would not be an appropriate assessment in planning terms in regards to the loss of good agricultural land.
- 2.4 Under point 6 Network Rail go on to say it would "also pass through an area used for storage purposes". We agree that part of this route would pass through an area for storage purposes but don't see why it could not be fenced off against the railway boundary to make it safe. This is not an area that is intensively used and the loss of land would not be significant for the current user.
- 2.5 Under point 6 Network Rail also state that the alternative proposal would require users to "pass a vehicle access point for the railway with the potential for additional risks". We would ask Network Rail to explain how the risks would be increased.
- 2.6 Network Rail have not addressed the question in their response of access to our client's field.
- 2.7 We ask Network Rail how they reconcile their proposals and their impact upon our client's land with their proposal to close Path EX/226/21 from the northern side of the railway to the A12 slip road without providing a replacement for that.
- 2.8 In Andrew Kenning's proof of evidence at point 14 he comments that they will continue to "engage with affected landowners With a view to reducing, or mitigating, the impact of the project as much as is reasonable practicable" We ask Network Rail to explain why they have not made these efforts prior to applying for the TWA as would be good practice so as to minimise costs and time for all parties?
- 2.9 We understand that just prior to submission of this a theft occurred at No.4 Whitebridge Cottages where access was taken through the rear of the property. Our client has highlighted security as a concern previously. We ask Network Rail if they are aware of this incident and to comment further in regards to security.

Signed for and on behalf of Mr A R Smith:



.....
Alexander Creed
20th September 2017



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6 September 2017

Ref: Obj/ES/139/R001

Dear Mr. Creed

The Network Rail (Essex Level Crossing Reduction) Order
Level crossing E16 Maldon Road
Landowner : Mr A R Smith
Parish : Margaretting
Plots : 6 and 8

The Department for Transport has passed to us your client's letter of objection to the proposed Order dated 8th May 2017, which has been allocated the reference OBJ/139 and the statement of case you submitted on his behalf.

We note your client's concerns and, in the following paragraphs, we respond to each point you raise. We set out below the current and proposed status of the level crossing referred to in the objection.

Level Crossing	Current Status	Proposed Status
E16 Maldon Road	Public footpath	Extinguishment of public footpath EX/226/21. Create bridleway joining with bridleway EX/226/22 from the rear of Whitesbridge Cottages within the adjacent field margin westward joining with Maldon Road.

Point 1 – Was not notified of works

We acknowledge that, notwithstanding previous discussions, your clients were not named as landowners in the Book of Reference. However, as the land is not registered with the Land Registry, 'unknown' notices were erected on the land to notify the landowner of the proposals in the Order. Your letter of objection dated 8 May 2017 was received after you had seen the notices erected on your land. Following this, you have also submitted a statement of case and you are entitled to appear at the public inquiry.

Transport Works Act Order Notices were erected at the level crossing and local residents were leafleted before each formal consultation stage. Feedback from Round 2 consultation indicated that Maldon Road was not suitable for walking and suggested a new route to the south of Maldon Road to link existing public rights of way. This alternative option was taken forward. The proposal was discussed with the landowners directly affected and as a result of this consultation, the full length of the bridleway is now proposed to be fenced off from the field.

Upon submission of the Transport and Works Act Order, directly affected parties were notified by statutory notices. In addition, these notices were also placed at the crossings and locally advertised and Network Rail has complied with the statutory procedures for publicizing the Transport and Works Act Order..

Point 2: Proposal to use private land was not accepted

Network Rail is under an obligation under the Transport and Works Act 1992 to provide an alternative route unless it can satisfy the Secretary of State that no alternative route is required. The footpath network is the responsibility of the highway authority and they are not prepared to allow the route to be simply extinguished when the crossing is formally closed. This has resulted in finding a solution to continue to offer connectivity for the public right of way network. A bridleway has been provided at the request of users and Essex County Council and is considered reasonable as the new public right of way links directly to an existing bridleway.

The alternative routes your client had proposed for the diversion were found unsuitable due to on road walking. Further clarification can be found in points 6 and 7 below.

Point 3 – Footpath and bridleway are separate entities, one cannot replace another

Bridleway EX/226/22 comes up from the south to cross Maldon Road. Historically this path would have continued north across the railway as a footpath. The provision of the new bridleway allows users to connect with onward public rights of way and provides an off road walking route before joining Maldon Road to cross the railway. A bridleway has been provided at the request of users and is considered reasonable as the new public right links directly to an existing bridleway.

Point 4 – Privacy and security for Littlebridges and Whitesbridge residents and security

We note your client's concerns over property security. It was noted at a site inspection, that there is a landscape buffer around the majority of the property boundaries. However Network Rail has confirmed to those residents who have objected to confirm that it would be happy to discuss reasonable mitigation measures such as fencing or planting.

Point 5 – Bridleway impacts farmland

Network Rail has included provision in the Order proposals to erect a fence along the length of the proposed bridleway.

In terms of the impact on the value of your interest, you may be entitled to compensation in line with the compensation code. The UK Government has issued

guidance on compulsory purchase, which is available from Government publications on the following link (<https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-1-procedure>).

Point 6 – Propose original footpath following railway to corner of Nunn's crossing down straight road

This option was carefully considered when suggested at the Round 1 consultation stage.

Network Rail land to the side of the railway is heavily vegetated and partly within an embankment and unsuitable for a new public right of way. The option could use third party land, but as per the southern side of the Maldon Road it would require the loss of agricultural land and also pass through an area used for storage purposes.

This option would also require users to cross Maldon Road twice passing a vehicular access point to the railway with the potential for additional risk. Also the footpath running in front of the cottages instead of behind them would expose users to road traffic and resulting in a longer and less convenient route than the one proposed within the Order.

Point 7 – Have not seen people use the footpath. People used road instead.

The level crossing, and so the footpath, is temporarily closed for safety reasons, owing to the absence of steps to facilitate ascent and descent of the cutting slope. .

For completeness we have also sent a copy of this letter direct to Mr Smith.

We hope that our response has provided sufficient clarity on each of the points made in your client's objection, and has addressed his concerns about this level crossing. If so, we would be grateful if you would kindly let the Department for Transport know by withdrawing the objection. We look forward to learning your position.

Meanwhile, if you require further information please do not hesitate to contact me by email on ALCross@networkrail.co.uk or on the address above, quoting the reference number provided.

Yours sincerely



Bridgit Choo-Bennett

Anglia Level Crossing Reduction Team
Network Rail

CC Mr A R Smith

