



OBJ/157-E57- 1 - Proof of Evidence

15th September 2017

Dear Sir/Madam

PROOF OF EVIDENCE
Department of Transport Reference TWA/17/APP/05/OBJ/157

My name is Charles Nicholas Gooch. I am owner of Plots 4, 5 6, 7, 9, 11(x2), 12, 14, 15, 22 and 23 and the surrounding land. This Proof of Evidence should be read in conjunction with the Statement of Case prepared by Strutt & Parker on my behalf and dated 3rd July 2017.

Network Rail propose to close the vehicular level crossing that serves my property, provide an alternative access and obtain a permanent right of way over my property to the level crossing.

The level crossing is infrequently used by vehicular traffic, but vehicular access for large equipment is needed to maintain my property, a UK BAP Priority Habitat. The level crossing is also used from time to time by Sustrans to maintain the cycle way known as National Route 51, and by the Environment Agency to maintain the sea wall. The sea wall will shortly become a Coastal Path which may involve physical improvements. As such, access by large excavators, stone lorries, tractors, trailers and other equipment is needed as well as a location to temporarily store stone and other materials.

Unauthorised use of the crossing is prevented by locked gates. Use by vehicles can only take place following Network Rail authorisation using fixed telephones.

A public footpath also crosses the railway line, which is frequently used by walkers and cyclists and this crossing is unfettered.

My objection is in four parts:

1. Notices for Plots 5, 6, 7, 11(x2), 14, 22 and 23 have been served for temporary use of my property. However, the Notice for Plot 4 is for the acquisition of permanent rights in land. Network Rail have confirmed (see Appendix H of our Statement of Case) that Plot 4 is only needed temporarily but have not withdrawn the Notice for Plot 4, although at our meeting on 31st August 2017 it was verbally confirmed to be an error. I have objected to this Notice.
2. The Notices for Plots 12 and 15, I understand, seek permanent rights of way over my adjoining property. Network Rail have failed to explain why they need these rights, bearing in mind they propose to close the level crossing. I would like to ask Network Rail to explain why they need these rights.

The adjoining land is currently allocated for University Expansion in Colchester Borough Council's Local Plan and I object to the potential detriment these rights could cause.

I also contend that Network Rail can access the railway line without these rights using the provisions of the Access to Neighbouring Land Act 1992.

Finally, Network Rail have been unable to confirm whether they would be responsible for any damage to my property by their use.

Therefore, I do not consider Network Rail's proposals to be acceptable.

3. Network Rail's proposed alternative access is completely impracticable for large machinery, nor does it provide an area for the storage of stone and other materials, which will be needed for cycleway maintenance etc. Sheet 42 appears to suggest that Network Rail intends that access with large machinery should be taken along the top of the sea wall, which is about 2.5m wide and which is further restricted at a sluice gate. Network Rail advised me on 19th April (see Appendix 1) that they would "make such alterations as are reasonably necessary, there may be a need to firm up some of the land to allow full access", which is insufficient. No engineering details have been provided.

It was only at a meeting on 31st August, when Network Rail's engineer, Andy Kenning, was present that the engineering requirements were discussed. I will add that should further widening/engineering be proposed, the Notices that have been served will not be on sufficient land area for these to take place. I would like to ask Network Rail to provide further details on these engineering proposals before the Inspector makes any recommendations to the Secretary of State as they seem to have tried to ignore this important issue.

Network Rail have confirmed that future maintenance "would be for the user of the route", thereby passing further costs onto me or Sustrans, which is not acceptable.

Furthermore, Network Rail have not confirmed to me that they are able to, and will, grant me a legal right of way over the proposed alternative access, some of which is owned by the Crown Estate. I would like to ask Network Rail to provide further details of their engagement with the Crown Estate on this matter.

I attach as Appendix 2 the Environment Agency's email of 23rd June and my reply of 26th June. I understand that the Environment Agency are yet to decide upon a formal response.

Finally, I have noted in Folder 2 of Network Rail's Statement of Case (Essex Stage 1 Road Safety Audit Nov. 16 on Page 18 and Essex Stage 1 Road Safety Audit Responses Report Nov. 16 Pages 26 and 27) that it was recommended that agricultural vehicles should not be diverted along the proposed new access due to the presence of vulnerable road users.

Therefore, as the proposals stand, I object to them.

4. I consider Network Rail's proposal to close this level crossing to be a significant over-reaction.

Their Statement of Case refers to one near miss and two misuses occurring at the level crossing. When asked for details, they insisted that I make a Freedom of Information Request. Their reply of 1st September is attached as Appendix 3. It confirms that there have been no near misses and the two incidents of misuse involved the gates being left open or unsecured by the public. Both gates are now locked which will prevent a reoccurrence.

The vehicular crossing is currently classified as an ALCRM score of M13, having previously been at a higher score of B4 when the gates were unlocked (see Freedom of Information reply referred to above). Now the gates are locked, I contend that the risk of an accident occurring whilst the crossing is used by a vehicle is far smaller than the frequent use of the footpath crossing by pedestrians and cyclists, which will remain open. Vehicular use requires prior authorisation and the sight lines are good in each direction.

Network Rail state that their strategy of removing level crossings is the most effective way to achieve safety improvements, but that does not mean that alternatives are not appropriate, particularly if a crossing is infrequently used and the alternatives are unworkable. I would like to refer again to Network Rail's Statement of Case. In Folder 1, Page 9, paragraph 14, it states that "reduction in level crossing risk may also be achieved by enhancing level crossings" and perhaps Network Rail should consider this as an alternative to their proposals. They also state that "closures may also result in the reduction of operating costs". I question whether, in fact, their proposals are likely to achieve a reduction in costs and also suggest that a possible reduction in costs, rather than the risk of the crossing's use, is behind their proposals.

Finally, Network Rail's Statement of Case refers in Folder 1, Page 157, that they "will continue to engage with relevant stakeholders". I should like to point out that, apart from a meeting with Network Rail's representatives on 31st August, absolutely no engagement has taken place so that they can understand and alleviate my concerns. Network Rail have stated in their letter of the 6th September, copy enclosed at Appendix 4, that they have met with Colchester Council and are trying to meet with the University of Essex and Sustrans. I would like to ask the Inspector to require Network Rail to explain as part of these proceedings how those discussions progressed.

In conclusion. I request that Network Rail's proposals be refused.

Yours faithfully

Charles Nicholas Gooch