

**THE PROPOSED NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING  
REDUCTION) ORDER**

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**CLOSING SUBMISSIONS  
ON BEHALF OF NETWORK RAIL**

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1. By this application, Network Rail seeks powers to close or downgrade rights over 56<sup>1</sup> level crossings within Essex, Hertfordshire, Thurrock, the London Borough of Havering, and Southend-on-Sea, together with associated powers, (including the acquisition of rights over land, and, to the extent necessary, deemed planning permission) to allow for the provision of diversionary routes for existing users of those crossings.
2. These closing submissions are structured as follows:
  - a. Part 1: Overarching issues
    - i. The case for the Order: Network Rail's 'strategic case';
    - ii. The development of the Order proposals, including alternatives;
    - iii. The position of objectors on strategic issues, including the use of the TWAO procedure;
    - iv. The general approach to public rights of way;
    - v. Planning policy;
    - vi. Road safety issues;
    - vii. Environmental appraisal;
    - viii. The general approach to matters relating to land acquisition
    - ix. Funding
  - b. Part 2: Considerations relating to individual crossings

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<sup>1</sup> Originally 60. E42 and E57 were removed from the draft Order before the inquiry opened. H03 (Slip Lane) and E12 (Wallaces / Wallis's) were withdrawn during the course of the inquiry.

- c. Part 3: The Order, planning conditions, and other consequential matters;
- d. Part 4: Conclusion

## **Part 1: Overarching issues**

### **(i) Network Rail's 'strategic case'**

- 3. As set out in Opening, the case for pursuing this Order is a strategic one. Through the Order, Network Rail is looking to reduce and rationalise level crossings across the Anglia route.
- 4. The strategic case for seeking this Order (and rationalising the at-grade crossing points on the railway) is, essentially, threefold:
  - a. Operational efficiency of the network (including increasing resilience of the current railway, and removing constraints with a view to future enhancements);
  - b. Safety of rail users and of those interacting with the railway by reason of the crossing points over the railway; and
  - c. Efficient use of public funds in accordance with the obligations imposed on Network Rail, as arms-length Government Body, under "Managing Public Money".
- 5. The benefits sought to be achieved, through the Order, are set out in more detail in the Statement of Aims (NR04), namely:
  - a. Creating a more efficient and reliable railway;
  - b. Facilitating capacity and line speed increases on the network in the future;
  - c. Improving the safety of level crossing users, railway staff and passengers;
  - d. Reducing delays to trains, pedestrians and other highway users; and
  - e. Reducing the ongoing operating and maintenance costs of the railway;

6. The case for the Order – and for closure of crossings contained within it – is not based on any one of those objectives individually, but on a combination of those factors. It is critical to understand that level crossings are but one part of the wider railway system. The proposals contained within the Order must be considered in that context. In pursuing this Order, Network Rail was not looking at individual crossings in isolation (save in considering the proposed diversion routes) but rather taking a “systems” or “global view”.<sup>2</sup>
7. The crossings included within the Order have not been selected based on the specific risk associated with that crossing;<sup>3</sup> a specific enhancement scheme being ‘held back’ by the presence of that crossing; or the costs associated with maintaining that crossing. The case for this Order turns on benefits to the railway which will result from reducing the number of at-grade level crossings across the Anglia route:
- a. enabling Network Rail to focus its resources on those at-grade crossings which cannot be closed by diversion;<sup>4</sup>
  - b. reducing constraints on future enhancement schemes which could impact negatively on the business case for that enhancement (and thus render it less likely to come forward);<sup>5</sup> and
  - c. improving the reliability, and resilience, of the network,
8. The removal of each and every level crossing will provide a safety benefit, remove a maintenance obligation, reduce costs, will make the route safer and more reliable, and make the network more suitable, or more open, to future enhancement – in turn, contributing to the fulfilment of Network Rail’s Licence obligations.<sup>6</sup>

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<sup>2</sup> Dr Algaard in XXC, in response to questions from NT, Day 4

<sup>3</sup> As set out at para 8.24 of Mark Brunnen’s PoE, ALCRM was not used to select or prioritise crossings for inclusion in the Order. He reiterated this in XXC on Day 2 of the Inquiry. Similarly, Dr Algaard stressed in XIC on Day 2 that this project was not about ranking of risk at level crossings, it was about safety at a system level.

<sup>4</sup> As MB explained during XXC on Day 4, by taking opportunities to eliminate risk by closing level crossings where those opportunities existed, that would mean resources could be focussed on improving level crossings where closure was not an option. Similarly, Dr Algaard stressed, on Day 4, the need for NR, as a publicly funded body, to optimise resources, and how by reducing operating costs at a systemic level by reducing level crossings, she would be able to redirect those costs.

<sup>5</sup> As discussed by Dr Algaard in XIC on Day 2 and in XXC on Days 3 (in response to questions from MH) and 4 (in response to questions from NT)

<sup>6</sup> On which, see Mr Brunnen’s PoE at paras 4.8 -4.11

9. As Dr Algaard explained in XXC,<sup>7</sup> the strategic case for closure of these level crossings, is that it will *“improve overall safety, reduce Anglia operational cost, means when future announcements are considered I have a better business case or rate of return”*. As she stressed, Network Rail’s case in this regard is based on a *“system view – it is not about a level crossing on its own”*.
10. Network Rail acknowledges that that analysis applies to the removal of any level crossing on the network – not just those included within the Order. Network Rail further acknowledges that the consideration of whether the Order, as drafted, should be recommended for approval is not limited to those matters alone. It is acknowledged that there is a need for a ‘balancing act’.<sup>8</sup> That is where consideration of whether the proposed alternative route is “suitable and convenient” comes into play (i.e. the requirement in s.5(6) TWA 1992). Network Rail maintains that it does not have to establish a ‘case’ for closure of an individual crossing: the case for closure of each crossing within the draft Order is inextricably part and parcel of the strategic case for the Order as a whole.

### **The strategic case and the requirements of section 5(6) TWA 1992**

11. Given the way in which NR’s case appears to have been characterised in the Ramblers’ Closing Submissions – and particularly the way in which it is said that the requirement for a “suitable and convenient” alternative route factors into its strategic case – it is sensible to set out, here, how NR says the requirement in s.5(6) sits alongside NR’s strategic case for the Order. More detailed submissions as to what is required under s.5(6) are set out below.

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<sup>7</sup> Day 2 in response to questions from MG

<sup>8</sup> As Dr Algaard stated in XXC (Day 2 in response to questions from MG), whilst NR has not made any secret of the fact that, ideally, it would like to close all level crossings, what it has also been very clear about is that it is a balancing act in terms of working with the local community and councils in balancing all the different needs.

12. Network Rail's position remains, as set out in its Opening Submissions that, if the Inspector (and, subsequently, the Secretary of State) is satisfied that Network Rail has made out its strategic case for the Order, then it follows that the only basis on which the Order could either not be confirmed, or confirmed with modifications (removing specific crossings from the Order) is if it is concluded either that an alternative route has not been provided but is required (s.5(6)(b)) or that the alternative route is not "suitable and convenient".
13. That is not because the question of whether there is a "suitable and convenient" alternative factors into the question of whether Network Rail has made out its strategic case for the Order. It is because if the Secretary of State is satisfied that the strategic case is made out – and thus the case for the Order is made out under s.1 of the TWA 1992 - the question of whether or not a specific crossing can remain in the Order (i.e. whether Network Rail may legally extinguish the PROW passing over it) depends on whether the requirements in s.5(6) are met.
14. It is not that the Order is "justified" through the provision of a suitable and convenient alternative for an individual crossing (cf how the Ramblers – erroneously – characterise Network Rail's case at §23 of their Closings). Rather, it is the recognition that, under the Act, even if Network Rail has made out its strategic case for the closure of the crossings in the Order as a whole, the Order may not provide for the legal closure of a level crossing, by extinguishing the PROW over it, if a suitable and convenient alternative right of way<sup>9</sup> is required and has not been provided. That is because the prohibition in s.5(6) of the Act would be engaged.
15. To be absolutely clear: Network Rail's position is that there is a two stage process on this inquiry.

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<sup>9</sup> I have specifically used the language from s.5(6) in this context as it is important to be clear that s.5(6) does not require the provision of a 'suitable and convenient replacement route' or 'suitable and convenient diversion' or other forms of short hand that have been used, by all parties, during the inquiry. As set out in the Note submitted to the inquiry on Network Rail's approach to "required" in s.5(6) TWA (NR 164), Network Rail considers that one situation in which an "alternative right of way" is not required under s.5(6) is where a suitable and convenient replacement for existing users is already provided by the existing PROW or highway network (or an existing route can be made suitable and convenient through works proposed to the existing route)

16. Firstly, has it made out its strategic case for rationalisation of Network Rail's level crossing estate through removal of the Order crossings from the network. That does not involve consideration of whether a suitable and convenient alternative route has been provided at a specific crossing.
17. Secondly, in respect of an individual crossing, is the proposed diversionary route a suitable and convenient replacement for existing users of the crossing. If the Secretary of State is not satisfied that an alternative right of way<sup>10</sup> has not been provided but is required, or that the alternative right of way proposed is not a suitable and convenient replacement for existing users, then the PROW over that crossing cannot be extinguished: s.5(6). If, however, the Secretary of State considers that either an alternative right of way is not required, or that the alternative right of way proposed is a suitable and convenient replacement for existing users, then the prohibition in s.5(6) is not engaged, and Network Rail may, legally, extinguish the PROW passing over the crossing.
18. There is no basis for seeking to import that second question into the first – nor is that Network Rail's case (contrary to what is suggested by the Ramblers Association in their Closing Submissions – in particular, at §22).
19. The “balancing act” which must be carried out is therefore that provided for by the statutory scheme itself. Firstly, is the strategic case for the Order made out (i.e. should the Secretary of State make the Order under s.1?) Secondly, have the needs of those using the crossings today been appropriately protected through the provision (or existence) of a suitable and convenient alternative route (i.e. has the test in s.5(6) been satisfied?). As was acknowledged by a number of objectors during the inquiry, there is no intrinsic value, or community value, in a level crossing itself. What is important is the linkage (or connections) it provides. That is what is protected by s.5(6).
20. There must also be consideration of whether the impact of the Order on landowners is justified, having regard to the relevant domestic (and ECHR) test. This is discussed further below at §182-185.

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<sup>10</sup> See above

21. That is not to say, however, that in its development of the Anglia Level Crossing Reduction Strategy, and the Order proposals, Network Rail has confined its consideration of whether a particular crossing should be included within the Order to the s.5(6) test. As various of Network Rail's witnesses acknowledged in evidence, there has clearly been a wider consideration of the impact of closure of a particular crossing. This is not, however, a judicial review into Network Rail's decision-making processes. The case for the Order must be considered on its own merits, against the framework provided for by the Act.
22. Network Rail maintains that the strategic case for the Order and the question of the suitability and convenience of the alternative route at any individual crossing are two distinct matters which must be considered separately. Further, that it is not required to establish a "case" for closure, on a crossing by crossing basis. What falls to be considered at a crossing-specific level is the suitability (or otherwise) of the proposed alternative route.

### Risk & safety

23. All level crossings carry risk. Level crossings are the largest single contributor to train accident risk on the railway network.<sup>11</sup> They present a risk to those traversing the crossing, and those driving or riding on trains. Mr Brunnen's evidence illustrates these risks in detail, setting out (inter alia) details of fatalities at level crossings from 2005-2017;<sup>12</sup> a 'worsening trend' of near-miss incidents;<sup>13</sup> and risks arising from user-behaviour, with particular reference to the risks arising from familiarity and distractions.<sup>14</sup>

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<sup>11</sup> MB PoE para 7.2. Further detail is provided at paras 2.5 – 2.10 of MB's Rebuttal of Proof of Evidence of Sue Dobson and Katherine Evans (NR27/4/2)

<sup>12</sup> Appendix 2 to his Proof of Evidence (NR27/2)

<sup>13</sup> MB PoE para 7.8

<sup>14</sup> MB PoE Section 9. NR would also highlight that a number of the fatal incidents recorded in the table on pages 2-8 of MB's Appendix 2 refer to the user of the crossing being distracted/potentially distracted.

24. It goes without saying that when those risks materialise, they have appalling consequences. Dr Algaard set out, in her Proof<sup>15</sup>, the impacts that arise from such events for those unfortunate enough to be involved in them. Whilst it is important to avoid too emotive an argument on these issues, neither Network Rail – nor, it is submitted, the Secretary of State – can disregard the human reality of these risks.
25. Network Rail must carefully manage those risks.
26. Whilst risk can be *managed* at any particular crossing, the only way to eliminate risk at the crossing is through closure.<sup>16</sup> As Mr Brunnen explained in XXC, closure is the “*only way to remove risk completely.*”<sup>17</sup>
27. That approach is supported by the ORR – the body principally responsible (with the Secretary of State and Scottish Ministers) for the regulation of the railway industry in Great Britain, and (so far as relevant to this inquiry), the Health and Safety regulator for the rail industry. As is clear from its ‘Strategy for regulation of health and safety risks – 4: Level crossings’, it wants to “**encourage crossing closure**”<sup>18</sup> and advises that “the removal of crossings is always the first option to be considered in a risk control strategy by the duty holder, in line with the general principles of prevention in European and UK law”.<sup>19</sup>
28. Similarly, Network Rail’s long-term strategy for improving level crossing safety in Great Britain, ‘Transforming Level Crossings 2015-2040: A vision-led long-term strategy to improve level crossing safety at level crossings on Great Britain’s Railways’ (NR17) states that “[c]losing level crossings will always be the most preferable and best solution to manage safety”.

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<sup>15</sup> PoE paras 2.3.6 & 2.3.7

<sup>16</sup> MB XXC in response to MG questions, Day 2

<sup>17</sup> MB XXC in response to MH, Day 2 of the Inquiry

<sup>18</sup> Core Document NR14, page 1. Bold as emphasis in original.

<sup>19</sup> NR14 para 6. NR would also highlight, in this regard, the obligations set out in the EU Rail Safety Directive, discussed at MB PoE para 5.5, specifically that in Article 4.1 which states that “*Member States shall ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved*”



29. Various duties imposed are on Network Rail, both through its regulatory framework, its Licence conditions and the general law.<sup>20</sup> Ultimately, Network Rail is under an overarching duty to operate a safe railway, and where opportunities exist for making it safer – such as through removal of level crossings – that is what it should strive to achieve. The fact that those duties may be “qualified” duties,<sup>21</sup> with respect, does nothing to detract from that overarching duty, or the conclusion that where risk can be eliminated, that is the option that should be pursued.

30. A number of objectors have suggested during the inquiry that a particular crossing was perfectly safe, or had been used without incident for years. This was particularly prevalent in terms of perceptions that there was good visibility at a crossing – in circumstances where either mitigation measures had had to be imposed, or a crossing closed under TTRO, due to it having insufficient sighting.<sup>22</sup> Issue was also taken with the ALCRM score for a particular crossing – usually by reference to a lack (or relative lack) of historic incidents at the crossing in question. A line of questioning was also pursued in XXC of Mr Kenning to the effect that where a crossing was currently open, it was ‘safe enough’ to be used.<sup>23</sup>

31. With respect, that is simply the wrong approach to looking at the risks posed by level crossings, and the very real benefits that would be achieved by this Order:

- a. The fact that a crossing is currently considered by Network Rail to be fit for use today, or “tolerably safe”<sup>24</sup> does not mean that it does not carry risk. It obviously does. The risk is quantified, by means of its ALCRM score, and assessed qualitatively, as explained by Mr Brunnen in Section 8 of his Proof. All level crossings carry risk;
- b. The lack of previous incidents at a crossing cannot be used as a proxy for current risk at a crossing. As Mr Brunnen explained in evidence, in the previous 2 years, there had been 7 fatalities at pedestrian level crossings, none

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<sup>20</sup> Discussed in Sections 4 and 5 of Mr Brunnen’s PoE

<sup>21</sup> As stressed at §57-60 of the Ramblers Closing Submissions

<sup>22</sup> See, for example, the assessment of Mr Lee (for ECC) in respect of E30, of Mr Goffee (for the Ramblers Association) in respect of E10 and of Mr Bird (for the Ramblers) in respect of E33.

<sup>23</sup> By MG for the Ramblers Association

<sup>24</sup> The language by AK in XXC in response to questions from MG, Day 5 of the inquiry

of which had a history of fatalities.<sup>25</sup> The suggestion that Network Rail should have to wait for an incident before deciding something needed to be done about a crossing is surely not the right approach – and is entirely contrary to the proactive approach set out in ‘Transforming Level Crossings’;

- c. History of incidents “*is an important consideration when assessing risk at level crossings, but only as one component of a multi-faceted risk assessment*”<sup>26</sup>. It also forms one component of the information input into ALCRM itself. Mr Brunnen explains in paras 8.7 – 8.10 of his Proof the principles used by ALCRM for modelling risk at each type of crossing, and the asset specific information required in respect of an individual crossing (which includes historic incidents at that crossing<sup>27</sup>), and that ALCRM has been calibrated using data from the Rail Industry’s Safety Management Intelligence System (SMIS) and from the RSSB’s Safety Risk Model (SRM) which uses incident data (or precursors) from the safety events within SMIS<sup>28</sup> to calculate the actual levels of risk for each type of level crossing;
- d. As to criticisms of the use of ALCRM or its reliability,<sup>29</sup> Network Rail would stress that ALCRM is recognised by the ORR as *the* level crossing risk ranking tool for all level crossings under Network Rail’s management, and it is acknowledged to provide a good overview of risk priorities. Network Rail would also reiterate that ALCRM forms only part of Network Rail’s risk assessment work, alongside the qualitative risk assessment by the LCMs who know, and are responsible for, the level crossing in question<sup>30</sup>

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<sup>25</sup> MB Rebuttal Proof to the evidence of Mr Kay and Cllr Liddy (NR27-4-1) at 5.4. The details of those incidents are included within Appendix 2 to Mr Brunnen’s proof (NR27-2). MB also identified the unfortunate incident at Tidemills as an example of a situation where a crossing perceived by others to be ‘safe’ suffered a fatality the following week: MB Rebuttal to Mr Kay and Cllr Liddy para 5.3.

<sup>26</sup> MB Rebuttal Proof to Mr Kay and Cllr Liddy (NR-27-4-1) para 5.5

<sup>27</sup> Dan Fisk PoE para 3.9

<sup>28</sup> As Mr Brunnen explains in para 8.7 of his Proof, SMIS is accessible to all rail companies managing infrastructure or operating trains and that they report data into the system. In relation to level crossings, SMIS records detailed information related to these accidents and incidents (including near-miss incidents).

<sup>29</sup> For example, by Cllr Liddy at para 14 of his Proof]. MB’s responds to the specific criticisms made at paras 4.1 – 4.7 of his Rebuttal to their proofs (NR27-4-1).

<sup>30</sup> An approach supported by the ORR – see the Letter from Ian Prosser dated 18 April 2012 at Appendix A to MB’s Rebuttal to the evidence of Mr Kay and Cllr Liddy (NR27-4-1)

- e. Nor can Network Rail rely on ‘perception’ of safety on the part of users of a level crossing. Mr Brunnen explained in evidence the risks which can arise from ‘familiarity’ with a crossing, including a perception of risk being low.<sup>31</sup> He also gave the example, in XIC, of a level crossing at Tide Mills where a proposed replacement bridge was objected to, one of the main reasons being ‘no one had ever died there’, and where, tragically, less than a week later a member of the public was killed at the crossing.<sup>32</sup>

32. In reality, there is little challenge to the safety case for closure. There is no challenge to Network Rail’s evidence that the Order will achieve a reduction in risk at every crossing. Cumulatively, across the Anglia route, that reduction is material<sup>33</sup> To the extent the ‘safety case’ is disputed it is on the basis that the safety case is not ‘made out’ in respect of a particular crossing. For the reasons set out earlier in these Closings, that is not the basis on which this Order should be approached.

33. As set out above, there was some suggestion that risk at a particular crossing was low, and that risk on the road network was either comparable or greater.<sup>34</sup> This issue of ‘comparative risk’ is addressed below, but it should be noted at the outset that such a contention misses the point of the Order. Network Rail is responsible for safety on the rail network – both to those using train services and those interacting with it (here, at level crossings). It cannot excuse its responsibilities by noting that more people die on the roads per year than on level crossings. Network Rail would also highlight that any comparison based on the pure number of incidents on the road / rail respectively cannot sensibly be used to seek to compare those risks: and there must be at least some attempt to put those numbers in the context of the overall number of journeys undertaken each year<sup>35</sup> - cf the conclusion set out at §21 of ECC’s Closing Submissions.

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<sup>31</sup> MB PoE paras 9.2 and 9.22-9.24

<sup>32</sup> MB XIC Day 1. See also para 5.5 of NR27-4-1.

<sup>33</sup> The Order would provide a cumulative risk reduction (FWI) saving of 0.118, from a total Anglia risk of 2.95 (See NR-125). Mr Fisk sets out the FWI score (and thus saving if closed) for each crossing in his Proof, as amended (or supplemented) by his Supplementary Proof.

<sup>34</sup> For example, John Russell’s PoE paras 2.1-2.5 (for the Ramblers) (Obj/148/019)

<sup>35</sup> As recognised by the House of Commons Transport Select Committee in its appraisal of the issue (NR 114).

## Operational issues and costs

34. The risks carried by level crossings, and Network Rail's responsibilities in respect of the same, mean that resources must be expended in assessing, maintaining and, where necessary, upgrading each of the crossing on the network.
35. This is no small undertaking. At the time the application was made, there were 771 level crossings on the Anglia Route alone, 203 of them within the highway areas covered by this Order.<sup>36</sup>
36. In practical terms, that imposes a significant operational cost on Network Rail which is ultimately borne by railway users and taxpayers. It is self-evident that reducing the number of level crossings reduces the number of locations where those resources must be deployed, and thus resources can be prioritised where they are needed most.
37. Dr Algaard explained in evidence the costs associated with managing level crossings, and the savings which would be realised from this Order.<sup>37</sup> Her evidence (which was not seriously challenged by any party) was that:
- a. Closure of crossings within the Order would provide a saving of £18,770,400 in asset inspections and general maintenance over a 30 year period;<sup>38</sup>
  - b. In addition, the reduction in the number of level crossings would allow for a reduction in Level Crossing Managers, from 14 to 13, representing a further saving of around £40,000 per annum;<sup>39</sup>
  - c. It would represent of £11,491,960 saving over a 30 year period on renewals which would otherwise be required to the level crossings in the Order<sup>40</sup>; and
  - d. If the crossings in the Order were to remain open, Network Rail would be looking at a minimum capital cost of £25,056,760 over a 30 year period to

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<sup>36</sup> By reference to NR-126, in XXC on Day 4

<sup>37</sup> See NR-126.

<sup>38</sup> Dr Algaard PoE para 2.2.4

<sup>39</sup> See NR-126

<sup>40</sup> See NR-126

‘eliminate’ those passive crossing (by upgrading them to ‘active’ crossings) in line with Network Rail’s ‘Transforming Level Crossings’ strategy. It should be stressed this figure reflects capital costs only. It does not reflect the increased inspection/maintenance costs which would result from a passive crossing becoming an active crossing.<sup>41</sup>

38. As an arms-length Government body, Network Rail is required to adhere to ‘*Managing Public Money*’. As Mr Brunnen explained in his evidence,<sup>42</sup> any money that is used unnecessarily or inefficiently directly impacts upon Network Rail’s ability to deliver other improvements elsewhere across the network. As Dr Algaard explained in XXC, as the Director Route Safety and Asset Management for Anglia Route<sup>43</sup> it was her role to demonstrate that every pound invested in the railway was invested wisely, and, as she set out in XIC by reference to Network Rail’s Licence conditions, it was her role was to make sure that public funds were being invested to make the railway reliable and efficient.

39. To be clear: Network Rail’s case in this regard (as to how the Order squares with its obligations in respect of Managing Public Money) is not dependent on a ‘CBA’ score: i.e. that closing these crossings under the Order would cost X and achieve a cost saving of Y as compared with the cost/benefit of other options it could have pursued. It does not therefore adduce any evidence to this effect. Nor does the closure of any individual crossing within the Order depend on the cost of closure being less than the cost of alternative action at the crossing. As set out in the Strategy (NR18) phases 1 and 2 of the Strategy are pursued on the basis that the “*overall cost is equal to or less than the risk reduction cost*”.<sup>44</sup> The Inquiry has, before it, CP6 base costs for installation and renewal of technology at passive crossings<sup>45</sup> and, in NR-126, the likely magnitude of those costs for the crossings in the Order taken as a whole.<sup>46</sup> The

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<sup>41</sup> Dr Algaard XXC Day 4, confirmed by Mr Fisk in re-examination on Day 5. For the difference in frequency in inspection, see DF PoE para 4.1

<sup>42</sup> PoE para 5.16

<sup>43</sup> Latterly, Route Director Asset Management for Anglia route, albeit with the same responsibilities – see para 1.1 of Dr Algaard’s supplementary proof (N28-5)

<sup>44</sup> Section 2.5, page 13. AK confirmed this approach in XXC by MH on Day 19

<sup>45</sup> At Appendix D of the Statement of Case

<sup>46</sup> The obligation to make all existing passive crossings active by 2039, as set out in NR17, should not be forgotten in this regard

Estimate of Costs (NR7) sets out, by contrast, the estimated costs (as at the date of application) associated with the Order. It is acknowledged that those costs are but estimates as at March 2017 – and that they are likely to have increased (not least due to a longer inquiry than anticipated). However, they are of an order of magnitude below those associated with the alternative ‘risk reduction’ options, as set out in NR126.

40. Nor is the ‘managing public money’ case dependent on a CBA analysis. As Dr Algaard stressed in evidence, it is about spending the money wisely. As set out in the Strategy (NR18), *“The closure of the crossing is best as it removes the risk going forward for ever”*. Investing in closure of the crossings today does not just save the cost of upgrading level crossings in the future<sup>47</sup>: it removes the ongoing (increased) maintenance costs, the ongoing renewal costs, and the risks associated with failure (and the monetary costs which flow from the same). It also goes without saying that money which has to be used to ensure maintenance and management of level crossings cannot be used elsewhere, even if that would represent a ‘better’ use of public money in terms of achieving Network Rail’s Licence objectives.
41. The focus, by some objectors, on the absence of a ‘CBA’ for the Order, or for closure of an individual crossing<sup>48</sup>, is therefore simply misplaced.
42. Part of the challenge to this element of the strategic case was that a costs liability is simply shifted from Network Rail (in terms of maintenance etc of a level crossing) to another public body – the responsible highway authority (in terms of maintenance of new PROW). There is no such shifting of burden: Network Rail has recognised the need to pay commuted sums where required by the highway authority, as reflected in its agreement with ECC.<sup>49</sup>
43. Cost is, however, only one part of the equation. Level crossings pose a very real constraint on the operational efficiency and reliability of the current network – even leaving aside future improvement or enhancements schemes (discussed below). Level

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<sup>47</sup> Which upgrades may not, in any event, be consistent with the obligation to run a reliable and operationally efficient network, for the reasons discussed below.

<sup>48</sup> For example, in ECC’s closing submissions (§26-30), and in CBC’s closings (§7)

<sup>49</sup> See paras 2.3 of the Statement of Common Ground between NR and ECC (NR-103)

crossings are a part of the railway system, and clearly the railway must therefore account for the presence, and use, of those crossings. As set out in the evidence of Mr Brunnen, Dr Algaard, and Mr Kenning, they can affect the speed at which trains can operate; they can interfere with potential upgrades to the network;<sup>50</sup> and can affect signalling operations.

44. As Mr Kenning explained in XIC on Day 4 (and discussed further when installation of technology was suggested at individual crossings), in terms of signalling, Network Rail needs to ensure there is a safe distance between the trains passing along the line at issue. To keep trains travelling at a consistent speed, and maximising the number of trains that can fit on the track, the signals will, ideally, be located equal distances apart – so, all things being equal, each train finds a green light at each signal and can proceed without slowing or stopping. However, as soon as signals are moved such that they are not an equal distance apart, this restricts the ability of trains to run consistently at line speed, and results in a disturbed speed pattern. If overlay MSLs<sup>51</sup> are installed at a crossing, this requires a ‘strike in’ to be installed on the track to activate the MSL system. That introduces another layer of signalling - and potential fault point. If an integrated MSL is required, that adds further layers into the signalling system. Both introduce further potential fault points into the system – with the knock-on effects on train services if a fault is detected.<sup>52</sup>

45. As Dr Algaard explained in XIC, Network Rail “*cannot forecast which crossing will fail on which day .... By reducing level crossings, I will reduce the risk of failures*”.

46. Dr Algaard also explained in evidence,<sup>53</sup> that an incident at a level crossing (for example, a collision, or reported ‘near-miss’) has implications going beyond the crossing itself. A reported incident can result in trains on the line being ‘stopped’ or ‘cautioned’ (i.e. reducing speed), which impacts on performance and reliability of the railway. If speed has to be reduced, all trains behind that train will have to be slowed

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<sup>50</sup> As Dr Algaard explained in XIC, where a train operator wishes to run more trains, or faster trains, NR must assess the risk at each crossing on the line and, where risk would materially increase, take steps to reduce it back to its previous level, in order for that ‘enhancement’ to go ahead.

<sup>51</sup> Miniature Stop Lights

<sup>52</sup> Mr Kenning provided a tangible example of the ‘ripple effect’ that can result from a fault with MSL equipment at E16 Margaretting on 10 October 2018 – see NR-158

<sup>53</sup> PoE paras 2.4.1 & 2.4.2.

too.<sup>54</sup> An incident in one part can quickly ripple across the rest of the network. Mr Brunnen's evidence was to the same effect.<sup>55</sup> Mr Kenning provided a tangible example of the ripple effect resulting from an MSL equipment fault at E16 Margaretting on 10 October 2018 – with effects still being experienced at 4pm from a failure at 6am, and extending to services on the West Coast Mainline and at Clapham.<sup>56</sup>

47. Similarly, if the only way to manage risk at a level crossing with insufficient sighting is through imposition of a temporary speed restriction, this can also impact more widely on the operational efficiency, safety and reliability of the network, as:

- a. A temporary speed restriction may have an adverse effect on the operation of active level crossings, which are calibrated to be triggered when a train passes a certain point (potentially increasing risk at those crossings);
- b. Trains may become out of sequence, causing network congestion and increasing signaller workload, increasing the risk of mistakes being made.<sup>57</sup>

48. Temporary speed restrictions are also at odds with the objectives under Network Rail's Licence conditions.<sup>58</sup> The speed restrictions at E41 Pagets (current) and E32 Woodgrange Close (in 2017) are tangible examples of how the need to ensure sufficient time to cross at a level crossing directly impacts on train services.

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<sup>54</sup> Figure 7 (Pg 24) in the Statement of Case (NR 26) sets out the delay minutes attributable to level crossing incidents or level crossing failures within Anglia from 2009/2010 – P2 2017/2018

<sup>55</sup> MB PoE para 10.18: "...slowing a train at a level crossing can have a knock-on effect on the efficiency of the network. Each train runs in its allocated time slot according to the railway's working timetable and all train movements are meticulously planned to run without causing undue delay to other services. Where a train runs late due to incident or temporary speed restriction, it can have a knock-on effect across the network, causing other trains to be delayed too. This is especially common when train services of different speed and stopping patterns share the use of a line, and when lines merge at junctions around the network. Each delayed train can then further compound the situation, causing delays across the network."

<sup>56</sup> See NR/151

<sup>57</sup> Dr Algaard PoE para 2.4.17

<sup>58</sup> Specifically, the Network Management obligations set out at A.1 of Part III of the Licence (extracted at para 4.9 of MB PoE)



49. Again, none of these matters were seriously challenged, in principle, by those objecting to the Order. Indeed, it appeared to be generally accepted that closure would reduce maintenance and enhancement costs, and that having fewer level crossings would lead to greater operational efficiency.<sup>59</sup> The issues raised on these points really turned on the degree to which those objectives would be met by closure of an individual crossing which, in turn, reflects a key point of dispute as to how this Order should be approached. The objectors focus on the ‘case’ for closure of individual crossings. Network Rail takes a “systems” approach and maintains that once the strategic case for the Order is established, the only matter which falls to be considered at an individual crossing is whether the proposed diversion route is suitable and convenient for existing users.

50. It is clear beyond doubt that, as Dr Algaard states at para 2.4.20 of her Proof, level crossings present a “*significant risk to timetable resilience*”, where any asset failures or incidents can lead to train delays. Only by removing these interface points can Network Rail “*entirely remove this risk to the efficient and effective timetabled service*”. Reducing the number of level crossings through this Order will clearly, and materially, assist in reducing this risk.

#### Level crossings are a constraint to enhancement of the network<sup>60</sup>

51. Outside of London, Anglia has the fastest growing employment in England.<sup>61</sup> Network Rail is seeking to improve services within the area – an objective shared (inter alia) by ECC.<sup>62</sup> As Dr Southgate acknowledged in his evidence, the principles underlying the Anglia Level Crossing Strategy are “broadly in line with ECC’s long term transport strategy and stated aim to improve connectivity and support economic growth”.<sup>63</sup>

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<sup>59</sup> See, §51 of the Ramblers’ Closings.

<sup>60</sup> These submissions, understandably, focus on constraints to the railway network. It should not be forgotten, however, that both Mr Brunnen and Mr Kenning drew attention to the constraints that level crossings can pose for other development in an area – for example, a housing development to which NR may have to object if concerned that the development would materially increase risk at the crossing.

<sup>61</sup> Dr Algaard PoE para 2.5.2

<sup>62</sup> See, eg, section 9.1.2. ‘Priorities for the Strategic Rail Network’ in ECC’s Essex Transport Strategy -Transport Local Plan (NR-131)

<sup>63</sup> Dr Southgate’s PoE paras 4-5

52. Mr Kenning discussed, in XIC, the prospective enhancement schemes of most relevance to the level crossings included within the Order,<sup>64</sup> by reference to the various lines on which the level crossings are situated:

- a. The Great Eastern Mainline: this is subject to line speed improvements<sup>65</sup> including ‘Norwich in 90’ - a currently unfunded project, the concept of which is to transport passengers from Norwich to London Liverpool Street (on the Great Eastern Main Line) within 90 minutes<sup>66</sup>;
- b. The West Anglia Mainline: this is the line serving London-Cambridge & Ely and also Stansted Airport from London/Cambridge. This line is identified in the Anglia Level Crossing Reduction Strategy (NR-18) as one for capacity enhancement in CP5.<sup>67</sup>;
- c. Essex Thameside: this line serves Southend Airport.<sup>68</sup> Mr Kenning highlighted in XIC the significance of routes to airports.

53. Level crossings are a constraint which must be addressed in order for an enhancement or improvement scheme to come forward. As Mr Kenning explained in XXC,<sup>69</sup> Network Rail’s regulator, ORR, will not allow Network Rail to increase services, running longer, faster or more trains, without dealing with level crossings. As Mr Kenning stated, level crossings are “*one of the biggest impediments*” to increased services.

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<sup>64</sup> By reference to the schematic at page 25 of NR24 – the Anglia Route Study (March 2016)

<sup>65</sup> The Essex Transport Strategy expressly identifies “lobbying Government for additional capacity on the Great Eastern Main Line” as a strategic transport priority (pg ix) (NR-131)

<sup>66</sup> Crossings E15, E16, 17, E18, 19, E20, E21, E22, E23, E25 and E56 are situated on this line (see NR- 117) The Anglia Route Study expressly identifies, at 5.2 (pg 64) that “[l]evel crossings also play a significant role in setting speed restrictions, therefore removing the constraint they pose will also contribute to improving journey times” (NR-24)

<sup>67</sup> Lobbying Government for additional capacity on the West Anglia Main Line is also a strategic priority set out in the Essex Transport Strategy (pg ix) (NR-131) Crossings H01, H02, H04, H05, H06, H08, H09 E01, E02, E04, E05, E06, E07, E08, E09, E10, 11, E12 and E13 are on this line (see NR-117)

<sup>68</sup> Crossing E26 is situated on this section of line (see NR-117))

<sup>69</sup> In response to questions from MG on Day 5

54. As was canvassed in evidence with Mr Kenning, if a future line speed or service improvement scheme is to be progressed, then Network Rail must assess the implications of that change for risk at each of the affected level crossings within the enhancement area and address any material increase in that risk. That may require enhancements (e.g. through the implementation of costly and complex technology) or removal (e.g. through costly closures with the provision of new bridges or underpasses).
55. That can, in turn, have a material, adverse, effect on the business case for that enhancement or improvement scheme coming forward.<sup>70</sup>
56. As Dr Algaard stressed in her evidence, this project is an “*enabler*”, and, through reducing the constraints which level crossings represent to enhancement schemes, “*when the Government is considering improvements in Anglia, I will have more chance to secure funding for this*”.<sup>71</sup> Similarly, Mr Kenning stressed in XXC that if the powers sought through the Order are granted, “*this could be a catalyst for the franchise operator, and equally Network Rail or the DfT, to say, right, now we can deliver this scheme here*” because there is certainty around what needs to be addressed or provided.<sup>72</sup> .
57. Nor is the concern about constraints just a costs issue. As Mr Kenning explained, an important point to bear in mind is timing, and the fact that having to respond reactively to a proposed enhancement can result in a sub-optimal outcome in terms of the efficiency and resilience of the network. To use Mr Kenning’s terminology: this project is about ‘unlocking the network’.

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<sup>70</sup> As Dr Algaard confirmed in XIC (Day 2), if a train operator’s request for enhancement led to increased maintenance costs for level crossings, NR could look to recover those additional costs from the operator and, as Mr Kenning confirmed in Re-IX (Day 5), if a private company wished to increase the number of trains it ran on a line, and that required an upgrade at the level crossings, the costs of those upgrades would be borne by the funder – who “*may say they’re not doing that here, so you’ve lost*”.

<sup>71</sup> XIC Day 2

<sup>72</sup> In response to questions from MG, Day 5

58. As Mr Kenning explained in Re-IX,<sup>73</sup> if Network Rail has 4 years for an enhancement project to be delivered (for example, Norwich in 90), Network Rail needs to start pinning down its signalling pattern in Year 1. At that stage, Network Rail needs to know what is happening with the level crossings on that line, as *“you need to fit signals around it”*. He confirmed that it was *“not likely”* that Network Rail would start pursuing Highways Act procedures at the point it was told it had 4 years to deliver a project, and, in reality, Network Rail would *“end up with [a] substandard network”*,<sup>74</sup> and that, if risk at level crossings increased, Network Rail would likely end up fitting technology which was, *“not ideal”* and *“not the most economical solution”*.<sup>75</sup>

59. He also highlighted, in XXC<sup>76</sup>, the need for certainty of delivery in securing an enhancement scheme in the first place. He explained that, if there is a project with number of elements to be addressed, and 4 / 5 of those elements are within Network Rail’s power but the 5<sup>th</sup> isn’t (and may take time and money to address, but still with a risk that it cannot be addressed – eg due to third party intervention), *“sometimes projects aren’t willing to take those kind of risks because such an unknown entity, because can’t put a price to it, because can’t say I need X years and outcome will be Y – then people tend to say, can’t guarantee me a timetable, I don’t know you’re going to give me Y at the end of it, do I really want to back this?”* He stressed that, through this project, *“Network Rail is trying to be proactive. Opportunity to unlock enhancement projects, and efficient use of money in terms of managing whole estate.”*

60. To be clear: Network Rail is not suggesting that any of the crossings in this Order is preventing a specific enhancement scheme from coming forward.<sup>77</sup> Rather, that removing these crossings would remove constraints which would otherwise have to be addressed when (or if – business case depending) a proposed enhancement was to come forward.

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<sup>73</sup> Day 5

<sup>74</sup> As Mr Kenning explained in XXC in response to questions from MG (Day 5), introducing these additional layers of signalling involved in fitting technology at level crossings means you *“end up with a sub-optimal railway, carries all the same risk as before, greater need on railway to deliver but does nothing to make it a robust network to deliver that”*. .

<sup>75</sup> He made similar points in XXC in response to questions from MG on Day 4

<sup>76</sup> In response to questions from MG, Day 5

<sup>77</sup> Although the inquiry will recall Mr Kenning’s evidence to the effect that crossings E01 – E13 contain a series of WB protected crossings on this line which are, collectively, a constraint on this line

61. Questions were also put to Mr Kenning as to why closure of level crossings could not just be dealt with when the enhancement scheme comes forward<sup>78</sup> – potentially as part of the TWAO for the scheme itself. Even assuming a TWAO or other consent would be required for an improvement scheme (which would be highly scheme dependent<sup>79</sup>), it simply does not address the issue explained by Dr Algaard or Mr Kenning, outlined above. It would not provide the certainty NR needed as to which assets it needed to deal with by, e.g, technology or infrastructure at the outset of the scheme (with consequences for delivery timescales). It would not remove the assets and/or potential costs from the scheme (with consequences for the business case and attractiveness of the scheme). It would not assist Dr Algaard (and her successors) in positioning the Anglia route so that it was as attractive as possible to investment.
62. It would simply not meet the strategic objectives which, together with safety and operational efficiency/resilience, NR seeks to realise through this Order. Nor would it be consistent with the specific conditions set out in Part III of Network Rail’s Licence conditions, specifically those regarding ‘planning’ as to how it will secure the improvement, enhancement and development of the network, and promoting the ‘long term planning objective’ of ‘the efficient and effective use and development of the capacity available on the network’.<sup>80</sup>
63. Alternatives to the proposed diversion routes – both those considered by Network Rail during development of the Order scheme and those advanced by others before or during the application process – have been considered and appraised by NR. Ms Tilbrook has addressed those alternatives in her evidence.<sup>81</sup>

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<sup>78</sup> For example, by MG in XXC on Day 5,

<sup>79</sup> A TWAO would not be needed purely for service enhancements, as opposed (potentially) to an infrastructure enhancement..

<sup>80</sup> Discussed at paras 4.8-4.9 of MB’s PoE

<sup>81</sup> In the crossing specific sections of her Proof, in Tab 7 of her Appendices (NR32-2) and orally

Branch lines v main lines

64. A question has also been raised during the course of the inquiry as to how closure of level crossings situated on branch lines accords with objectives sought to be achieved through this Order, and NR's wider strategy in respect of level crossings.<sup>82</sup>
65. Closure of level crossings on branch lines is entirely consistent with the strategic objectives which underpin this Order.
66. Firstly, as set out above, all level crossings carry risk – both to those using the crossing and to the railway 'system'. It is not the case that level crossings on branch lines necessarily carry less risk than those on mainlines.<sup>83</sup> As Mr Brunnen explained in XXC,<sup>84</sup> line speed is a component of risk, but it is "*not true that less speed means less risk*".<sup>85</sup> Mr Fisk confirmed in XIC that there is no difference in approach to assessing risk by virtue of a crossing being situated on a branch line as opposed to a mainline – "exactly the same principles".<sup>86</sup> There is no 'magic' in the term branch line. Mr Kenning explained in XIC the very real concerns that can arise in respect of level crossings even on branch lines.<sup>87</sup> Mr Brunnen also reiterated that, as with crossings on the mainline, installing technology would not eliminate the risk – and that closure was consistent with the wider NR strategy (NR17) of seeking to close the crossing where an opportunity existed to do so, "*not waiting until 2039 to solve the problem*".<sup>88</sup>
67. Nor is there any difference in the inspection or maintenance responsibilities (and hence, costs) by virtue of a crossing being on a branch line as opposed to a mainline.<sup>89</sup>

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<sup>82</sup> In particular, NR's strategy 'Transforming Level Crossings 2015-2040' – NR17.

<sup>83</sup> Mr Fisk highlighted in XIC (Day 6) that the line speed for the 'branchline' crossings to which ECC objected were 75mph, 60mph and 50 mph respectively

<sup>84</sup> In response to questions from MH, Day 2

<sup>85</sup> Mr Brunnen also highlighted in XIC on Day 1 that line speed on some of the branch lines can be up to 70mph

<sup>86</sup> Day 6. Mr Kenning made the same point in XIC on Day 4

<sup>87</sup> Specifically, where crossings on a main line are located in the vicinity of crossings on a slower branch line (using the example of crossings around Marks Tey). AK XIC Day 4.

<sup>88</sup> XXC in response to questions from MH Day 2

<sup>89</sup> No such differentiation appears in the Operations Manual on Risk Assessing Level Crossings at Tab 2 of Mr Fisk's PoE [NR31-2]

68. As regards resilience and reliability, as Mr Kenning set out in his evidence, the fact that a level crossing failure or incident occurs on a branch line does not mean that there will not be a ripple effect across the wider network<sup>90</sup> – although he accepted, fairly, in XXC that due to the lower frequency of trains on the branch lines in question, the impact was likely to be of a lesser extent than a failure or incident on the mainline.<sup>91</sup>

69. In respect of enhancements, whilst it was acknowledged that there are currently no concrete enhancement schemes in respect of the ‘branch lines’ in the Order, as Dr Algaard stressed in XXC, Network Rail “regularly” receive requests to increase speed on branch/mainlines.<sup>92</sup> Mr Kenning also highlighted, on a number of occasions during the inquiry, the aspirations to bring forward enhancements on branch lines. That aspiration is reflected in ‘Once in a generation – A rail prospectus for East Anglia’ (NR-132), a document authored by a ‘multi-agency alliance’ of key stakeholders in the region (including ECC<sup>93</sup>) putting forward a case for a “feasible programme of improvements” up to 2032.<sup>94</sup> The principle of seeking to remove constraints, pro-actively, as a potential catalyst to future development applies equally to branch lines as it does to mainlines.

70. Whilst a number of parties have therefore questioned the ‘case’ for closure of individual crossings on branch lines by virtue of that crossing being on a low speed line, and/or with a low ALCRM score and/or without there being a clear enhancement scheme in the immediate future, Network Rail maintains that once the strategic case for the Order is accepted, it is clear that strategic case applies equally to the crossings on the branch lines as it does to those on the mainlines.

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<sup>90</sup> Mr Kenning highlighted, in particular in XIC, that whilst for the purpose of the CRD (NR18) the Braintree line had been treated as a branch line, the trains on that line run directly to London Liverpool Street, and a delay on that stretch of line matters because it’s connected to the mainline and so if it misses its slot it can still cause a ripple effect for trains to/from London Liverpool Street (Day 4),

<sup>91</sup> In response to questions from NT on Day 5

<sup>92</sup> In response to questions from NT, Day 4

<sup>93</sup> Dr Southgate confirmed in XXC that he had written the Essex section of the document (Day 10)

<sup>94</sup> The Executive Summary expressly states “We are keen for continued improvement in our branch lines, increasing track capacity, enhancing stations and improving line speed and frequency of services to support the planned economic growth in our communities”.

71. To reiterate: the removal of each and every level crossing will provide a safety benefit, remove a maintenance obligation, reduce costs, will make the route safer and more reliable, and make the network more suitable, or more open, to future enhancement.

## **(ii) The development of the Order proposals, including alternatives**

### National strategy

72. As set out earlier, Network Rail has adopted a strategy for level crossings which includes a process of reducing the number of crossings. A copy of that strategy – ‘Transforming Level Crossings 2015-2040’ – can be found at Core Document NR17. The national strategy is “a vision-led long term strategy to improve safety at level crossings on Great Britain’s railways”, extending over several control periods, which sets out that *“To achieve our safety vision for level crossings, we will move away from reactive management of emerging single issues in isolation, in favour of a targeted strategic plan to improve safety. This transition benefits all and will help to avoid a management culture of constant fire-fighting, waste, duplication of effort and sub-optimal solutions not aligned to a wider business strategy.”*<sup>95</sup>

73. The national strategy reflects the requirement which the ORR has placed on NR to seek significant reductions in level crossing risk: a further 25% reduction in risk at level crossings during Control Period 5 (CP5) (2014–2019).<sup>96</sup> The ORR has made a specific, ring-fenced fund, of £99m available to NR for that purpose.

74. Network Rail proposes, through this Order, to reduce the number of level crossings through co-ordinated multiple closures and diversions. This is distinct from, and in addition to, the process of individual closures for safety reasons, and continued focus upon closure of the highest risk crossings.<sup>97</sup> It is also distinct from ongoing work to improve the safety of retained crossings – both through the measures discussed in

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<sup>95</sup> Page 6 of the strategy

<sup>96</sup> As confirmed in MB PoE para 6.5 This follows the 31% reduction in risk achieved during CP4: MB PoE para 6.3.

<sup>97</sup> As confirmed by Mr Brunnen and Dr Algaard in evidence



NR17 and in Section 6 of Mr Brunnen's PoE, and through the wider objective of phasing out passive crossings by 2040.<sup>98</sup>

75. ORR is aware of, and supportive of, the approach being taken by NR through this Order (and the 2 related TWAO applications). It has expressly approved the use of part of the £99m ring-fenced fund for the Order proposals: see Appendix 2 to Dr Algaard's Supplementary Proof of Evidence (NR28-5).<sup>99</sup> It has further confirmed that funds can continue to be used towards the Order during CP5, even though the associated benefits may not be achieved during the CP5 control period.<sup>100</sup> Network Rail's approach to seeking to reduce risk across the network, by means of reducing its at grade level crossings where opportunities exist to do so, is thus expressly endorsed by ORR, even though those crossings are not the 'highest risk' crossings on the network.

### The Anglia Strategy

76. The Anglia CP5 Level Crossing Risk Reduction Strategy ("the Strategy")<sup>101</sup> sets out a phased approach to removing level crossings from the Anglia Route. It was authored by Mr Kenning, and endorsed, and adopted, by Dr Algaard (then Director Route Asset Management).

77. The Strategy is clear and unambiguous in its terms. Its purpose is "*to set out the CP5 level crossing reduction strategy for the Anglia Route, to provide the high level thought process and show the framework to deliver further reductions in the number of level crossings.*"<sup>102</sup> It identifies the difficulties which exist in utilising other processes for seeking to remove level crossings from the network,<sup>103</sup> and identifies

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<sup>98</sup> As MB explains at para 6.12 of his Proof regarding the national strategy, "*In accordance with the level crossing strategy, NR will invest in additional risk controls at those level crossings across the network that cannot be closed. By rationalising the asset base NR will be able to direct resources efficiently to those level crossings most in need of enhancement. It is anticipated that allocated funding, resource and deliverability challenges, and technology constraints will combine to make the implementation complex and a long-term objective. The vision-led safety is accordingly estimated to last into Control Period 9 (2040) or beyond*"

<sup>99</sup> Specifically, paras 5 & 6 of the Note and (internal) Appendix 3

<sup>100</sup> See para 8 of the Note and (internal) Appendices 4 & 5.

<sup>101</sup> Core Document NR18

<sup>102</sup> Page 5

<sup>103</sup> Pages 5-6

that the TWAO process enables the wider strategic benefits which result from removing level crossings from the network to be brought into the picture.

78. It articulates a clear strategy which includes a phased approach to level crossing closure. Phases 1 (mainline) and 2 (branchline) seek closure of crossings that “*clearly are unused or have extremely little use*”,<sup>104</sup> and “*those that have a nearby alternative route utilising existing bridges as a means of crossing the railway*”.<sup>105</sup> Phase 4 of the strategy included the downgrading of roads and “*UWCs<sup>106</sup> where an alternative means of access has been identified and needs powers to enforce the provision of access*”. Phases 3 (non-vehicular) and 5 (road crossings) concern crossings where a new bridge is likely to be required. The Strategy also recognises that there are many level crossings “*where it is not feasible to extinguish or divert the right of way*” and where technology would be required (‘No change’).<sup>107</sup>
79. The Strategy goes on to address the “Scheme Definition”. It notes that if a crossing is not assessed as suitable for one phase, it will be moved into a later phase, and that “*[e]ach phase provides a greater level of investment and infrastructure than the previous stage. As the Anglia Route builds up a picture of crossing works that will lead to a reduction in crossings it will allow the Anglia Route to focus its efforts on the remaining crossings, thus driving the development of solutions for these crossings*”.<sup>108</sup> Network Rail would highlight that this reflects the evidence of Mr Brunnen and Dr Algaard that closing the crossings in this Order will enable Network Rail to divert its resources to those other crossings requiring greater, or more complicated, interventions.

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<sup>104</sup> Contrary to the suggestion in the Ramblers Closing that there was no indication of what would constitute such a crossing, Mr Kenning explained the sort of crossings that would fall within this category during XXC by MG (Day 5)

<sup>105</sup> Page 9

<sup>106</sup> User-worked crossings

<sup>107</sup> Mr Kenning explained in XIC (Day 4) that this ‘6<sup>th</sup> phase’ was included in a revision of the CRD following significant public outcry in Stowmarket when it was believed, erroneously, that NR was intending to close the level crossings in the town carrying public roads across the railway and acknowledging that there were a number of level crossings in Anglia where NR was unable to be likely to effect closure – primarily where the crossings carried significant public roads.

<sup>108</sup> Page 11

80. Section 2.2.1 of the Strategy sets out the “Scheme Definition” for Phases 1 and 2. It sets out a number of assessments to be carried out – including diversity impact assessments. It is clear, from a fair reading of the Strategy, that Network Rail was keenly aware of the need to consider those using the crossings, and not purely the needs of the railway.<sup>109</sup>
81. Appendix B to the Strategy<sup>110</sup> sought to provide an overview of where the crossings within Anglia might fit into the phased approach. As Mr Kenning explained in XIC,<sup>111</sup> this was a desk-based exercise, listing all the level crossings, and highlighting where it was thought crossings might fall into a certain phase. It represents the state of play as at March 2015.
82. It was not, however, determinative of which crossings fell into which phase. Nor was it intended to be.
83. Whilst the Strategy is helpful in setting the Order scheme in context, this is not an inquiry into, nor judicial review of, the Strategy – cf the submissions (and line of questioning in XXC<sup>112</sup>) on behalf of the Ramblers Association which appear to be treating it as such. It was but the first stage in a detailed and involved process which resulted in the Order proposals – which proposals must be considered against the whole of the evidence currently before this inquiry. It is simply wrong to seek to ‘stop the clock’ as at February 2015 when the Strategy was finalised and to try to impugn the Order proposal by references to inferences drawn from language used in that document, or from matters which are not canvassed within it (for example, an express reference to the test in s.5(6)TWA 1992 or consideration of national/local plan policy). Nor are the inferences which the Ramblers have sought to draw from it in their Closings (specifically, at §65 – 66) fair or accurate.

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<sup>109</sup> See, inter alia, the need for (and benefit of the TWAO process providing for) consultation on the proposed changes (eg at page 5) and the identification of some crossing points (Motts Lane, Ingatestone Hall) a bridge was thought likely to be required (page 5).

<sup>110</sup> A copy of which was submitted separately - NR 115

<sup>111</sup> Day 4 of the Inquiry

<sup>112</sup> MG questions of EA on Day 2, and of AK on Day 5 of the inquiry

84. Nor it is relevant to consider whether, and if so, how or when, later phases of the Strategy will be implemented.<sup>113</sup> The Order scheme is not NR's final position in respect of level crossings in the highway areas covered by it, but it is the Order proposals which are currently before this inquiry for consideration. The crossings proposed for closure in this Order will achieve the strategic objectives discussed earlier in and of themselves: those benefits are not dependent upon future phases being implemented.

85. As is clear from the CRD, the availability of an alternative route is at the heart of the strategy for phases 1 and 2. By definition, the proposed crossing closures in the Order are those where Network Rail considers that a suitable and convenient alternative route is available, can be provided, or is not required. That is the issue which falls to be considered at this inquiry, based on all the evidence presented to date: not whether Network Rail was correct to take the view, when the Strategy was drafted, that there was a 'nearby' crossing point to which users could be diverted (cf the questions put to AK in XXC<sup>114</sup>). Network Rail reiterates that this is an inquiry into the merits of the proposed Order: not a judicial review of Network Rail's decision-making processes.

### The Order Scheme

The Order scheme originates from the Route Requirements Documents ("the RRDs") for Essex, Hertfordshire and Thurrock which were developed to give effect to Phases 1 and 2 of the Strategy.<sup>115</sup> The RRDs were written in tandem with the Strategy. It was a desk-based exercise, preceding engagement with the external stakeholders (including the highway authorities) and the appointment of Mott MacDonald to take forward assessment of the proposals. Mr Kenning explains the nature of that initial desk-based exercise, and what it entailed, in paras 3.3 – 3.8 of his Proof.

86. Discussions began with the highway authorities in April 2015.

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<sup>113</sup> In any event, as Mr Kenning made clear in XXC (in response to questions from MG, Day 5), given the need to increase rail services, and the constraints posed by level crossings to increased services, whilst it couldn't be guaranteed that the next phases of the Strategy would be taken forward, there was a clear need to deal with level crossings going forward.

<sup>114</sup> By MG on Day 5 of the inquiry

<sup>115</sup> The RRDs for Essex and Hertfordshire are at Tab 1 of Mr Kenning's Appendices (NR30-2). The RRD for Thurrock was submitted separately – NR 116.

87. Mott MacDonald were appointed in June 2015. Mr Kenning sets out in Section 3 of his Proof the work which Mott MacDonald was asked to undertake which included, at GRIP stage 1, a ‘sense check’ of the proposed diversion routes tentatively identified by NR, and then more detailed assessment work at GRIP Stage 2. Network Rail would highlight, in particular, that Mott MacDonald’s work was not limited to appraising Network Rail’s initial proposals, but included them identifying whether they considered the alternative route identified by Network Rail was not acceptable or not viable, noting any other routes that might be more suitable, and/or any ‘better’ route which they might have identified.<sup>116</sup>

88. The first of two rounds of public consultation began in June 2016. Examples of the round 1 and 2 consultation materials – including questionnaires – are appended to Mr Kenning’s Proof at Tabs 4 & 5.<sup>117</sup> As Mr Kenning explained, for a number of crossings, Network Rail was considering more than one option for the diversionary route at round 1, and responses were sought as to consultees’ preferred route.<sup>118</sup> By round 2, Network Rail had identified its preferred diversionary route for each proposal.<sup>119</sup> For a small number of crossings, further changes were made following the second round of public consultation, and further engagement was undertaken by way of letters to affected landowners, and notices at crossings for the wider public, as opposed to consultation events held at rounds 1 and 2.<sup>120</sup> These rounds of consultation served a number of purposes. Not only did it enable Network Rail to inform the public of its proposals, and seek their views to inform development of the Order proposals, but holding two rounds of consultation was also seen as important to make clear that Network Rail had been listening to the information and feedback received and that it had informed the development of the proposals.<sup>121</sup> In some cases, feedback received through the consultation events led to proposals being removed

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<sup>116</sup> See paras 3.17 and 3.22 of Mr Kenning’s Proof of Evidence

<sup>117</sup> Copies of the consultation material for each crossing can be found in Tabs 2 and 3 of Susan Tilbrook’s Appendices [NR-32-2] See also the Statement of Consultation (NR5). NR 5 also sets out details as to how the consultation events were publicised.

<sup>118</sup> AK PoE para 3.38

<sup>119</sup> AK PoE para 3.45

<sup>120</sup> AK para 3.55

<sup>121</sup> AK PoE para 3.49

from the Order, Network Rail not being satisfied it had found the right solution, or amendments being made to better meet the needs of users of the crossing.<sup>122</sup>

89. As Mr Kenning explained in evidence, at various stages of the project, crossings proposed for closure were removed from the Order scheme, following more detailed assessment work and public consultation. As Mr Kenning emphasises at para 3.52 of his Proof, “[i]t has never been Network Rail’s position that it would not alter its proposals or remove a level crossing from the Draft Order if it became apparent that that was the right course of action, as a better alternative had been identified, or it became apparent that the diversionary route proposed was not satisfactory.”

### Alternatives

90. As set out earlier in these submissions, the Order scheme is not being pursued instead of other measures to reduce level crossings and/or to improve safety at those crossings. It is being pursued alongside other measures both within Anglia and nationally, as discussed by Dr Algaard and Mr Brunnen in evidence.

91. The Strategy itself identifies the difficulties which NR has experienced in seeking to close level crossings through other processes (specifically, proceedings under the Highways Act 1980). I set out in Opening and below why proceedings under the Highways Act 1980 are not, in fact, a process which Network Rail could use to achieve the strategic objectives which are the basis for this Order in any event.

92. It is right to say that Network Rail did not actively consider, in developing the Order scheme, whether instead of closure of the (now) 56 crossings within it, it should instead install technology and/or provide infrastructure under or over the operational railway. That would have been wholly contrary to the purpose of phases 1 and 2 of the Strategy which was to seek opportunities to rationalise the level crossing estate by diverting users to an alternative crossing point where that diversion could be carried out without the need for infrastructure to be provided. Whilst installation of technology may have assisted in reducing, or managing, risk at the crossings, it would not have removed it entirely – which would be the case with closure. Nor would it

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<sup>122</sup> Ibid

have accorded with the objectives of improving the operational efficiency, reliability and resilience of the network (for the reasons explained by Mr Kenning in evidence) or Network Rail's obligations under 'Managing Public Money'.

93. That is not to say that alternatives to closure on a crossing by crossing basis have not been considered by Network Rail. They have: albeit as part of the optioneering exercises carried out by the level crossing manager responsible for a particular crossing as part of NR's risk assessment process, and not as part of the Order scheme. The 'cba' score for each option, set out in the crossing specific sections of Mr Fisk's PoE,<sup>123</sup> did not inform the development of the Order scheme proposals.<sup>124</sup> Nor are those 'cba' scores relied on by NR in support of its application for the Order.<sup>125</sup> This information has been provided, however, (i) by way of completeness of account of the risk assessment process carried out by LCMs in respect of an individual crossing,<sup>126</sup> and (ii) to make clear that whilst Network Rail has not looked at alternatives to closure as part of development of the Order scheme *per se*, that does not mean that it has simply ignored the possibilities which may exist for taking other steps to mitigate or otherwise manage risk, at the level crossings contained within the Order - those matters are considered, routinely, as part of the day to day management of the level crossings. Whilst those 'cba' scores were not relied upon, therefore, in selecting crossings for inclusion within the Order, it is not accepted they are either "irrelevant" or "should not have been included" as suggested by the Ramblers Association (§123 of their Closings). They are part and parcel of the risk management process undertaken by LCMs, and were included as such.

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<sup>123</sup> A number of criticisms, or queries, have been raised about the results of the 'optioneering' exercises set out in the crossing specific sections of Mr Fisk's PoE. As he explained in evidence, these exercises are carried out by the LCM responsible for that crossing, using 'generic' figures which the LCM may adjust, given his or her knowledge of that crossing and its surroundings.

<sup>124</sup> As confirmed by Mr Kenning – the author of the strategy - in XXC

<sup>125</sup> Not least, as those 'cba' scores are limited, essentially, to safety benefits v cost and do not reflect the wider strategic objectives sought to be achieved through this Order.

<sup>126</sup> As Mr Fisk explains at para 3.40 of his Proof, after completing the risk assessments, the LCMs carry out an 'optioneering' exercise, to consider options for eliminating, reducing, mitigating or managing the risk at an individual crossing.

**(iii) The position of objectors on ‘strategic’ issues, including process concerns**

ECC

94. As is clear from Dr Southgate’s Proof of Evidence, the principles underlying the Anglia Level Crossing Reduction Strategy were broadly in line with ECC’s long term transport strategy and stated aim to improve connectivity and economic growth.<sup>127</sup> Where ECC takes issue with particular crossings within the Order, it is because ECC considers that the closure would have significant negative impacts on the PROW network, or Network Rail’s proposed alternative route is not considered appropriate.<sup>128</sup> When calling its ‘strategic’ evidence at inquiry, ECC characterised its position on the strategic case for the Order as one of “neutrality”.<sup>129</sup>

95. ECC had also objected to the Order as a whole, pending resolution of its concerns as to the potential increased maintenance liabilities resulting from the new PROW proposed under the Order.<sup>130</sup>

96. As set out in the Joint Statement on behalf of Network Rail and ECC dated 26 September 2018 (NR 118), Network Rail and ECC have now entered into an agreement which addresses ECC’s concerns regarding implementation of the Order (if the Order is made), including:

- (i) arrangements for agreeing the design and approval of the works authorised by the Order in respect of each crossing;
- (ii) arrangements relating to the certification of those works; and
- (iii) the payment of commuted sums to be paid by Network Rail to ECC, including the scope of such payments and how they are to be calculated.

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<sup>127</sup> Obj195/W11 para 5

<sup>128</sup> Dr Southgate’s PoE, para 1 under sub-heading ‘ECC Strategic Position on Level Crossing Closures’

<sup>129</sup><sup>129</sup> NT to Dr Southgate in Re-IX, confirmed also by Helen Baker (Day 10)

<sup>130</sup> ECC’s Statement of Case, page 3



97. The agreement also includes a requirement for the approval and construction of any works altering the existing highway to be undertaken before the related crossing can be closed.

98. As a result of that agreement, ECC withdrew its general objections to the Order.<sup>131</sup> The issues which remained related to the individual crossings to which ECC objected, and are discussed in that context below.

### CBC

99. To the extent that CBC raises ‘strategic issues’ in respect of the Order, it is apparent that are centred on the ‘case’ for closure of the crossings to which they specifically object (E41, E51, E52) which were all situated on branch lines as opposed to main lines. As set out above, Network Rail maintains that its strategic case for closure applies equally to branch lines as it does to mainlines.

### The Ramblers’ Association

100. The Ramblers raise a number of objections to the proposed Order. Primarily, they object to the use of the TWAO process to effect closure of level crossings (and extinguishment of the PROW which traverse them), both as a matter of principle, and in respect of this Order specifically.

101. The first of those matters (objection to the TWAO process in principle) is addressed at paragraphs 104 – 107 below. With regard to this Order in particular, it is clear that their case centres on: (i) an erroneous focus on the Strategy<sup>132</sup> as the be-all and end-all of NR’s ‘strategic case’; (ii) a failure to recognise that what has driven the selection of crossings for inclusion in this Order is whether (and where) opportunities exist to rationalise the network by diverting users to an alternative crossing point of the railway in order to meet Network Rail’s strategic objectives and (iii) a misunderstanding (or lack of confidence) in the processes which apply under the TWAO and how they are intended to operate.

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<sup>131</sup> Expressly confirmed in NR118

<sup>132</sup> ie NR18

102. Points (i) and (ii) are addressed earlier in these submissions. Network Rail would also note that, despite their opposition to the Order generally, the evidence called by the Ramblers on ‘strategic’ issues (i.e. that of Mr de Moor) was much more limited.

103. The Secretary of State will no doubt wish to bear this in mind, when considering the weight to be given to the more general opposition to the Order advanced on behalf of this national campaign group.

104. As regards the objection to the use of the TWAO process in principle, this is essentially a legal issue which I addressed in Opening, and I indicated during inquiry would be addressed further as required during Closings. In fact, the Ramblers’ case on this issue did not go much further in closing than it did in opening (reliance being place in closing, as in opening, on the Legal Submissions submitted before the inquiry opened). In these closings, therefore, I simply repeat that the Ramblers’ case in this regard is without merit, for the following reasons:

- a. This Order falls squarely within s.1(1) of the TWA 1992: “an order relating to, or matters ancillary to, the construction or operation of a railway”. The rationalisation (through reduction) of the level crossing estate on the Anglia Route is clearly and indisputably a matter ancillary to the operation of a transport network: specifically, the efficient and safe operation of the railway network within the Anglia region;
- b. To the extent that it is argued that proceedings under the Highways Act 1980 would be ‘better’ that is simply irrelevant. If (as is the case here), the TWAO procedure is one which may lawfully be used, the fact that objectors might prefer a different process to have been followed is nothing to the point – the application must be determined on its merits. That is also the short response to the reliance placed by the Ramblers (in their Legal Submission) on s.48 TWA 1992;

- c. Nor is it correct to say, in any event, that proceedings under the Highways Act 1980 would be ‘better’ or ‘preferable’. To achieve closure of 53<sup>133</sup> level crossings through Highways Act proceedings would involve 53 separate applications, potentially leading to 53 separate inquiries;
- d. In any event, those proceedings would only be available – and thus this objection engaged – where public rights of way across the railway are affected. Not all of the crossings in this Order are subject to public rights of way;<sup>134</sup>
- e. Further, the objects of this Order are ones which the relevant provisions under the Highways Act simply do not take into account.<sup>135</sup> The sole basis for closure under s.118A/s.119A is safety of users of the crossing. That is only part of the objectives sought to be achieved through this Order. The safety of users of the railway (as opposed to the PROW), its operational efficiency, reliability, resilience and future capacity are all elements of the strategic case advanced through this Order. S.118A/s.119A simply do not provide for closure for those wider reasons. S.116 provides for closure only on the basis that the right of way is ‘unnecessary’ or the diversion would be ‘more commodious’ for users of the public right of way: again, not on the grounds advanced as justification for this Order. The proposals contained within this Order are simply not proposals which could be dealt with under other existing, statutory procedures;
- f. The ‘high point’ of the Ramblers’ legal case appears to be that s.13(2) of the TWA provides that where the Secretary of State considers “that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order”;

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<sup>133</sup> Excluding the 3 crossings of which NR seeks to extinguish private rights only (E07, E12 and H09) and H01 where NR seeks to downgrade the rights from public road to bridleway with vehicular rights for authorised users

<sup>134</sup> Ibid.

<sup>135</sup> See paras 33-40 of NR’s Opening Submissions [NR-100]

g. The starting point here is “the order applied for” – i.e that which NR is seeking through this application (not that which objectors say NR could have applied for). This is highly material, because the order applied for includes:

- i. Compulsory acquisition of rights over land;
- ii. Temporary possession of land;
- iii. Disapplication of legislation;
- iv. A request for deemed planning permission;
- v. Extinguishment of private rights;
- vi. Dedication of new public rights of way; and
- vii. Closure and associated alteration of rights of way across multiple crossings.

Those matters simply could not be achieved under Highways Act processes. That is a complete answer to this point.

h. NR would note, in any event, that s.13(2) is a discretionary power. The Secretary of State is not *required* to refuse the Order even if (contrary to the submissions above) the objects of the Order could have been met by other means. If and to the extent the Secretary of State considers it necessary to consider exercising his discretion under s.13(2), no doubt he would wish to have regard to the fact that TWAOs to close level crossings have been made on at least 5 occasions in the past – two during 2017.<sup>136</sup>

105. As mentioned above, reference was also made, during the course of the Ramblers’ submissions to section 48 of the TWA 1992, which provides that where a PROW crosses a railway otherwise than by tunnel or bridge, the operator of the railway has made a closure or diversion application in respect of the crossing, and in the opinion of the Secretary of State the crossing constitutes a danger to members of the public using it or likely to use it, the Secretary of State may, by order, require the operator to provide a tunnel or bridge, or to improve an existing tunnel or bridge to carry the PROW over the railway.

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<sup>136</sup> Eg Ammanford Level Crossing Order 1996 (no associated works); Northumberland Park and Coppermill Lane Closure Order 2017 (only work was a replacement footbridge); Abbots Ripton Level Crossing Order 2017 (no associated works). Copies are in the Legal Bundle [NR-122]

106. Again, the reliance on this provision is wholly misplaced. Firstly, the exercise of this power, as with s.118A, is again premised on the crossing constituting a danger to members of the public – not the wider objectives sought to be achieved by this Order. Secondly, the Ramblers reliance on this provision wholly fails to acknowledge that s.48 does not confer a power on the operator to acquire land or rights necessary to provide (or improve) the bridge or tunnel, or indeed any other powers required to construct the bridge. This is absolutely clear from s.48(7) – which makes express reference to the operator potentially needing to use the TWA procedures in order to acquire the necessary land or rights.<sup>137</sup> It is notable that the Ramblers did not refer this provision in either their Legal Submissions, or in Closing Submissions when s.48 was relied on as being “relevant and applicable” at E30 and 31.<sup>138</sup>

107. There is, in NR’s submission, simply no basis for concluding that a TWAO is not an appropriate, and lawful, means of seeking to effect the objects of this Order.

108. As regards the final point (point (iii)) identified at paragraph 101 above, it is clear that what sits behind a number of the objections raised by the Ramblers Association (and pursued in closing) is (i) a misunderstanding of the TWAO processes and/or (ii) a worrying lack of confidence in the ability of two, public, bodies to carry out their statutory functions as they are required to do and to deliver that which they have said they will deliver.

109. As to the first point, a recurring criticism made by the Ramblers Association is as to the lack of detail of what is proposed to be provided on the ground, and such details being left to detailed design stage, subject to certification by the highway authority.<sup>139</sup> It is said that such details need to be provided now, so that interested parties can assess whether, and the Secretary of State can be satisfied that, a suitable and convenient alternative will in fact be provided.

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<sup>137</sup> S.48(6) provides that “An operator shall not be regarded as in breach of a duty imposed by an order under this section if he has used his best endeavours to comply with the order”. S.48(7) provides that “Where an operator is required by an order under this section to provide or improve a bridge or tunnel, but is unable to do so because he does not have the powers or rights (including rights over land) needed for the purpose, he shall not be taken to have used his best endeavours to comply with the order unless he has used his best endeavours to obtain those powers or rights (whether by means of an order under section 1 above or otherwise”. These provisions were notably not mentioned in the Rambler’s legal submissions.

<sup>138</sup> At paras 254 – 258.

<sup>139</sup> See for example, §94 – 111 of their Closing Submissions

110. With respect, that submission is premised on a fundamental misunderstanding of what is sought through this TWAO application, and the TWAO process itself. Through this application (and the TWAO process) what is sought is approval in principle for the closure of the crossings in the Order on the basis that a suitable and convenient alternative has been, or will be provided (or is not required). That is a matter of principle – not of detail. The Order itself prescribes the processes that will need to be followed to ensure a suitable and convenient alternative is in fact provided – and what the details of that will be. That is provided for by the certification provisions within the Order (specifically, Article 13). For those crossings in Part 1 of Schedule 2 of the Order, the crossings simply cannot be closed until those new routes are certified by the highway authority. The process can, therefore, clearly be contrasted to that prevailing on an application under s.118A / s.119A of the Highways Act 1980 where the extinguishment (or diversion) takes effect on the making of the Order – and hence why those matters of detail need to be considered before the relevant order is made.

111. Further, the responsibility for certifying that the route provided on the ground (as opposed to the line of route) is in fact suitable and convenient for existing users is entrusted to the highway authority – the body to whom Parliament has generally entrusted the duty for maintaining the highway and PROW network. There is simply no basis for suggesting that the relevant authority may simply disregard, or derogate, from those duties in respect of the highways/PROW at issue in this Order.<sup>140</sup> There is no, justifiable, basis for concluding that a different safeguard is required in respect of this Order.

112. As regards the scale of the current Order, Network Rail acknowledges that it has been a substantial undertaking, and that, at times, errors have been made. It strongly refutes the suggestion, however (at §38 of the Ramblers Closings) that it has “*bitten off more than it can chew*”. Nor that the scale of the Order can rationally found a conclusion that either the use of the TWAO process for this project is inappropriate, or that the Order should not be made.

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<sup>140</sup> Cf the rather surprising suggestion at §108 of the Ramblers’ Closing Submissions, that the highway authority and Network Rail “*may later agree between themselves to an alternative route that is not suitable and convenient*”.

## The NFU (Obj/32)

113. NFU's Statement of Case raised issues both of general concern to its members and, specifically, with regards to 4 of its members: (i) V & D Roberts (E47); (ii) the Audley End Estate (E12, E13)); (iii) E Camp & Sons (E02, E03<sup>141</sup>) and (iv) C, N & R Hutley (E48). The Proof of Evidence of Ms Staples (Obj 34) addressed only NFU's general concerns. Separate proofs were submitted in support of members' objections.
114. When examined critically, it was clear that NFU's 'general concerns' were, in fact, just that: general concerns about level crossing closures and what that might mean for its members – and concerns about replacement PROWs being provided on their members land. Ms Staples very fairly agreed in XXC that the concerns identified in her proof as to the impacts on agricultural operations of the closure of level crossings<sup>142</sup> were general concerns for the NFU and were not specific to this Order. Ms Staples also accepted that a number of concerns identified as regards new PROW were also 'general' concerns as opposed to concerns related to specific proposals in the Order.<sup>143</sup>
115. Ms Staples also agreed in XXC that when looking at the provision of new PROWs as replacement routes, it was necessary to look at a number of matters: it is apparent that NFU's key concern was that the Secretary of State must have regard to the affected landowner, not just users of the PROW. That is common ground.
116. As was put to Ms Staples in XXC,<sup>144</sup> what the issue really comes down to as between NR and NFU is not that NR has not looked at the needs of farmers, but that the NFU takes a different view as to where the balance falls. Ultimately this will be a question for the Secretary of State to consider when assessing the proposals at individual crossings. Mr Billingsley has set out in his evidence the nature of the exercise which Network Rail has to undertake in the present case, where it has to consider not only the needs of the landowner affected by the proposed rights, but also the needs of the third party users. Further, given that a replacement PROW may need

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<sup>141</sup> E03, Sadlers, is not in fact proposed for closure under the Order

<sup>142</sup> Detailed at section 4 of her Proof.

<sup>143</sup> For example, NR is not proposing any new footpath route adjacent to an Internal Drainage Board drain (cf para 5.14 of Ms Staples' Proof)

<sup>144</sup> On Day 11 of the Inquiry

to be provided across parcels of land in different ownership and needs to connect coherently into the wider PROW network, there is less flexibility than a developer might have on a different scheme to try to reach agreement with the affected landowner<sup>145</sup> Ms Tilbrook set out in her evidence how NR has recognised the need to balance the requirement to ensure there is a suitable and convenient alternative route for users with the impacts on private landowners and has identified, in a number of locations, where it was felt that taking rights over private land could not be justified, given that the existing highway was considered to provide a suitable and convenient alternative.

117. The NFU's complaints as to consultation are also not accepted by Network Rail. It relies on the evidence of Mr Kenning and Mr Billingsley in this regard.

#### ELAF (Obj/142)

118. ELAF contend that Network Rail are not working towards the objectives set out in 'Transforming Level Crossings' (NR17) as the majority of crossings in the Order are not on high speed lines, have high usage or a large number of trains, and are not proposing to make any of the passive crossings active.<sup>146</sup> Mr Brunnen explained in evidence that the Order proposals are consistent with the objectives in that Strategy, and that it has the support of the ORR.<sup>147</sup>

119. ELAF have also raised concerns that Network Rail have not considered the level crossings in an area "holistically" (this was raised, in particular, in respect of crossings E01 – E04<sup>148</sup> and crossings E17-E23.<sup>149</sup>) That criticism is simply not borne out. As Network Rail has made clear in its evidence (specifically by Mr Kenning), Network Rail has not looked at crossings in isolation in this Order. The very purpose of phases 1 and 2 of the Strategy was to identify where there were opportunities to

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<sup>145</sup>NB PoE paras 5.19 and 5.20

<sup>146</sup> PoE of Sue Dobson, pgs 2-3 (Obj 142/1)

<sup>147</sup> It should also be noted that the passages cited from NR17 by Ms Dobson must be read in context. In particular, the recognition on page 3 of the Strategy that closing level crossings will always be the most preferable and best solution to manage safety, and that making passive crossings active is the last step as of 2039 for "existing" passive crossings: ie those that Network Rail has not been able to previously address.

<sup>148</sup> PoE of Katherine Evans (Obj 142/2) pgs 4-5

<sup>149</sup> PoE of Sue Dobson (Obj 142/1) pgs 3-4



divert users to an alternative crossing point of the railway. This has necessarily involved consideration of how the crossings in the Order relate to, and operate alongside, other crossing points on the same stretch of line – and within the wider PROW network in the area. It is clear from the evidence given by both Mr Kenning and Ms Tilbrook how this has been considered in any given case.

120. Similarly, the suggestion that Network Rail has failed to properly consider the potential implications of development and/or strategic highway improvement works in the vicinity of E17 - E23 is without merit. Mr Kenning explained in evidence how those potential developments have been considered, and why Network Rail's proposals neither prejudice those proposals coming forward, nor prevent the future enhancements which ELAF may wish to see to the PROW network if those developments come forward. That evidence was not seriously challenged.

121. ELAF also challenge the use of the TWAO process as opposed to seeking closure through separate applications under the Highways Act. This is addressed above and, with respect to ELAF, not repeated here.

### Consultation

122. Consultation concerns can be dealt with shortly. It is common for those opposed to infrastructure schemes to say that there has been inadequate consultation when in fact, what is meant, is that the promoter of the scheme has not made the changes they would wish to have seen made.

123. Nor is there merit in the Ramblers' suggestion that consultation was flawed because its focus was on the proposed alternative routes, rather than the principle of closure *per se*. As Mr Kenning made clear in his evidence, such comments were received from consultees and considered. A lawful consultation does not require a public body to consult only when all possible options are on the table. It is entitled to consult on a proposal it wishes to pursue – as was the case here.

124. As the consultation report<sup>150</sup> makes clear, there has been meaningful, thorough and repeated consultation on the Order proposals – more than is required by the law or as a matter of policy. It has included consultation with key stakeholders, including the highway authorities and the Ramblers Association, from an early stage. Mr Kenning and Ms Tilbrook have explained how those consultation exercises have informed development of the Order proposals, and how they have changed as a result of consultation.

125. A number of complaints have been made as to publicity for the Order proposals and/or the public consultation events. The Statement of Consultation (NR5) sets out the various means by which Network Rail publicised its proposals – and opportunities for affected individuals, or members of the public, to comment on the same. This included (i) publicising the proposed consultation events by way of notice at each level crossing; (ii) advertisements in local newspapers for each of the consultation events; and (iii) the distribution of flyers to properties within the vicinity of each of the level crossings, publicising the consultation events. There is simply no basis for suggesting that Network Rail had not taken appropriate steps to publicise its proposals, or to give those interested the means of commenting on the same.

### Statutory Procedures

126. Network Rail acknowledges that there were, unfortunately, some issues in the compilation of the original Book of Reference, which resulted in a number of interests not being recorded, and hence served with statutory notices. Those matters were addressed during the inquiry adjournment, as set out in the Note which accompanied the updated compliance bundle (NR110). Save for that issue, it is not understood to be seriously disputed by any party that NR has complied with the statutory requirements for consultation under the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. Nor could such a contention be sustained.

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<sup>150</sup> Core Document NR5

## Equalities

127. There has been some discussion, during the course of the inquiry, as to how NR has looked at the potential ‘equalities’ impacts of the proposed closures, by reference to the Public Sector Equality Duty under s.149 of the Equality Act 2010.
128. Any suggestion that there has been a failing on the part of NR to comply with its duties under that section is without merit.
129. The evidence is clear: NR has considered equalities issues at each stage of the process. The need for diversity impact assessments is identified in the Strategy. A DIA scoping exercise was carried out by specialists within Mott MacDonald during 2016.<sup>151</sup> Full DIAs for 14 crossings were prepared by equality specialists during 2016: the first versions being provided in December 2016.<sup>152</sup> Ms Tilbrook explained in evidence how that work has informed the consideration, and assessment, of the Order proposals.<sup>153</sup> It is simply unarguable that there has been a failure to “have due regard” – which is the duty in s.149.
130. In any event, the duty to “have due regard” in fact rests with the decision-maker in this context: namely, the Secretary of State: this inquiry is not a judicial review of Network Rail’s decision processes. No doubt in discharging that duty, the Secretary of State will wish to have regard to the totality of the evidence – including, for example, the evidence as to equalities issues arising from the crossing proposed for closure, and PROW leading to and from the same<sup>154</sup> - and any points raised by objectors as to matters they say were not and/or should have been considered in Network Rail’s own DIA assessments will be looked at in that light. It goes without saying that NR does not accept there were ‘deficiencies’ in its assessment, or the criticisms made of the same, for the reasons it set out in its evidence during the inquiry.

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<sup>151</sup> NR-119

<sup>152</sup> A full set of the DIAs is at NR 120.

<sup>153</sup> In section 1.16 of her PoE & in XIC

<sup>154</sup> As discussed in the Overview Report, the DIAs, at paras 63 – 72 of the Statement of Case (NR26) and in Mr Brunnen’s PoE at paras 7.4 – 7.6 and 9.8-9.13

(iv) *The general approach to public rights of way*

131. Network Rail has set out its approach to the s.5(6) test in 2 notes submitted to this inquiry: (i) its "Note on S.5(6) TWA 1992 – required" (NR 164), setting out the approach taken by Network Rail to whether an alternative route is "required to be provided"; and (ii) the agreed note between NR, ECC and the Ramblers Association on the definition of "suitable and convenient" (NR 135).

132. Network Rail's position is summarised here.

133. The starting point is the statute. S.5(6) TWA 1992 provides that an order shall not extinguish a public right of way over land unless the Secretary of State is satisfied that (a) an alternative right of way has been or will be provided, or that (b) the provision of an alternative right of way is not required.

134. That is, in reality, a simple test that does not require glossing. If an alternative right of way is required, it must be provided – and provided through this Order. If it is not required – for example, because the existing network is sufficient – then it need not be provided through this Order.

135. NR has, however, set out its approach to whether the provision of a new (alternative) right of way is required in NR-164. In brief:

- a. Provision of a new (alternative) right of way is not "required" where no public rights of way exist over the crossing (s.5(6) is concerned only with public rights of way);
- b. When considering whether an alternative right of way needs to be provided, Network Rail has looked at whether a suitable diversionary route would be provided by the existing PROW or highway network. If so, it has determined that provision of an alternative right of way is not required to be provided;
- c. In reaching that determination it has not limited its consideration to whether a diversionary route already exists on the ground, but whether that diversionary

route is (or could be made) “suitable and convenient” (having regard to the policy test in the TWA Guidance – discussed below). It has also been informed by the views of the highway authority;

- d. Where the existing PROW/highway network does not provide a potential diversionary route or it was considered that a diversion provided by the existing PROW/highway network would not be suitable and convenient, an alternative right of way has been provided for within the Order proposals.

136. The main debate between the main parties to the inquiry turns on the guidance provided in Annex 2 to the DfT Guide to TWA Procedures. The Guidance provides (pg 105) that:

*“If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users.”*

137. It is common ground<sup>155</sup> between NR, ECC and the Ramblers Association that those words are being used in the context of guidance and should not be construed as if they were a statute. The words should be given their ordinary, common sense meaning having regard to the statutory scheme and policy guidance of which they form part.

138. NR’s position is that in considering whether an alternative route is suitable and convenient, this needs to take account of the purpose and use of the existing route, its local environment, and relationship with the wider PROW network. It has looked at the function served by the existing PROW, having regard to the origin and destination points, desire lines, and whether the route is (e.g.) a utility route or a leisure route.

139. ECC and the Ramblers’ Association agree that those are all matters to be taken into account. They consider, however, that the factors to be considered should also include the quality of experience of using the route (i.e. enjoyment of the route).

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<sup>155</sup> NR-135 para 3

140. That distinction – function as against quality of experience – encapsulates the primary point of disagreement between the parties when considering the application of the statutory test to the Order proposals.

141. When considering whether a proposed alternative route is “suitable and convenient” it is critical to bear in mind the statutory context in which that test falls to be applied, and the consequences of the test not being met. This Order is pursued under the TWA 1992, not the Highways Act 1980. That is an important distinction. The focus, on applications under s.118A/s.119A/s.116 of the Highways Act is very clearly – one might say, almost solely – on the interests of those using a specific PROW. That is a wholly different statutory context to the TWA 1992. The guidance is notably silent on any requirement to consider enjoyment of the route as a whole.<sup>156</sup> Nor does it invite a comparative exercise between the established PROW and its replacement: the suggestion that the use of the word “replacement” in Annex 2 of the TWA Guidance imports such an exercise<sup>157</sup> is unsustainable.

142. The TWA 1992 provides an authorising regime for transport projects, which schemes “*can have a very important role to play in improving the country’s infrastructure*”.<sup>158</sup> S.5(6) provides an important protection for public rights of way, which need to be disturbed or diverted in order for the scheme to be implemented. Understood in that context, it is, in NR’s submission clear, that the focus on ‘function’ as opposed to more subjective consideration of ‘enjoyment’ is correct. It would, for example, be clearly unreasonable if a transport scheme which would realise significant public benefits were to be precluded from coming forwards, because the alternative route for users of a PROW was not considered suitable and convenient because it did not offer the same ‘views’ or ‘aesthetic enjoyment’ as that which needed to be displaced for the scheme.

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<sup>156</sup> Cf the test in s.119A of the Highway Act 1980

<sup>157</sup> As suggested by Ramblers’ Association: NR-INQ-135 para 11. ECC agrees that the test does not require assessment of the Highway Act tests, but does consider that the word “replacement” suggests a comparative exercise, specific to each site. NR-135 para 12.

<sup>158</sup> DfT ‘Transport and Works Act Orders: a brief guide’ para 3.

143. That is not to say that ‘journey quality’ has been ignored by NR in developing, and appraising, the proposed diversionary routes. Ms Tilbrook confirmed in XXC<sup>159</sup> that that had been considered. It is simply not part of the ‘test’ which falls to be applied under s.5(6).
144. Similarly, a common sense approach needs to be taken when considering who are the ‘existing users’ of the crossing.
145. NR maintains that the correct approach is to look at existing use and users of the PROW having regard (inter alia) to the characteristics of and constraints which exist on the existing PROW, and purposes it serves. It acknowledges that future occupants of consented developments in the vicinity of the crossing can be included within that group.<sup>160</sup> It does not agree, however, that “existing users” requires the decision maker to have regard to any person who might be legally entitled to use the route (but for whom the route is not usable due to, e.g., accessibility constraints), or who might, theoretically, do so in the future<sup>161</sup>. It is important to bear in mind in this regard that the language used by the Secretary of State, focussing as it does on *existing* users of the public right of way, indicates, also, that the Secretary of State is not seeking *enhancements* to the PROW network under s.5(6) TWA 1992.

**(v) Policy**

146. Consideration of PROW policy does not end with the TWA Guidance. There is a wider policy context to consider.
147. National and local policy supports the provision of a good public rights of way network – and understandably so. As recognised in the Government’s ‘Cycling and Walking Investment Strategy’,<sup>162</sup> for instance, walking and cycling should be encouraged. There are clear health and social benefits which arise from walking,

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<sup>159</sup> In response to questions from MG, Day 6 & Day 7

<sup>160</sup> Ms Tilbrook confirmed in XXC in response to questions from MG, Day 6 that that would be taken into account in assessing usage/ likely usage, for example where a housing development was being built

<sup>161</sup> It is understood that ECC agrees with NR’s approach in this regard: see NR-135 para 16. Cf the position adopted by the Ramblers: NR-135 para 17.

<sup>162</sup> Appendix 2 to Mr De Moor’s PoE

which have been emphasised during this inquiry.<sup>163</sup> Those benefits, and the importance of maintaining the PROW network, are not in dispute, and are wholly accepted by Network Rail. Similarly, Network Rail recognises the need to ensure that its Order proposals do not undermine the objectives sought to be achieved by the highway authorities' ROWIPs: as confirmed by Ms Tilbrook in evidence.<sup>164</sup> Ms Tilbrook's evidence throughout the inquiry was to the effect that she considered the proposals advanced in the Order were consistent with those objectives.

148. However, those high level policies and aspirations cannot be seen in isolation. Non-motorised journeys are part of a wider system of sustainable travel, which includes rail travel.

149. The National Policy Statement for National Networks identifies a “*critical need to improve the national networks to address... crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth*”.<sup>165</sup> As set out earlier, the Essex Transport Strategy – Local Transport Plan 2011-2031 Part 1- Transport Strategy highlights the importance of seeking improvements to (inter alia) the rail network.

150. All of those high-level policy documents also recognise the importance of access to local routes for non-motorised users.

151. It is simply wrong, therefore, to attempt to set walking and cycling against train travel, as if they are in competition or conflict. The issue is about striking the right balance.

152. Network Rail considers that for each of the proposals in the Order, it has struck the right balance by providing a suitable and convenient alternative route. ECC, the Ramblers' Association (and others) have objected to those crossings where they consider the proposed diversionary route is not suitable and convenient.

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<sup>163</sup> For example, by Mr De Moor for the Ramblers' Association

<sup>164</sup> For example in XIC on Day 6

<sup>165</sup> Para 2.2., extracted at para 5.2 of Mark Brunnen's PoE



153. Mr Brunnen, Dr Algaard and Ms Tilbrook set out in their evidence how they consider the Order proposals comply with relevant policy, including the objectives of the ROWIPs. In respect of local plan policies, as Ms Tilbrook explained in XXC, in developing the Order proposals, planning policies were considered, and the plans and proposals shared with all local planning authorities<sup>166</sup> – it should be noted that none of the local planning authorities (save for CBC in their recent planning Note) have raised any concerns about compliance of the Order proposal with their local plan policies.

154. In addition, Network Rail has submitted a Note on Planning Policy (NR 138) setting out its appraisal of how the Order proposals comply with relevant national and local policy. Notes have also been submitted on behalf of the Ramblers Association (RA-17) and Colchester Borough Council (Obj 141-3).

155. In reality, there is little difference in the policies identified by the parties as potentially relevant to the Order proposals. There are, however, two differences in approach. The first (as between CBC and Network Rail) relates to the legal framework within which planning policy falls to be considered: this is addressed at §158 briefly below. The second, reflects what seems to be a general difference in approach between NR on one hand and the Ramblers Association and CBC on the other as to how the Order proposals fall to be assessed generally.

156. To consider that second point first. As Network Rail as set out earlier in these Closings, it maintains that once the strategic case for closure of level crossings through this Order has been established, what falls to be considered at a crossing-specific level is whether the proposed diversion route is suitable and convenient for existing users. In Network Rail's submission, that approach also applies when considering the extent to which Order proposals comply with national or local policy. I.e. what has to be considered is the extent to which the objectives which would be achieved by the Order as a whole comply with policy – not to the extent to which closure of a particular crossing is justified by reference to the local plan policies for the area in which it is situated. Where local plan policies become particularly pertinent is where they relate to the diversion or provision of PROW – or any specific (e.g. environmental) issues which may arise in a particular location.

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<sup>166</sup> In response to questions from MG on Day 6

157. As set out in its Response to the Ramblers Association and CBC Planning Notes (NR-183), it would not, in NR's submission, be appropriate to suggest that in a case where the Secretary of State was satisfied that a proposed diversion would provide a suitable and convenient replacement for existing users, a crossing should nevertheless be removed from the Order because a local plan policy which applied to the LPA area within which that crossing was situated imposed different, or more onerous, requirements for the creation of new, or replacement, PROW.

158. As to the legal framework against which planning policy falls to be considered, this was also addressed in Network Rail's response to the Ramblers Association and CBC Planning Notes (NR/183) and not repeated in detail here. This concerns the approach to be taken to Network Rail's request for deemed planning permission. In brief, the request for deemed planning permission under s.90(2A) TCPA 1990 does not fall to be determined in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004: i.e. in accordance with local development plan policies unless material considerations indicate otherwise – contrary to CBC's submissions in its Planning Note.

159. Network Rail notes the position set out in the TWA Guidance, that *“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”* and whilst that is clearly recognised as the Secretary of State's stated position as to how applications will be considered, NR submits that it would be wrong for this statement of policy to be elevated to, in effect, a statutory test by another name. NR would highlight in this regard para 25 of the Guide to TWA Procedures,<sup>167</sup> which makes clear the status of that document, stating as follows:

*“The guidance given in this booklet on the TWA procedures and on how they are intended to be applied is based on DfT's understanding of the statutory provisions and the principles underlying them, and on experience of best practice. It is intended to help applicants and others with an interest. However, no reliance*

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<sup>167</sup> A copy of which can be found at Tab 13 of the Legal Bundle [NR-122]

*should be placed on any legal interpretation given in this guidance, as only the courts can give an authoritative interpretation of the law. Applicants and other interested parties should seek their own independent legal advice where necessary. Should there be any inconsistency between the guidance in this booklet and the provisions in the TWA or relevant SIs (such as might arise from a subsequent change in the legislation) the latter must prevail.*

160. Network Rail submits that, in reality, the dispute as to whether the Order proposals comply with relevant policies has to be considered on a crossing by crossing basis – and turns on whether the proposed diversionary route is or is not “suitable and convenient for existing users”.

**(vi) Road safety issues**

161. A number of objectors have criticised the lack of a comparative assessment of the ‘risks’ at a particular level crossing and the ‘risks’ of pedestrians using the rural road network proposed as part of a diversionary route following closure of the crossing.

162. There is no established methodology for comparing risk at level crossings with risks on rural roads.<sup>168</sup> Such attempts as have been made in the past, specifically for the House of Commons Transport Select Committee, led to the conclusion that:

*“Analysis of Network Rail and Department for Transport data (see Annex) shows that if an average walking trip includes a level crossing, the fatality risk to a pedestrian is about double the risk of an average walking trip without a level crossing. Overall, there is an increase of around 8% in the risk of a fatality during an average car journey that includes a level crossing, compared with one that does not”.<sup>169</sup>*

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<sup>168</sup> This is now understood to be common ground: Ms Tilbrook confirmed that there was no such methodology in XIC (Day 6). Mr Russell agreed in in XXC (Day 9).

<sup>169</sup> ‘House of Commons Transport Committee Safety at Level Crossings Eleventh Report of Session 2013-14’ para 15 (NR 114)

163. Ms Tilbrook explained in evidence how road safety issues have been considered in assessing proposed diversionary routes.<sup>170</sup> The inquiry has before it RSAs carried out by an independent RSA team within Mott MacDonald,<sup>171</sup> and Road Safety Assessments carried out by two members of the Ringway Jacobs / Essex CC Partnership's Road Safety Engineering Team, in respect of 7 crossings.
164. Whilst Mr Russell (for the Ramblers Association) and Mr Burbridge (of Iceni projects) have provided their assessment of the safety (or otherwise) of proposed diversion routes, both confirmed that they had not carried out 'road safety audits' for the purposes of HD 19/15.<sup>172</sup>
165. The RSAs commissioned by Network Rail and the 'road safety checks' carried out on behalf of ECC have taken different approaches. The RSAs commissioned by NR have been carried out in accordance with the provisions of DMRB HD 19/15. The Road Safety Checks carried out on behalf of ECC have assessed the proposed diversion routes by reference to the Road Safety GB Guidance 'Assessment of Walked Routes to School' (ECC-06).
166. Network Rail maintains that both the Network Rail commissioned RSAs and ECC commissioned Road Safety Assessments should be take into account in assessing the Order proposals. As confirmed in the Joint Statement on Road Safety Audits (ECC-01) the dispute between Network Rail and Essex County Council turns on the outcomes of those assessments: not the process.
167. The Ramblers Association do, however, take issue with the process followed by Network Rail – and assert, essentially, that Network Rail's RSAs should be disregarded, as 'fatally flawed' (see, e.g. §150 of the Ramblers Closing Submission).

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<sup>170</sup> Section 1.5 of her PoE

<sup>171</sup> NR16 and Appendix D of ST'S rebuttal proof to the Ramblers Association (NR-32-4-2)

<sup>172</sup> Mr Russell in XXC Day 9, CB in XXC Day 33.

168. That submission is wholly without merit. It is, notably, not a view shared by ECC<sup>173</sup> – nor it is a concern that has been raised by any of the other highway authorities.

169. Ms Tilbrook acknowledged, in XIC, that the relevant highway authority, rather than Network Rail, should have been identified as the “Overseeing Organisation” for the RSAs, and that the RSA briefs were not ‘signed off’ by the relevant highway authority. However, as she was at pains to stress in her evidence, the fact that NR, rather than the relevant highway authority, was identified as the ‘Overseeing Organisation’ did not affect the substance of the RSAs themselves – or the way the auditors carried out their work. Despite the issues Mr Russell raised, he had to accept in XXC that he had no reason to call into question the qualifications or competence of the individuals who carried out the NR commissioned RSAs.<sup>174</sup> The Ramblers Closing Submissions, however, come perilously close to doing just that.<sup>175</sup>

170. Ms Tilbrook also confirmed, in XXC, that the RSAs had been shared with the relevant highway authorities during the Order development,<sup>176</sup> who had not challenged the process in any way.<sup>177</sup> Nor is there merit whatsoever in the suggestion – which was, surprisingly, still pursued by Mr Russell (and the Ramblers Association in Closings) despite the clear evidence from Ms Tilbrook on this matter<sup>178</sup> – that the NR commissioned RSAs were not sufficiently ‘independent’ by reason of correction of a minor typographical error in the report being ‘signed off’ by Ms Tilbrook. As was noted in XXC, Mr Russell came perilously close to calling into question the veracity of Ms Tilbrook’s evidence in this regard – and he, notably, qualified his evidence appropriately. Despite that recognition in XXC, the Ramblers seem to again sail perilously close to the wind in this regard in their Closing Submissions. It was, notably, not a point pursued in their closings in the inquiry into the Suffolk Order – where materially the same evidence was adduced by Network Rail.

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<sup>173</sup> See the Joint Statement and absence of any such reference in ECC’s Closing Submissions

<sup>174</sup> Day 9 Q “Just so I am clear I understand you are not calling into question their qualifications or competence” A: “I have no reason to”.

<sup>175</sup> See, for example, the point made around ‘timing’ of the site visits at §165-166

<sup>176</sup> Including ECC – see the email chain at NR-130. Somewhat surprisingly, Mr Russell seemed to in fact question (in XXC) whether ECC was the highways authority

<sup>177</sup> In response to questions from MG Day 7, and similarly in response to questions from the Inspector.

<sup>178</sup> ST Supplementary PoE (NR- 32-5) and in oral evidence (XIC Day 6). It is perhaps even more extraordinary that this point is still pursued given the clear responses given on this question when it was raised in the inquiry into the proposed Suffolk Order – and into the proposed Cambridgeshire Order.,

171. Nor, with respect, is there any merit in the criticisms made by Mr Russell of the NR commissioned RSA by reference to information he says should have been provided to the auditors but which did not form part of the Audit Brief. Firstly, the information which Mr Russell considers should have been provided,<sup>179</sup> is not a “mandatory requirement” of HD 19/15<sup>180</sup>. What is mandatory, however, is for the road safety audit team to request further information if they consider the Road Safety Audit Brief to be insufficient for their purpose.<sup>181</sup> They did not do so – and thus clearly regarded the information they had to be sufficient. I repeat, that Mr Russell accepted in XXC that he had no reason to call into question the qualifications or competence of the individuals who carried out the NR commissioned RSAs.

172. In respect of a number of crossings, there was a difference of opinion between Ms Tilbrook and Mr Russell as to the acceptability, or otherwise, of a proposed diversion route in road safety terms. Where that is the case, Network Rail submits that the evidence of Ms Tilbrook is to be preferred – and will invite the Secretary of State to conclude likewise.

173. Ms Tilbrook is an experienced highways engineer, whose background includes road safety schemes, and carrying out road safety audits.<sup>182</sup> Her evidence was detailed and careful in writing. Orally, her evidence was clearly fair and balanced; she did not, at any point, seek to overstate matters, or downplay concerns. She gave full and thoughtful answers. Network Rail submits that the Secretary of State may, properly, give significant weight to her evidence.

174. In respect of Mr Russell’s evidence, however, it became apparent early in the inquiry that he had not, perhaps, familiarised himself with documents or material that was clearly key to a proper understanding, or assessment of, the Order proposals. Notably, it appeared that in undertaking his assessment of the proposed routes, he had only worked from the Design Freeze plans. He had not made reference to the Design Guide, nor to the Order plans (which are the critical plans for the purpose of this inquiry: the design freeze plans being illustrative only). Astonishingly, Mr Russell

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<sup>179</sup> At paras 3.5 – 3.10 of his Proof

<sup>180</sup> Specifically, it is not included in a square box – see para 1.9 of HD 19/15 (NR 123)

<sup>181</sup> Para 2.90 of HD 19/15 (NR-123)

<sup>182</sup> See, to the extent necessary, section 1 of Ms Tilbrook’s PoE [NR32-1]

apparently did not realise until Ms Tilbrook's oral evidence on Day 13 of the inquiry that Network Rail's proposals at E38 involved creating gaps in the existing VRS: this is despite the fact that both the Design Guide, and indeed Ms Tilbrook's PoE, expressly identified this.<sup>183</sup> Similarly, it did appear, at times, that Mr Russell was seeking to 'construe' guidance, or standards, to support a point he was trying to make<sup>184</sup> - or ventured beyond the matters in his brief.<sup>185</sup> His responses given at times in XXC<sup>186</sup> may properly be contrasted with the detailed, and considered, responses given by Ms Tilbrook.

175. The Secretary of State is respectfully invited to conclude that, where they disagree, Ms Tilbrook's evidence may properly be preferred.

176. In addition to evidence from its two road safety assessors, Mr Seager and Mr Corbyn, during the adjournment ECC submitted a proof of evidence from Mr Cubbins, a Road Safety Strategy Analyst with ECC, appending road traffic collision data stated to be "relevant to the proposed level crossing closures". When examined critically, it became apparent that whilst this document provided a useful overview of collisions across the Essex area, and the costs of the same, it was only the data in section 3 (pages 3 – 5) that was of direct relevance to the proposed crossing closures. The more general evidence, on the number or ratio, of incidents on A, B and C roads did not, as suggested in ECC's closings (para 23) demonstrate "that the roads to which the routes are diverted are statistically known for the collisions specified in para 21 above" (my emphasis): it merely demonstrated that such incidents were statistically known on the classification of roads to which users were being diverted at the crossings it had objected to.

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<sup>183</sup> ST's PoE para 2.31.7, pg 57 of the Design Guide (NR12)

<sup>184</sup> Specifically, again in respect of E38, para 3.36 of TD 19/06; his assertion that MfS indicated a minimum walking space of 750mm for an adult – whereas the guidance clearly indicated that was the minimum width for a person with a walking aid – and the conclusions he drew (at least in writing in his 1<sup>st</sup> Technical Note, although he later 'clarified' this in oral evidence) from the road safety data he had compiled at paras 1.21 – 1.29

<sup>185</sup> For example, the potential child safeguarding issues he raised in his Proof respect of E10 (reiterated in his rebuttal proof)

<sup>186</sup> For example, in response to questions in XXC on E10 about the fact that installing a crossing point does not automatically mean a road is safer and there are other factors which need to be considered, Mr Russell's responses were to the effect that "*it is not beyond the capability of a highway engineer that it is made suitable for users*"

177. Similarly, Mr Russell, in his ‘Technical Note 01: September 2018’ purported to carry out an exercise to analyse “recorded pedestrian casualties in the vicinity of proposed closures”,<sup>187</sup> setting out, in tabular form, all recorded accidents over the past 19 years within a 2 mile radius of the crossings he considered. He seemingly drew on that data to conclude, at para 1.28, that “the accident summary provided above shows that for each of the locations considered, there has frequently been road collisions that have resulted in a pedestrian casualty”. With respect, it does nothing of the sort.

178. Whilst the evidence that has been provided to the inquiry of accident data which is in fact close to, or on the same stretch of highway, as a proposed diversion route is clearly of relevance when considering whether that alternative route is ‘suitable and convenient’, the more general accident information contained in Mr Cubbin’s evidence and Mr Russell’s Note does no more, in reality, than demonstrate that accidents happen on roads. It does not support the submission, made by ECC in its closings (para 21) that, in respect of the crossings to which it objected, that “*the elimination of risk on the railway is disproportionate to the transfer of that risk to the road where familiarity and distraction are also present and ultimately the risk of conflict with the individual user is greater*”.

**(vii) *Environmental appraisal***

179. An Environmental Screening Request Report was prepared by Mott MacDonald and submitted to the Secretary of State in January 2017, with a request for a direction as to whether an EIA was required. That report assesses the potential effects of the Order scheme on a crossing-by-crossing basis (as well as considering its cumulative effects) on:

- a. Ecology;
- b. Landscape;
- c. Historic Environment;
- d. Air Quality;

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<sup>187</sup> At paras 1.23 – 1.29



- e. Noise;
- f. Ground Conditions;
- g. Water Resources (including consideration of flood risk);
- h. Traffic and Transport; and
- i. Socio-economics and Community

180. The report concluded that there would be no potentially significant effects, either at individual crossings or from the Order scheme as a project. By letter dated 15<sup>th</sup> March 2017,<sup>188</sup> the Secretary of State notified NR of his decision that an environmental impact assessment was not required.

181. In a Technical Note appended to Ms Tilbrook's Proof<sup>189</sup>, Mott MacDonald confirmed that whilst the screening assessment was carried out under the requirements of Schedule 1 to the TWA Applications Rules which did not include 'health' as a topic,<sup>190</sup> due to the limited size, nature and location of the works, it was unlikely that the proposed works would give rise to adverse significant effects to human health. The Note also confirms that matters such as flooding<sup>191</sup> were expressly considered in the EIA Screening Request Report. A full copy of the EIA Screening Request Report has been submitted to the inquiry: NR-155

*(viii) Approach to acquisition of rights / powers over private land*

182. Mr Billingsley sets out in his Proof the nature of the rights and powers sought by this Order,<sup>192</sup> and the compensation provisions for landowners affected by the exercise of those powers.

183. The essential point is this: those landowners whose interests in land are adversely affected by the Order scheme will receive compensation. That compensation will include (where established) disturbance losses resulting from

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<sup>188</sup> NR11.

<sup>189</sup> NR-32-1, Tab 8

<sup>190</sup> Health having been identified as an issue on which the Secretary of State wished to be informed in the Statement of Matters

<sup>191</sup> Statement of Matters issue

<sup>192</sup> The Order does not now include any compulsory acquisition of land.

temporary use of land (for example, for loss of crops whilst a PROW is constructed); diminution in value and/or disturbance of enjoyment as a result of dedication of a new PROW on the land over which it passes – “and land held therewith” – under s.28 of the Highways Act 1980 and reasonable fees associated with such a claim.<sup>193</sup>

184. Where rights are to be acquired by the Order, Network Rail submits that a compelling case for that compulsory acquisition has been made. The strategic case for closure of these crossings is summarised above. The acquisition of rights (or powers) over land is required to implement the Order scheme – specifically, through the creation of alternative rights of way, as required by s.5(6) of the TWA 1992. The acquisition of those rights is thus both necessary and justified by a compelling case in the public interest. Moreover, Network Rail maintains that it has taken a proportionate approach in identifying the powers and rights which it seeks to achieve those public benefits: it has limited its powers to acquiring rights – both to create new PROW and to access land – and powers to temporarily use land, rather than seeking acquisition of the land *per se*. Compensation is available to those landowners for losses suffered as result of exercise of those powers.

185. Mr Billingsley made clear in evidence his view that both the domestic<sup>194</sup> and ECHR ‘tests’ for compulsory acquisition were met in respect of this Order. That conclusion has not been challenged by any party. Nor is there any reason for concluding to the contrary.

#### ***(ix) Funding***

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<sup>193</sup> NB XIC/XXC Day 7

<sup>194</sup> By Note issued on 22 January 2019, the Inspector drew attention to the revised DCLG “Guidance on Compulsory Purchase Process and the Crichel Down Rules” and asked for any comments on the same. NR confirms that it does not consider that there is any material alteration in the comparable paragraphs to those referred to in the Statement of Matters.

186. NR's proposals for funding the Order scheme are set out in its Funding Statement (NR 20). Dr Algaard confirmed that this remained the position in XIC on Day 2 of the inquiry. NR has also provided confirmation from ORR that it is content for monies allocated to the Order scheme in CP5 to continue to be used during CP5 despite the possibility that its benefits may not be achieved during the same control period – by way of Note (with appendices) which is appended to Dr Algaard's Supplementary Proof of Evidence at Tab 2 (NR 28-5.1).

187. NR has also provided a Note setting out the funding sought in respect of CP6; the level of funding likely to be available (by reference to HC 448 'Statement of Funds Available' for CP6); and the significant commitment made by NR towards continuing its level crossing risk reduction work during CP6. This is appended to Dr Algaard's Supplementary Proof of Evidence at Tab 1 (NR 28-5.1) At Tab 3 to Dr Algaard's Supplementary Proof, there is a letter from Meliha Duymaz, the Anglia Route Managing Director, outlining Network Rail's ongoing commitment to the route wide level crossing project and confirming that funding will be allocated from the CP6 determination to enable the implementation of the Order (if the Order is approved). Network Rail's commitment to the Order scheme, and the objectives it seeks to achieve, cannot be doubted.

## **B INDIVIDUAL CROSSINGS**

188. For the purposes of these submissions, it is not intended to repeat the detailed evidence in respect of each crossing, nor to address those closing to which either no objections were received, or were dealt with by way of written representations only, save where there are particular points which Network Rail would wish to highlight. Network Rail's written evidence<sup>195</sup> in respect of each crossing (i) describes the crossing including assessments of the risk at the crossing;<sup>196</sup> (ii) sets out the proposals for the crossing, including development of the same and changes made through that process;<sup>197</sup> and (iii) assesses the impact of the proposals, specifically with regard to the suitability and convenience of the alternative route.<sup>198</sup>

189. Nor do these submissions address each and every point raised by objectors during the inquiry: no disrespect is intended to those objectors in that regard.

190. There are a few points of general application to make at the outset.

First: the suggestion that less weight should be given to Ms Tilbrook's assessment of whether a proposed alternative route is suitable and convenient because she (or a member of her team) had not walked each and every diversionary route, or the full extent of the existing and proposed route, and/or because her team did not include someone with previous experience as PROW officer<sup>199</sup> is simply without merit.<sup>200</sup>

191. Ms Tilbrook is an experienced highways engineer with extensive experience of dealing with public rights of way.<sup>201</sup> As she explained on a number of occasions in evidence, the team she works with is an experienced one, which has diverted and created PROWs in many schemes, and understands the issues which need to be considered.

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<sup>195</sup> Including Network Rail's written responses to the objectors not appearing at the inquiry contained within the correspondence bundles: NR112 and NR189.

<sup>196</sup> Mr Fisk's evidence

<sup>197</sup> Mr Kenning & Ms Tilbrook

<sup>198</sup> Ms Tilbrook

<sup>199</sup> See §145 of the Ramblers' Closings

<sup>200</sup> Similarly, the point regarding the initial site visits is also without merit. This was explored – and explained – in XXC on Day 6, and the practical feasibility confirmed by dint of a simple mathematical exercise in Re-lx on Day 8.

<sup>201</sup> See, to the extent necessary, section 1 of Ms Tilbrook's PoE [NR32-1]

192. More importantly, as with her evidence on road safety concerns, her evidence should be assessed on its substance. It is detailed and careful in writing. Orally, her evidence was clearly fair and balanced; she did not seek to diminish or avoid the concerns of objectors. She gave full and thoughtful answers. Network Rail submits that Ms Tilbrook very obviously is suitably qualified to give her evidence. Once satisfied as to that, her evidence should be assessed on its merits.
193. Nor is there merit in the suggestion that the evidence given by members of the Ramblers Association as to whether a proposed diversion route was “suitable and convenient” should be preferred to that of Ms Tilbrook, on the basis of their “local understanding”,<sup>202</sup> or experience as walkers.
194. Second: it was clear that for a number of crossings, the dispute between the parties could often be distilled down to whether the ‘enjoyment’ of the diversion route would be the same as the existing route. As set out earlier, that dispute reflects a key difference between Network Rail and the Ramblers Association as to what has to be considered in assessing whether a proposed diversion route is a “suitable and convenient replacement for existing users.” Network Rail maintains that the focus is, properly, on functionality, as opposed to aesthetics.
195. Third: a number of objectors queried why Network Rail was proposing to close a particular crossing as opposed to installing technology (or other mitigation measures). Where constraints existed to installing technology at a particular location, Mr Kenning therefore explained in his evidence what they were. Whilst Network Rail does not rely on the difficulties that may arise in installing (eg) MSL at a specific crossing to justify the closure of that crossing, Mr Kenning’s evidence illustrates – and provides tangible examples of – the constraints and complexities that he discussed in more general terms during his ‘strategic’ evidence. It is clearly not “irrelevant”, or “should be put to one side” as is now, rather surprisingly suggested by the Ramblers in their Closings (§126) – all the more surprising given that questions as to why alternatives to closure could not be pursued at a crossing were such a common feature of their Proofs, and indeed, of XXC.

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<sup>202</sup> As suggested for example, at §177 of the Ramblers Closings in relation to E02

196. Fourth: there was some considerable discussion during the inquiry as to the availability (or otherwise) of highway verges where use of rural roads was included within a proposed diversionary route and as to the ‘width’ of the pedestrian facilities which needed to be available (or provided). In respect of highway verges generally, there is a rebuttable presumption that in respect of an ordinary highway running between fences (or hedges), the highway extends to the whole of that space between fences/hedges.<sup>203</sup> Ms Tilbrook confirmed, repeatedly, in evidence that nothing had been put forward to rebut that presumption in respect of the various verges being discussed during the inquiry. Similarly, she confirmed that, save in respect of Pea Lane/Ockendon Road<sup>204</sup> none of the highway authorities had raised any suggestion that where existing highway was being considered as part of a diversionary route those highway verges were not in fact part of the highway. Network Rail would also reiterate that a verge does not have to be adopted highway to be, legally, a highway.<sup>205</sup> To the extent this point is relied on by the Ramblers’ Association as demonstrating that a proposed diversionary route is not suitable and convenient, it is thus wholly without merit.

197. As regards widths of footways / pedestrian facilities, it was common ground between Ms Tilbrook and Mr Russell that there is no specific guidance on widths for rural areas. As Ms Tilbrook explained in evidence, Mott MacDonald has drawn on a number of guidance documents in considering the suitability of a route<sup>206</sup> – and no one has seriously suggested that it has failed to have regard to a standard or guidance which should have been considered. The key difference between Ms Tilbrook and Mr Russell appears to centre on whether there should be a set, minimum, separation distance. Ms Tilbrook explained why she considered each route

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<sup>203</sup> See, eg, paras 15-15 of the Open Spaces Society Information Sheet C10 ‘Highway Verges’, appended to Ms Tilbrook’s rebuttal to the evidence of the Ramblers Association at Appendix F [NR 32-4-3]

<sup>204</sup> Where LB Havering identified that their highways department did not have “control” over the verge— see the Meeting Minutes at Tab 5 of ST’s Appendices pg 382 [NR32-2]

<sup>205</sup> A highway is, essentially, a public right to pass over a defined route (see, to the extent necessary, Sauvain Highway Law 5<sup>th</sup> Edn, para 1-03). Under common law, one of the ways by which a highway can be created is by implied dedication. A statutory presumption of dedication is now contained in s.31(1) of the Highways Act 1980 and presumes dedication from 20 years without interruption.

<sup>206</sup> ST PoE para 1.11.5.

needed to be considered having regard to its individual circumstances.<sup>207</sup> Mr Russell, in contrast, adopted a minimum width of 750mm, which he said was taken from Manual for Streets (MfS) and added a further 450m.

198. As regards the 750mm, it is clear, as put to Mr Russell in XXC, that the page from which he had taken that figure in MfS<sup>208</sup>, when read with *Inclusive Mobility* (which is where the indicative minimum distances in MfS are taken from), provides that 750mm is the minimum width for a person who is mobility impaired. For a non mobility impaired adult, the figure provided in *Inclusive Mobility* is 700mm.<sup>209</sup> As regards Mr Russell's suggestion that pedestrian facilities of a minimum of 1.2 m should be provided, by adding an additional 450mm allowance – which allowance is that recommended in guidance to avoid street furniture being clipped by passing vehicles - Ms Tilbrook has explained why she does not consider that to be necessary, or indeed, an appropriate comparator, in the context of what is being proposed through this Order.

199. Similarly, concerns have been raised by the Ramblers Association as to how diversionary routes along existing highways (as opposed to creation of new PROW) are to be 'safeguarded' against any future proposals that might interfere with them. As Ms Tilbrook explained in evidence, any future highway schemes will necessarily have to consider the needs of NMUs and any works to the highway / highway scheme will require the consent of the highway authority. There is no need for further intervention through this Order.

200. Fifth: a number of criticisms have been made – in particular, by the Ramblers Association<sup>210</sup> - as to use of the census data collected during the development of Order proposals and of 'origin and destination' surveys not having been undertaken. Those criticisms are without merit.

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<sup>207</sup> By way of example, in a number of locations it is considered that pedestrians will, in reality, walk in the carriageway, rather than along the verge, and step onto the verge out of the carriageway as required.

<sup>208</sup> Page 68

<sup>209</sup> Mr Corbyn similar referred to a width of 700mm in his evidence on E38

<sup>210</sup> See eg the Ramblers DIA note

201. Ms Tilbrook explained on a number of occasions that the census data only provided a ‘snapshot’ of a point in time and was neither determinative, nor treated as determinative, of levels of use , or of who constituted existing users.<sup>211</sup> It had not been relied upon as the justification for a decision that a proposed alternative route was suitable and convenient - nor were those decisions based solely on that data. It was but one information source drawn on when Mott MacDonald was considering the purpose of the current route, who was using it, and the purpose(s) which the replacement route needed to fulfil. She drew attention, inter alia, to the information received through the consultation process – noting, in particular, the questions asked on the round 1 consultation questionnaire,<sup>212</sup> which included “*For what purpose do you use the crossing?*” and “*For what purpose do you most often use the crossing?*”
202. She explained, again on a number of occasions, why she did not consider that origin and destination surveys undertaken at the crossings would have materially contributed to Mott MacDonald’s understanding of how the crossing was used and for what purposes. It is notable that no one has identified any purposes for which a particular crossing was used which had not been considered by Mott MacDonald in developing the Order proposals.
203. Sixth: a number of criticisms have been made as to the lack of a comparison between the ‘risk’ of using the level crossing and the ‘risk’ of using a road proposed as part of a diversion. That point has been addressed, generally, earlier in these Closings. Network Rail strongly refutes the suggestion, however, that the approach it has taken to risks on the road is “a world away” from the approach it has taken to safety on the railway, or that it has failed to properly evaluate safety from user’s perspective.<sup>213</sup> As is common ground, there is no direct comparator of risk on a level crossing as against risk on a road. They are, in fact, qualitatively different, as Mr Brunnen and Mr Kenning stressed in evidence. Network Rail is not seeking to close these crossings on the basis of safety alone – if it were, there might, perhaps be

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<sup>211</sup> For example, Ms Tilbrook confirmed in XIC on Day 6 that existing users had not just been limited to census users – “*just an indication. We’ve also considered physical aspects of access – terrain on approach, barriers on boundary to railway – steps/stiles – and taken into consideration feedback from public consultation exercise and stakeholder consultation*”.

<sup>212</sup> Appendix 4 to Mr Kenning’s PoE (NR30-2)

<sup>213</sup> Cf the suggestion at §89 of the Ramblers’ Closings



greater force in the complaint as to the alleged lack of comparative assessment. As Network Rail has made clear throughout its evidence, it has not pursued a proposal where it is not satisfied that the proposed diversionary route is suitable, convenient and safe. In §75 of Closings, the Ramblers state that ultimately Mr Kenning had to agree a crossing could be included in the order even where it had the five characteristics they set out in §75. The statement in the fifth of those points - “in fact more risky to use than a level crossing” - is not reflected in the notes NR have of the evidence in that regard. The criticisms made by the Ramblers Association in Closings are simply not accepted. Nor is the conclusion in §90 of those Closings.

204. Seventh: what appeared to underpin many of the concerns raised as to whether a particular route was ‘suitable and convenient’ was the (alleged) lack of detail as to what would be provided on the ground.

205. As set out earlier in these Closings, that is not the right basis on which to assess the proposals. S.5(6) is clear: in order to justify extinguishment of a PROW, the Secretary of State must be satisfied that a (suitable and convenient) alternative right of way has been or will be provided.

206. It is common ground that detailed design is yet to be undertaken. At that (second) stage, any concerns relating to usability of verges and/or need for vegetation cut-back or profiling; the profiling, cross-fall, and/or surfacing of proposed new footpaths; how gradients or levels are to be addressed; and any associated matters (such as drainage and/or additional signage<sup>214</sup>) can and will be addressed. As set out earlier in these closings, the new PROWs created under the Order are required to be constructed to the reasonable satisfaction of the highway authority; failing which the highway authority can refuse to certify the PROW. That, in turn, would preclude the crossing being closed. Any works in the highway will be subject to the oversight of

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<sup>214</sup> Signage was a particular concern raised by ELAF. Ms Dobson agreed, in XXC, that that was a matter which ELAF could no doubt raise with ECC if the Order was approved in line with the Defra Guidance on Local Access Forums in England (Appended to Mrs Dobson’s PoE). NR highlighted, in particular, para7.1.2 (pg 27) “forums can give advice without being invited to do so” and Annex A (pg 2) ‘Matters on which forums may advise’ which include, under the sub-heading ‘Management of Public Rights of Way’ “maintenance and infrastructure, signage, promotion and publicity...”.

the highway authority. It is agreed between NR and ECC that any works required to a highway forming part of a diversionary route must be carried out before the crossing is closed.<sup>215</sup>

207. A number of criticisms have been made by the Ramblers Association in their Closing Submissions (and throughout the inquiry) as to the information provided by Network Rail to the inquiry. In presenting its evidence to the inquiry, Network Rail has sought to present the evidence appropriate for this “in principle” decision-making stage.<sup>216</sup> Where the inquiry has indicated that further details are needed, Network Rail has sought to provide that detail. Similarly, where there have been errors in its evidence, or documents, Network Rail has sought to correct the same. Network Rail maintains, however, that the “in principle” decision sought from the Secretary of State does not, ultimately, turn on proposed surfacing, or how exactly a safe landing place will be provided at the top of a set of steps leading up to a road bridge. The Secretary of State may safely, and properly, rely on the framework provided for through the Order – specifically, that second stage approval process by the relevant highway authority – to be satisfied that what is provided on the ground will be safe and suitable for users before the crossings are closed.

208. The complaint that the detail to be provided through the detailed design process has not been provided yet is not, therefore, in Network Rail’s opinion a valid basis to conclude that a suitable and convenient alternative ‘will not be provided’ for the purposes of s.5(6).

### **E01 Old Lane<sup>217</sup> & E02 Camps<sup>218</sup>**

209. E01 and E02 are both situated on the WAML, with a line speed of 70mph. Neither has sufficient sighting to meet industry standards, being situated in the middle

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<sup>215</sup> In the side agreement. See NR-118

<sup>216</sup> Ms Tilbrook confirmed, in XIC (Day 6), that based on her experience with previous highway projects that she had been involved in, the level of detail provided in this application was entirely consistent with the level of detail provided on those projects.

<sup>217</sup> Order replacement sheet 4

<sup>218</sup> Order replacement sheets 5 and 6

of a reverse curve.<sup>219</sup> Both are fitted with whistle boards, to mitigate insufficient sighting.

210. E01 is currently closed under TTRO. This is because of its proximity to a third level crossing in this area – Wildes – which is also protected by whistle boards. As Mr Kenning explained in evidence, because of the proximity of the two crossings there is a risk that a user might “*hear the wrong whistle*”.<sup>220</sup> NR had originally proposed to close Wildes level crossing by way of TTRO but ECC’s position was that it would prefer for E01 to be subject to the temporary closure, as Wildes was a more convenient location for a crossing.<sup>221</sup> In particular, Mr Kenning noted in his evidence that footpath EX/203/13 has a tendency to flood.<sup>222</sup> NR has previously sought to close E01 through the s.118A HA 1980 process, but due to objections received, the Order was not progressed by the highway authority.<sup>223</sup>

211. NR proposes, through the Order, to extinguish footpath EX/203/13 as it passes over the crossing from the point where it meets footpath EX/185/79 to the south to the point where it meets footpath EX/203/44 to the north. Users would be diverted to Wildes crossing to the west, via existing footpath EX/185/79 – an additional distance of around 150m<sup>224</sup>. Having regard to the purpose of the current crossing (which NR considers is to provide leisure and recreational access to the local footpath network, and access to the north of the railway to the River Stort), the links provided by the proposed diversion, the environment through which it passes and the limited additional distance in the context of the leisure walking being undertaken, Ms Tilbrook confirmed, in evidence, that she considers the proposed diversion provides a suitable and convenient alternative route for existing users.

212. No objectors appeared on E01.

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<sup>219</sup> DF PoE paras 6.13 (E01) and 7.13 (E02).

<sup>220</sup> AK in XIC Day 15

<sup>221</sup> AK PoE para 5.7.

<sup>222</sup> AK PoE para 5.8

<sup>223</sup> AK PoE 5.6, as amplified in XIC (Day 15)

<sup>224</sup> ST PoE para 2.1.8

213. E02 is situated to the east of Wildes crossing. NR proposes to extinguish footpath EX/185/75 from the point where it meets footpath EX/185/74 to the south to the point where it reaches footpath EX/185/181 to the north. This would include the extinguishment of a section of footpath running through Roydon Lea Farm. Users would instead cross the railway at Wildes level crossing, via a new section of footpath created to the south of the railway, connecting footpath EX/185/122 to footpath EX/203/44. The private rights over E02 would be unaffected.

214. Mr Kenning explained in XIC that whilst, therefore, E02 would remain in use as a crossing point if the Order was made, removal of the PROW would still meet the objectives which underpin the Anglia Level Crossing Reduction Strategy, of rationalising the level crossing estate. In effect, Network Rail would, in future, have to manage one crossing at this location rather than two<sup>225</sup>, and can “hone” the way it deals with that crossing to the use being made of it.<sup>226</sup> It will also mean, if NR needs to take further action in the future, it can focus, solely, on the needs of the private user, as opposed to having to find a solution that works both for the PROW and for the private rights.

215. Given the retention of the private rights of way, and the extinguishment of the footpath passing through the farm north-south, it is perhaps somewhat surprising that Mr Camp objects to the Order proposals and would rather the crossing remain open (with the PROW in situ) in preference to the Order proposals.<sup>227</sup>

216. When examined critically, it is clear that what lies at the core of Mr Camp’s objections to E02 is the fact that Network Rail determined, prior to making the application, that it was not able to pursue an alternative that it had been considering earlier in the process, namely to divert users to an underpass to the east of E02 which

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<sup>225</sup> The private UWC and public passive crossing have separate ALCRM scores despite being in the same location (as confirmed by AK in Re-IX- DaY 15). DF in XIC confirmed that the element of risk associated with the footpath element of the crossing point would be removed.

<sup>226</sup> Mr Kenning also explained, in his oral evidence, why use of the telephone provided for users of the UWC crossing would not be appropriate for users of the footpath level crossing.

<sup>227</sup> Mr Camp’s stated position in XXC on Day 15

would also have enabled the closure of E03.<sup>228</sup> The effect of that proposal would have been to remove a number of PROW to which Mr Camp's land is currently subject. Both Mr Kenning and Ms Tilbrook explained why it was decided that that option could not be taken forward as part of the Order.<sup>229</sup> Mr Kenning confirmed, however, that NR has not given up on the possibility of being able to utilise that underpass - and, if achievable, that they would try to divert users of Sadlers level crossing to it. It just did not fit within phases 1 or 2 of the Strategy.<sup>230</sup> As regards the concerns as to potential impact of the new PROW on the residential occupiers of Roydon Lea Cottage, Ms Tilbrook confirmed that the new footpath would be around 200m from the property, and that the property had vegetation on the boundary which would provide some screening. Mr Billingsley confirmed that concerns as to the implications of the new PROW for the land covered by the Higher Level Stewardship scheme was something that could be considered as part of any claim which Mr Camp might wish to make under s.28 of the Highways Act 1980.<sup>231</sup>

217. Ms Tilbrook explained how the proposed diversion route would retain both access to destinations to the north of the railway, and the ability to undertake circular walks.<sup>232</sup> As set out in her Proof, and reiterated in her oral evidence, having regard to the purpose for which the crossing is considered to be used (leisure / recreational walks), the environment, and the impact of the proposals for both those using the route and landowners, she considers that the proposed diversion provides a suitable and convenient alternative for existing users. She did not consider that any issues arose as a result of users having to cross a farm track.<sup>233</sup>

218. NR maintains, therefore, that the Order may properly be confirmed without modification

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<sup>228</sup> See pg 219 (Tab 3) and pg 346 (Tab 4) of ST's Appendices [NR 32-2]

<sup>229</sup> Mr Kenning in XXC, ST in Tab 7 of her Appendices pg 427 (NR32-2)

<sup>230</sup> In XXC in response to questions from Mr Camp (Day 15).

<sup>231</sup> Mr Billingsley in response to questions from Mr Camp. Day 15

<sup>232</sup> Mr Naylor, for the Ramblers, agreed in XXC that the creation of the new section of PRWO would retain the ability to undertake a circular walk, albeit not the same as at present (Day 16) He also stated, in evidence, that he thought that people would still use the route.

<sup>233</sup> In response to questions in XXC from Mr Camp

#### **E04 Parndon Mill**<sup>234</sup>

219. E04 is located in Harlow, on the WAML. It has not existed, on the ground, for many years – most likely, since the 1950s.<sup>235</sup> Through this Order, NR essentially seeks to formalise that closure, extinguishing those parts of footpath EX/185/73 immediately to the north and south<sup>236</sup> of the (former) crossing point, and creating a new section of footpath running south from the north-eastern corner of Ram Gorse south to Elizabeth Way. Walkers wishing to cross the railway to reach the ongoing footpath network to the north will cross the railway using the existing Parndon Mill Lane overbridge, and then follow Mill Lane to the point where it meets footpath EX/185/128.

220. Ms Tilbrook has set out, in her PoE,<sup>237</sup> why the diversionary route is considered to be a suitable and convenient replacement for existing users. The RSA, undertaken in November 2016,<sup>238</sup> recommended that pedestrians be routed along the northern side of Elizabeth Way, which recommendation was duly incorporated into the proposals. It did not raise any other concerns with the proposed diversion route, either along Elizabeth Way or Parndon Mill Lane.

221. 3 objections were received to the proposals at E04, 2 of which remain extant.<sup>239</sup> Obj/005, Glenn Hann on behalf of himself and of Hanns Caravan Storage Ltd, objected on the basis that there was no crossing or public right of way on his land and he would object to any works on his property or land. NR's proposals will in fact benefit the land occupied by Hanns Caravan Storage Ltd: both the definitive line of footpath EX/185/73 and any rights over the path not shown on the definitive map would be extinguished under the Order run (at least in part) over that parcel of land. No other powers, or rights, are sought over the land in which the objector has an interest.

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<sup>234</sup> Order replacement sheet 7

<sup>235</sup> AK PoE para 7.2

<sup>236</sup> Both the line of footpath 73 as shown on the Definitive Map and any PROW which may exist over the other path marked on the Order plan .

<sup>237</sup> Section 2.3 (pgs 20-22)

<sup>238</sup> Transport and Works Act Order (TWAo) Anglia Route GRIP 2 Review Essex Stage 1 Road Safety Audit November 2016 pg 4 [NR16]

<sup>239</sup> The Ramblers Association withdrew objection to this crossing on 15<sup>th</sup> October 2018 - [RA-07].

222. The proposed new footpath runs inside the western boundary of the former Harlow Rugby Club, a site now being developed by Kier Living Ltd (the remaining objector: Obj/176) for housing. Kier has previously raised concerns as to the interaction between its proposed development and the new footpath – specifically, its development plots 1 and 37. NR responded to this concern by email dated 15 October 2018<sup>240</sup> attaching a plan showing that the line of the proposed footpath lies to the west of the development plots at issue, and confirming, specifically, that the line of the footpath would not pass through the garage being constructed for development plot 1.<sup>241</sup> There is a potential overlap between Order plot 40 - land required temporarily to construct the footpath - and the garage and two parking spaces/turning areas (as shown on the plan at NR 176). However, as confirmed on Day 39 of the inquiry, even if NR is unable to use the full width of Order plot 40 in this area, that will not preclude the construction of the footpath itself. It is clearly not in NR's interests to prejudice the timely construction, or occupation, of the Kier development by reason of its works in this area.

223. Kier had also raised a concern regarding the deliverability of the footpath in the proposed location, given issues with levels. Ms Tilbrook explained<sup>242</sup> that there will need to be some regrading either side of the 2m wide footpath to ensure a reasonable cross fall, and some works to accommodate the change in levels moving north from Elizabeth Way to the point where the new footpath would meet footpath 73 (some cutting into the embankment to create a gradient down, and likely some ramped steps<sup>243</sup>). The exact details will be for detailed design, but NR maintains that a suitable footpath can be created in this location.

224. The Kier site is adjacent to a parcel of woodland owned by Harlow District Council, Ram Gorse Wood, which is subject to a Tree Protection Order.<sup>244</sup> No part of the proposed footpath, or the plot of land required temporarily to construct the new footpath, is situated within the woodland and there are no proposals to remove, or fell, any of the trees subject to the TPO. At most, it may be necessary to lop low branches

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<sup>240</sup> NR 175

<sup>241</sup> A copy of the plan appended to that email was submitted separately on Day 39 of the inquiry – NR/176

<sup>242</sup> Day 39 of the Inquiry

<sup>243</sup> Ms Tilbrook drew attention to the indicative timber steps at figure 4.5 of the Design Guide NR12

<sup>244</sup> NR-171

if required to ensure adequate headroom for those using the new footpath. NR considers that any such lopping can be carried out without the need for further consent from the local planning authority, as explained in NR-178.

225. As there has been no physical crossing point at E04 for many years, it has never been subject to a full ALCRM risk assessment (it has been assigned a score of M13 as a ‘sleeping dog’). However, as explained by Mr Kenning, if a crossing were to be reinstated at E04, there would not be sufficient sighting to comply with industry standards at the line speed of 70mph. It is highly unlikely that ORR would permit NR to open a ‘new’ level crossing which was reliant on the protection of whistle boards, so it would be necessary to install integrated MSL, overlay MSL not being an option in this location due to the proximity of Harlow Town Station which sees both stopping and non-stopping services.

226. NR maintains, therefore, that the Order may properly be confirmed without modification

#### **E05 Fullers End**<sup>245</sup>

227. E05 is located on the WAML. It is a footpath crossing with gates<sup>246</sup> and MSL. It is situated within Uttlesford. The Uttlesford Local Plan contains a number of allocations for large amounts of housing in Elsenham – some of which has the potential to increase risk at this level crossing.<sup>247</sup> E05 is, therefore, an example of a location where closure via diversion would allow NR to pro-actively manage risk at the crossing, and to manage it (it would say appropriately) at a time when an appropriate solution remains available. Contrary to the submission made by the Ramblers in Closing (§186), increased risk resulting from increased usage is a cause for concern – not a reason to keep the crossing open.

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<sup>245</sup> Order replacement sheet 11

<sup>246</sup> These are not locking gates. As Mr Kenning explained in XIC, NR would not install an arrangement that would prevent someone from exiting the crossing if they were caught on the crossing when a train was approaching. Where NR does have locking mechanisms, there is a member of staff on site to operate the gate. That is not the position at E05.

<sup>247</sup> AK PoE 8.9. Relevant extracts of the Local Plan are at the end of AK’s Appendices (at the back of Tab 5) [NR 30-2] and he explained, in XIC, where those allocations are on the design freeze plan.



228. Removal of this crossing, despite the fact it is protected by MSL and not merely reliant on users to ‘stop look and listen’ – is therefore entirely consistent with the strategic objectives which underpin this Order.

229. NR seeks to extinguish the public footpath rights<sup>248</sup> over E05 and divert users to an existing underpass located just to the west of the crossing via two new PROW: one to the south, one to the north. The new footpath to the south passes through a former industrial estate, which is currently being developed. As Mr Kenning discussed in XIC, following discussions with the affected landowner,<sup>249</sup> and removal of existing buildings on site, Network Rail has been able to amend its proposal, so that the footpath will be located adjacent to the railway boundary and will be graded down to the underpass. The proposed amendment was consulted on in October/November 2017, and again before the inquiry resumed in September 2018.<sup>250</sup>

230. Ms Holmes, a landowner affected by the proposed new PROW to the north of the railway, has also objected to the proposals. Ms Tilbrook explains in her PoE that an alternative route to the north was considered but not taken forward, and the reasons why.<sup>251</sup> As regards the concerns expressed about security of Mrs Holmes’ parents’ property, NR confirmed at inquiry<sup>252</sup> that NR would be happy to continue discussions with Ms Holmes as to appropriate measures that could be provided, if the Order is confirmed.

231. Ms Tilbrook confirmed that she is satisfied that suitable footpaths with appropriate surfacing and gradients can be provided in this location.<sup>253</sup> Those footpaths would, in any event, have to be provided to the reasonable satisfaction of the highway authority. Ms Tilbrook confirmed, in XXC, having acknowledged the

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<sup>248</sup> During XXC, the RA raised concerns about cyclists. Cyclists are not, legally, permitted to ride their bicycles over E05 at present. They will, similarly, be permitted to walk their bicycles on the replacement footpath.

<sup>249</sup> Obj 170

<sup>250</sup> See NR 105

<sup>251</sup> PoE para 2.4.12. This refers to a route shown at round 1 consultation (ST Appendices, Tab 2, page 193) [NR 32-2].

<sup>252</sup> Through counsel

<sup>253</sup> XIC Day 16 In particular, Ms Tilbrook confirmed in XIC (and in response to the Inspector’s questions) the gradient on the north side of the railway will be less steep than the desirable maximum – 1 in 12 – and overall, when looking at the distance between the level crossing and the underpass and difference in levels this would equate to around 1 : 20, although it would be steeper in some parts. She highlighted that it was worth noting that the climb up to Robin Hood Road from the level crossing today was about 6% or 1 in 16.

level of usage, and the location of facilities in this area, that although the diversion routes would add additional time to current journeys, she did not consider it would be such as to prevent people from walking if they are choosing to do so at the moment.<sup>254</sup>

232. Mr Kenning also explained, in evidence, why alternatives suggested by objectors – (i) installation of locking gates/provision of a refuge area, (ii) a bridge over the level crossing, and (iii) creation of a new underpass under the level crossing – were not feasible solutions in this location. That explanation is, clearly, without prejudice to NR’s case that such solutions fall outside the scope of phases 1 and 2 of its Strategy, and are not alternatives that could be recommended in lieu of closure by diversion at this inquiry in any event.

233. The Secretary of State can therefore be satisfied that a suitable and convenient replacement will be provided for existing users of the crossing, and confirm the Order with the proposed modification.

#### **E06 Elsenham Emergency Hut**<sup>255</sup>

234. E06 is located on the WAML. It has been shut under TTROs since 2013 due to safety concerns. The crossing has insufficient sighting, with whistle boards installed, but the whistle boards do not provide sufficient mitigation due to proximity to Elsenham station, which is served by both stopping and non-stopping trains.

235. With the crossing open, members of the public would be able to use the crossing to access the PROW network to the east of the railway from the PROW network to the west, either by turning south along Old Mead Road until they reached existing footpath EX/13/22 to continue further east, or north along Old Mead Road to connect into footpaths further north.

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<sup>254</sup> In response to questions from MG, Day 16. ST highlighted, in particular, that the census data did not indicate use as a school route – in response to a line of questioning about the impact on those making journeys to and from school by MG

<sup>255</sup> Order replacement sheets 12-14

236. In its proposals for E06 (which were amended after the application was deposited – see NR 157) NR proposes diversionary routes to facilitate both those onward eastward and northwards journeys. Users wishing to continue to the east, south of the level crossing, would utilise New Road, cross the railway at the existing facilities at Elsenham Station, and then continue north along Old Mead Road, along a new section of footway,<sup>256</sup> until they reach footpath EX/13/22. Users wishing to access the PROW network further south, would use footpaths EX/51/14 and EX/25/32 as at present and then continue along a new section of PROW to the west of the railway to the point where the footpath meets EX/51/24.

237. Ms Tilbrook confirmed<sup>257</sup> that whilst the crossing provides an east-west link today, whereas the new PROW runs north-south, the provision of that north-south link provides some mitigation for loss of the direct east-west link; provides people with a choice as to where they can go; and mitigates against the loss of the PROW network which could potentially be caused by the closure of E06. It is notable in this regard that both Mr Reay (Obj 146) and Mr Braeckman (Obj 125), the landowners affected by the new PROW, saw the opportunities that closure of E06 provided: suggesting that instead of providing the new PROW, NR should instead extinguish the remaining ‘cul de sacs’ of PROW between Elsenham Station and Ugley Lane level crossing to the north.<sup>258</sup> Ms Tilbrook highlighted that whilst the new PROW could, understandably, be viewed by the landowners as an enhancement, it was, rather, a consequence of seeking to maintain east-west fluidity between the wider network which NR sought to maintain through its Order proposals.

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<sup>256</sup> As, Ms Tilbrook explained, this new section of footpath would take users along the frontage of the industrial estate to the entry to the station car park, taking users across all the conflict points that exist in that section.

<sup>257</sup> In response to questions from the Inspector on Day 38,

<sup>258</sup> EX/25/7, EX/51/24, EX/51/31, EX/25/38, EX/25/32, and EX/51/14. Ms Tilbrook’s response to their proposed alternatives can be found at pages 438 and 446 of Tab 7 to her Appendices (NR 32-2). Mr Kenning also responds to the concerns raised by Mr Raey and Mr Braeckman in his Rebuttals to the proofs submitted on their behalf: NR30-4-1, NR 30-4-2.

238. An outstanding concern remains, from Fairfield Elsenham Ltd (Obj/130) about the proposed temporary use of plots 15 and 16A. NR has set out the proposed nature (and duration) of the use of that land in correspondence with Fairfield Elsenham. Ms Tilbrook explained that those parcels had been chosen due to their proximity to the works which needed to be undertaken (both under the original scheme, and the amended proposals). NR confirmed that the car park next to the station is not, in fact, a NR or railway asset, but is in third party ownership. This is not, therefore, a situation where NR is utilising private land where NR land would be available. NR maintains that there is no cause for concern that the temporary use of those plots should adversely affect upon Fairfield Elsenham's ability to develop their land, if planning permission is granted for the same.

239. NR maintains, therefore, that the Order may properly be confirmed with the proposed modification.

#### **E07 Ugley**<sup>259</sup>

240. At E07, NR is proposing to extinguish private rights only (there are no PROW across the crossing). There have been no objections to the proposed closure of this crossing and no evidence was called on it at the inquiry.

#### **E08 Henham**<sup>260</sup>

241. E08 was dealt with by way of written representations at the inquiry. Network Rail would merely highlight that the proposals for E08 have been amended<sup>261</sup> to accommodate concerns expressed by the affected landowners. No further objections were received following consultation on the same.

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<sup>259</sup> Order sheet 15

<sup>260</sup> Order replacement sheet 16

<sup>261</sup> A copy of the amended Order replacement sheet is contained within NR 105.

## **E09 Elephant**<sup>262</sup>

242. E09 is located on the WAML. It is currently closed under a TTRO for safety reasons, as there is insufficient sighting of approaching trains, and, due to the proximity of the station, the whistle boards do not provide sufficient warning time. Mr Kenning explained in XIC why installing technology at this crossing would be a complicated undertaking, given the proximity of the station and the combination of stopping and non-stopping services, and reiterated the undesirability of installing locking gates at an unmanned crossing.<sup>263</sup>

243. Further, as Mr Kenning set out in his PoE, E09 is one of a series of whistle board protected crossings between Bishop Stortford and Audley End that are a limiting factor on the line speed along this stretch of line.<sup>264</sup>

244. NR's proposal is to extinguish footpath EX/4/14<sup>265</sup> from High Street on the west side of the railway to the point where it meets another section of footpath EX/4/14 on the eastern side of the railway. Users of the crossing will be diverted to cross the railway at Debden Road Bridge, via existing highway to the west, and a new PROW running south from footpath EX/4/14 to the east. Ms Tilbrook set out in her evidence how the level crossing, and the proposed diversion route, fitted within the wider PROW network in the area and why she considered it was a suitable and convenient replacement for existing users, when considered in the context of the purpose and characteristics of the existing route.

245. Mr Kenning explained in XIC how the proposals for this crossing had changed as the Order was being developed. Despite a different route being identified as NR's preferred option at the round 2 consultation,<sup>266</sup> in light of concerns about the risk of people using Debden Road bridge instead of the proposed diversion route further south (using the station footbridge), it was agreed with ECC that traffic lights would

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<sup>262</sup> Order replacement sheet 17

<sup>263</sup> Which he discussed earlier in the inquiry in respect of E05. Mr Kenning also confirmed that Cannon Mills Lane, which was the crossing relied on by the Parish Council, did not have locking gates.

<sup>264</sup> PoE para 12.2

<sup>265</sup> Both the definitive line, as shown on ECC's DMS, and the route which appears on the ground

<sup>266</sup> ST Appendices Tab 3 page 231

be installed at Debden Road Bridge and this was therefore taken forward into the Order.

246. Ms Tilbrook set out more detail about the proposed traffic light arrangement in her PoE<sup>267</sup>, and provided further clarification in XIC: specifically, that the traffic lights will be in operation at all times rather than being dependent on a pedestrian calling the lights. Ms Tilbrook confirmed that it was proposed to install a new, kerbed, footway along the north side of the bridge, and that the proposed arrangements would be of advantage to existing users of the bridge as there was limited visibility currently. These measures addressed the road safety concerns that had been identified earlier in the process.<sup>268</sup>

247. NR's response to the landowners affected by the proposed new PROW is summarised in Mr Billingsley's PoE.<sup>269</sup> Mr Kenning confirmed, in XIC, that whilst there had been discussions with Mr Bunten (Obj 113) regarding a potential tweak to the route to avoid a hawthorn bush and large area of vegetation, he had not been amenable to that change being taken forward, and so the proposals for this crossing had not been amended. Ms Tilbrook has considered the alternative proposals put forward by the affected landowners: these are addressed at pages 415 and 429 of her Appendices respectively.<sup>270</sup>

248. Mr Ayles, who appeared for the Parish Council, strongly opposed the closure of the crossing, and made clear the Parish Council would strongly object to the proposal for the lights at Debden Road Bridge, which they considered would make it "considerably more dangerous" than what is there at the moment.

249. NR does not consider this to be the case – for the reasons set out in its evidence. NR would also highlight that during discussions with ECC during Order development, ECC did not raise any objections to the proposed route, subject to the introduction of suitable measures over Debden Road Bridge.

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<sup>267</sup> Para 2.8.12. Further details are set out in the Design Guide pgs 38-9 (NR12)

<sup>268</sup> See ST PoE para 2.8.17 – 2.8.19

<sup>269</sup> NB PoE section 8.6 (pages 38 – 40)

<sup>270</sup> Tab 7 NR32-2

250. NR maintains, therefore, that the Order may properly be confirmed without modification.

**E10 Dixies**<sup>271</sup>

251. E10 footpath level crossing is one of a series of whistle-board protected crossings on this section of the WAML. It has been closed under a TTRO since 2017 as vulnerable users had been identified, and it was not possible to move the whistle board to the south of the level crossing due to the constraints of the railway viaduct.<sup>272</sup>

252. As with E05, there are a number of allocations within the Uttlesford District Local Plan to develop land in this area for housing – some of which could affect this level crossing.<sup>273</sup> As at E05, the potential increased usage – with consequent increase in risk – resulting from such development in fact supports NR’s approach of seeking to manage that risk now, through closure of the crossing if possible, rather than being a justification for keeping the crossing open.

253. In terms of assessing the proposed diversion routes, Ms Tilbrook stressed, in XXC, that the focus had to be on the existing users – not people who might potentially occupy a potential development at some point in the future. As she confirmed in Re-IX, it was not NR’s responsibility to provide links for communities that were being developed or expanded on one side of an existing railway, where that expansion post-dated the railway itself. Ms Tilbrook confirmed that Uttlesford District Council had not expressed any concerns about the proposed closure in the meetings which they (with others) had attended with NR in August 2016 or October 2016.<sup>274</sup>

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<sup>271</sup> Order replacement sheet 18

<sup>272</sup> DF XIC Day 28. Para 14.14 of Mr Fisk’s PoE sets out that the only other option to temporary closure would have been to impose a TSR of between 20mph and 30mph to provide sufficient time for users to cross safely

<sup>273</sup> AK PoE para 13.7. Extracts from the local plan are at the end of his Appendices. AK explained in XIC where the relevant allocations were located in relation to the crossing on the Design Freeze Plan.

<sup>274</sup> In Re-IX. The meetings minutes are at Tab 5 of ST’s Appendices (NR32-2) pages 358 and 367-8 respectively.

254. NR's proposal is to extinguish footpath EX/41/7 from Cambridge Road to the east to where it meets footpath EX/41/4 to the west. NR does not propose to create any new sections of PROW as it considers that the existing highway and PROW network provide a suitable and convenient alternative. E10 is therefore included in Part 2 of Schedule 2 to the Order.

255. Walkers travelling from Cambridge Road who would have used the level crossing to access the PROW network to the west of the railway, would instead utilise Cambridge Road down to Gaces Acre, either using Cambridge Road (which becomes Belmont Hill after the junction with Bury Water Lane) for the full distance, or instead use Bridge End and Water Lane, which are quieter roads of comparable length. From Gaces Acre, they would head north onto EX/41/2, west on to Bury Water Lane, then cross Bury Water Lane to continue north on footpath EX/41/4, through the grounds of the Joyce Frankland Academy.<sup>275</sup>

256. The Ramblers' main objections to the proposals appeared to be three-fold:

- i. The length of the proposed diversion;
- ii. The risk that users would not follow the proposed diversion via EX/41/2 but would instead take a 'short cut' via Bury Water Lane; and
- iii. Crossing facilities on Bury Water Lane

257. As regards the length of the proposed diversion, Ms Tilbrook explained that the maximum additional length of the diversion route would be around 1150m<sup>276</sup> – approx. 14 mins additional walking time<sup>277</sup> - and that the origin point of the journey would affect how much of the diversion an individual had to undertake. She highlighted, in this regard, that whilst the level crossing provided an east-west connection to Cambridge Road, there was little in terms of access to the wider PROW

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<sup>275</sup> Both footpath EX/41/7 and EX/41/4 run through the school grounds today. The school was consulted on the proposals and raised no concerns. There is no merit in the suggestion raised by JR in his PoE (para 4.24) that there any "child safeguarding issues" resulting from the proposed diversion. It also became apparent, during XXC, that this concern was, in fact, more around the temporary closure of footpath 4 at the date of his site visit, and a risk to the PROW in that the school, in future, might decide it did not want a PROW so close to the school buildings.

<sup>276</sup> ST PoE para 2.9.9

<sup>277</sup> ST Rebuttal Proof to the Ramblers, para 5.4 (pg 7) (NR32-4-2)



network to the east of this location; that there were a number of long distance paths coming in from the south from Saffron Walden; and that the centre of the village with its facilities was to the south of Bury Water Lane. Given the location, and purpose, served by the crossing, the additional distances are considered acceptable.

258. Ms Tilbrook also explained why she considered it unlikely that walkers would choose to use Bury Water Lane as opposed to the proposed diversionary route, regardless of whether they were travelling from the east or the west of the railway.<sup>278</sup> She explained that people accessing from Cambridge Road were likely to be local residents, who would therefore be familiar with the issues with that section of Bury Water Lane. She confirmed that, as Mr Kenning had identified in his evidence, the diversion route was “*a much more pleasant route*”.<sup>279</sup> In terms of people travelling from the PROW network to the west, Ms Tilbrook explained that she considered it unlikely that people would choose to walk down Bury Water Lane, noting that mapping and/or signage would indicate the other routes, specifically, footpath EX/41/2 just to the south west of where they would emerge from footpath EX/41/4.<sup>280</sup>

259. As regards the need to cross Bury Water Lane, Ms Tilbrook’s position was that provision of a dedicated crossing point was neither necessary nor appropriate. She drew attention to the existing zebra crossing, which provided access between the two school sites, and stressed that NR would not wish to adjust that, and impact on the school. It would not be appropriate to install a second crossing point so close to the existing. There would also be potential consequences for traffic on Bury Water Lane if a pedestrian island were to be installed.<sup>281</sup> Having regard to the low numbers and low speeds identified in the ATC data,<sup>282</sup> she did not see the need for additional crossing features in this location. Mr Russell took a different view – though did not really engage with the points put to him in cross examination as to the potential

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<sup>278</sup> Ms Tilbrook confirmed, in XXC, that NR had not considered it appropriate to recommend the eastern section of Bury Water Lane as part of the proposed diversion route – even though ECC had noted that school children used Bury Water Lane, and the road was being used at present (Day 28)

<sup>279</sup> In XIC, Day 28

<sup>280</sup> In XXC, Day 28

<sup>281</sup> Which could, in any event, be difficult given the width of Bury Water Lane at this point

<sup>282</sup> Pages 51-53 of Tab 1 of ST’s Appendices (NR32-2)

issues that might arise if another crossing were to be proposed.<sup>283</sup> NR submits that Ms Tilbook's evidence is clearly to be preferred.

260. NR maintains that the existing highway and PROW network provides a suitable and convenient alternative for existing users of E10. The Secretary of State is invited to confirm the Order without modification.

#### **E11 Windmill**<sup>284</sup>

261. This crossing was dealt with by way of written representations at the Inquiry.

#### **E12 Wallaces (Wallis's)**

262. This crossing has now been withdrawn from the Order, Network Rail and the landowners having agreed a Deed of Release for the private rights across the crossing.

#### **E13 Littlebury Gate House**<sup>285</sup>

263. E13 is the northern-most crossing on the WAML included within this Order. It does not have sufficient sighting in all directions, and there is a speed restriction of 50mph (the line speed would otherwise be 70mph) on the 'up' line to mitigate that deficient sighting.<sup>286</sup> There is thus a clear, and tangible, impact on the operational efficiency of the railway here, as a result of the need to manage risk at the crossing.

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<sup>283</sup> JR's responses were, in effect, "*it is not beyond the capability of a highway engineer that it is made suitable for users*" and "*there is a wealth of documents looking into this*".

<sup>284</sup> Order replacement sheet 19

<sup>285</sup> Order replacement sheet 21

<sup>286</sup> DF PoE para 17.13 as corrected in oral evidence on Day 38 (substituting 'Up' for 'Down' – reflecting the evidence in the sighting table in para 17.8)

264. NR's proposal is to extinguish the short section of footpath passing over the crossing to Peggy's Walk and to divert users south via a new field-edge footpath to Littlebury Green Road. They would then cross the road to walk along the existing verge (or carriageway) and a new section of footpath, until they reach Peggy's Walk, at which point they could continue their journeys as before. A section of BOAT to the north of the level crossing on the west side will be downgraded to footpath (just to the south of the proposed residential development between the railway and the BOAT) to address concerns raised by the landowner during consultation.

265. The landowner, the Audley End Estate, objects to the proposed creation of the two sections of new footpath on its landholding. The Estate queries, in particular, why the new footpath to the west of the railway could not be provided within NR's land – rather than estate land – and queries the need for the new footpath to the south of Littlebury Green Road.

266. Mr Kenning explained the difficulties which providing the new PROW within NR's land would create for NR's management and maintenance of the operational railway. The railway is in cutting here, with steep chalk embankments that are prone to erosion – as evidenced by the netting secured over the slopes to protect the operational railway from slippage. Locating the PROW on the top of the embankment would impact on future maintenance of the railway in this location as it would, for example, require removal of the boundary fence (between the PROW and the top of the embankment) every time NR needed access for maintenance of the embankment.

267. This is not a case of comparable 'inconvenience' to NR and the landowner, as suggested by Mr White in questioning. Firstly, it is not only NR which would be 'inconvenienced' if the boundary fence had to be moved for NR to maintain the railway, but also users of the PROW, if it needed to be temporarily stopped up or diverted. Indeed, if the highway authority considered a temporary stopping up unacceptable, it might require a diversion onto third party land anyway.<sup>287</sup> Further, as Mr Kenning stressed in Re-IX, it would not be consistent with the strategic objectives

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<sup>287</sup> AK Re-IX Day 38

which NR sought to achieve through this Order to make the maintenance of the railway more difficult, as it “*would affect the resilience and operational efficiency of the railway*”. Mr White fairly accepted that point in XXC.

268. Ms Tilbrook explained why the new section of the footpath was required to the south of Littlebury Green Road to address road safety concerns that had been identified, in order to provide a suitable and convenient route for existing users. She confirmed that the proposed diversion routes fulfil the same purpose as the route over the level crossing today – and added only a short additional distance of approx. 300m (max): around 5 mins extra walking. She confirmed, in response to questions from the Inspector, that there were no concerns about the gradient on the proposed routes.

269. As Ms Tilbrook explained in XXC, in considering the proposed diversion route, NR had had to consider the ‘whole picture’: “*There is a compromise, a balance, as to what we consider to be a safe and suitable route here that also minimises the impact on others as far as possible.*”

270. NR maintains that it has struck the balance correctly in respect of its proposals for E13. The Order may properly be confirmed without modification.

#### **E15 Margaretting / Parsonage Lane**<sup>288</sup>

271. NR’s proposal is to remove all public rights of way over the level crossing (currently protected by MSL). Users would instead utilise the existing underbridge and PROW to the east of the crossing. Vehicular access would be maintained for authorised users (those with properties to the south). NR has explained how this would operate in practice in a Note submitted to the inquiry: NR 153. It is no longer proposed to padlock the vehicular gates.

272. This crossing was dealt with by way of written representations at the Inquiry.

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<sup>288</sup> Order sheet 22

## **E16 Maldon Road**<sup>289</sup>

273. E16 is a footpath level crossing located on the GEML. It has been closed under TTROs since 2013 due to insufficient sighting in 3 of the 4 directions. Whistle boards are installed at the crossing, but are not considered to provide sufficient protection due to the high frequency and number of trains which run during the Night Time Quiet Period (00:00 – 06:00). If the crossing was open, footpath EX/226/21 would provide a north-south route between the A12 off-slip to Maldon Road, with onward connections to the PROW network to the south.

274. NR's proposal is to extinguish the entire length of footpath EX/226/21 and to create a new section of east-west bridleway running to the south of Whitesbridge Cottages and then in field edge adjacent to Maldon Road. Users would then continue west along the existing highway until they reached the B1002 (marked as B1062 on the Design Freeze plan) from where they could continue their journeys as before.

275. Whilst NR had previously proposed to simply extinguish footpath 21, it became apparent that that would not be supported by ECC who considered a diversionary route was required.<sup>290</sup> As Mr Kenning explained in XXC,<sup>291</sup> ECC were “*not keen*” to see pedestrians diverted onto the road, and considered that a new stretch of PROW would provide connectivity to the pavement which exists further west on Maldon Road, and would compensate for the loss of network resulting from the extinguishment of footpath 21. ECC considered that a new bridleway (as opposed to footpath) would improve connectivity for cyclists, from the bridleway it would connect into, and that is what is provided for in the Order. Whilst NR maintains that a bridleway is an appropriate solution in this location, as Ms Tilbrook confirmed in Re-IX, if the Secretary of State were to consider that the replacement should be a footpath rather than a bridleway, that would still provide a suitable and convenient replacement for existing users of the level crossings. She noted, however, that the interests of other parties (for example, ECC) would need to be considered in this regard.

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<sup>289</sup> Order replacement sheet 23

<sup>290</sup> AK PoE para 18.6

<sup>291</sup> Day 36

276. Ms Tilbrook confirmed in evidence how the proposed new PROW would maintain links within the network which would otherwise be lost, and noted that whilst the A12 is a barrier to onward PROW to the north, the B1002 provides connections, at present, to the PROW network further to the west/ south west.

277. Mr Smith (Obj/139), the landowner to the south of Maldon Road, objects to the creation of the new bridleway as shown on the Order plans. As set out at inquiry, it was Mr Smith's position that:

- (i) A new PROW is not required: footpath 21 should simply be extinguished;
- (ii) If a new PROW has to be provided, it should have the status of footpath, not bridleway;
- (iii) The Secretary of State should consider re-routing the proposed PROW to run to the north of Whitesbridge Cottages rather than the south, to mitigate the impact on those properties.

278. By letter dated 5<sup>th</sup> February 2019, Strutt and Parker confirmed that points (ii) and (iii) were no longer being pursued, and that the objection was maintained only on point (i).

279. In respect of Mr Smith's proposed alternative, Network Rail would note that this alternative had previously been suggested by the owner of one of the cottages: Mr Marshall (Obj 18). Ms Tilbrook has set out in her evidence why that alternative is not considered appropriate; specifically, that the verge is not considered wide enough to provide a PROW in that location.<sup>292</sup> As set out in NR's response to Mr Marshall<sup>293</sup> NR would be happy to discuss further mitigation measures with the affected owners if the Order is approved. Mr Kenning confirmed that there had since been further discussions.<sup>294</sup>

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<sup>292</sup> Page 410 Tab 7 of ST's Appendices [NR 32-2], and XIC. ST identified that a hard surfaced footway could potentially be accommodated but the costs associated with that, and potential impacts on this rural setting, were not considered to be justified, given that a suitable and convenient route could be provided in the field margins.

<sup>293</sup> Summarised in Mr Billingsley's PoE at 8.8

<sup>294</sup> In response to Inspector's questions

280. NR maintains that it has struck the balance correctly in respect of its proposals for E16. The Order may properly be confirmed without modification.

### **E17 Boreham & E18 Noakes**<sup>295</sup>

281. E17 and E18 are situated on the GEML. E17 is currently closed under a TTRO due to insufficient sighting. E18 is a crossing characterised by NR as a ‘sleeping dog’.<sup>296</sup> NR proposes to extinguish bridleway 23 as it passes over E17, and footpath EX/213/24 from the point where it meets the A12 (to the south of the railway), to a point where it meets a new section of bridleway to the north of the railway. A new bridleway will be created connecting bridleway 23 to the west to a section of footpath 24 to be upgraded to bridleway to the east. As Ms Tilbrook explained, as the ongoing routes to the south of the level crossings were severed, historically, by the construction of the A12, NR is proposing to provide this new circular route (of bridleway status) to the north, to mitigate for the loss of connectivity.<sup>297</sup>

282. In terms of the objections to these proposals, it became apparent that the main concern of both ELAF and Ramblers was that of prematurity. They consider that, as a potential upgrade to the A12 is being considered by Highways England, and there is a proposed new development to the west (referred to in Mr Kenning’s proof as the Beaulieu development) there may be the potential, in future, to reinstate the north-south links historically severed by the A12. NR should, in effect, ‘wait and see’ what happens there, before a decision is taken as to whether these crossings should be closed.

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<sup>295</sup> Order replacements sheet 24 and 25

<sup>296</sup> See paragraph 62 of the Statement of Case (NR26)

<sup>297</sup> As Ms Tilbrook confirmed in XIC (Day 25), due to the severance, E17 and E18 are not considered to provide a north south route today, so NR does not consider the proposed replacement is therefore required to provide a north-south route.

283. As Mr Kenning set out in his evidence,<sup>298</sup> the proposed diversions have been considered alongside the future proposed new railway and Beaulieu development (and changes made in consultation with the developer of that site). There are no definite timescales for the proposed A12 upgrade – or even a clear indication as to what those upgrade works might entail. ECC have confirmed that they do not consider NR’s proposals at E17 or E18 would affect the A12 or station proposals.<sup>299</sup>

284. It is, in NR’s submission, simply not reasonable to expect that where NR has identified an opportunity to rationalise its network today (as it has with these Order proposals) it should sit back and ‘wait and see’ what a future (as yet unconfirmed and unconsented) project might do to the area.

285. Nor does it provide a proper basis for refusing to confirm the Order with the inclusion of these crossings.

#### **E19 – Potters**<sup>300</sup>

286. E19 is also situated on the GEML. NR’s proposal is to extinguish footpath EX/105/43 passing over the crossing up to a point to the north where it would meet the proposed new footpath running east-west to join footpaths EX/105/48. Users of the crossing would cross the railway via the existing underbridge on Oak Road.

287. Ms Tilbrook set out in her evidence how the existing and proposed routes sit within the wider network today, and why she considers that the proposed diversion route is a suitable and convenient replacement for existing users.<sup>301</sup>

288. There were two, main, issues raised by objectors to this crossing. The first related to flood risk on the proposed diversion route. Ms Tilbrook acknowledged that part of the proposed diversion sat within areas of flood zone, but drew attention to the

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<sup>298</sup> AK PoE para 19.7

<sup>299</sup> See the Meeting Minutes of the meeting between NR and ECC 31<sup>st</sup> October 2016, Tab 5 pg 369 of ST’s Appendices [NR32-3] “GW” is Gary White of ECC.

<sup>300</sup> Order replacement sheet 29

<sup>301</sup> PoE Section 2.16 and in oral evidence



fact that that was a common feature of footpaths in the area generally.<sup>302</sup> She acknowledged that there might be issues that meant it was ‘more boggy’ underfoot, and that the surfacing was not quite as good. She emphasised, however, that the route at issue (footpath EX/105/48) was an existing footpath and that ECC had not raised any concerns about the footpath, but that if it was considered that there did need to be some remedial works (e.g. some surfacing, or providing more drainage), that could be undertaken as part of providing the new route. Ms Tilbrook also drew attention to the fact that the proposed new footpath would provide a new linkage to Oak Road to the west – which users could use (as a route with a drier surface) if weather conditions were bad.

289. The second issue related to safety of Oak Road underbridge. Ms Tilbrook confirmed that an RSA had been undertaken in respect of the proposed route,<sup>303</sup> and that no road safety issues had been raised. She also did not share the concerns raised by Mr Evans as to the width of the footway under the underbridge confirming that from the site visits undertaken by her team (and her own visit<sup>304</sup>), there was around 1m of width, which was “*sufficient for the level of people we are looking at using this location,*”<sup>305</sup> and that “*ECC have introduced a footway into that environment that they considered a suitable width*”. Ms Tilbrook also highlighted that there was a priority working system through the underbridge, that walkers would be passing through the underbridge for a very short time (comparable to the time to cross the railway), and that, in her view, it was acceptable in the context of how it was being used.<sup>306</sup> NR would highlight that Mr Evans acknowledged in evidence that he walked that section of Oak Road today.<sup>307</sup>

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<sup>302</sup> This was also addressed in Ms Tilbrook’s Rebuttal Proof to the Ramblers Association at section 24 (page 38) by reference to the EA flood maps at Appendix E to that Rebuttal Proof (NR 32-4-2)

<sup>303</sup> Para 24.8 of her Rebuttal Proof to the Ramblers Association (NR32-4-2)

<sup>304</sup> Ms Tilbrook has walked the proposed route along Oak Road, but as confirmed in evidence, not the existing footpaths- although those have been visited by members of her team.

<sup>305</sup> XIC Day 25

<sup>306</sup> In response to questions from MG in XXC (Day 25)

<sup>307</sup> Day 26

290. Mr Evans, for the Ramblers Association, and Mr Hope clearly disagreed. However, NR maintains that for the reasons set out by Ms Tilbrook in evidence, the Secretary of State can be satisfied that a suitable and convenient alternative route for existing users will be provided in this location, and that Order may therefore be confirmed without modification.

## **E20 – Snivellers**<sup>308</sup>

291. E20 is situated on the GEML. It is another crossing where historic north-south connectivity has been severed by the A12. Similar to the proposals at E17 and E18, NR is proposing to provide a new circular bridleway to the north of the railway, maintaining this amenity value for users wishing to undertake a leisure walk.<sup>309</sup> Those wishing to access the cycleway along the A12 can do so by means of Cranes Lane (crossing the railway at the existing overbridge) to the east of the crossing.

292. As with E17 and 18 it was clear that the primary objection to closure, for both the Ramblers Association and ELAF, was, again, prematurity. In addition to the A12 upgrade works being considered by Highways England, reliance was placed on ECC's announcement of its preferred option for a 'A120 Braintree to A12 upgrade', in June 2018.<sup>310</sup> NR would highlight that, as made clear in ECC's announcement, whilst ECC has identified its preferred route, the next stage is to recommend it to Highways England and the DfT for inclusion in the Road Investment Strategy 2. It is not, therefore, a committed nor a funded project at present. Nor is there any guarantee that it will be.<sup>311</sup>

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<sup>308</sup> Order replacement sheet 30

<sup>309</sup> ST PoE para 2.17.11

<sup>310</sup> See ELAF's Additional Evidence on Crossings E19 – Potter and E-20 Snivellers (Obj 142- 04) Mr Kenning discussed the plan showing the preferred option in some detail in XIC, the thrust of which was to the effect that there are several features which need to be addressed in providing for a new junction in this location, and it cannot be assumed that a new N-S connection would be provided at the E20 location if it were to remain in situ.

<sup>311</sup> See ECC's announcement (the text of which is at page 3 of Obj 142-04)

293. NR position, therefore, as with E17 & E18, is that it is simply not reasonable to expect that where NR has identified an opportunity to rationalise its network today (as it has with these Order proposals) it should sit back and ‘wait and see’ what a future (as yet unconfirmed and unconsented) project might do to the area.

294. Ms Tilbrook explained why the proposed diversion – including Cranes Lane - is considered to be a suitable and convenient replacement for existing users.<sup>312</sup> Again, Mr Evans clearly disagrees. However, NR maintains that, for the reasons set out by Ms Tilbrook in her evidence, the Secretary of State can properly be satisfied that the proposed route would provide a suitable and convenient replacement for existing users.

295. Network Rail submits that the Order may properly be confirmed, with the slight modification proposed in respect of the line of the proposed new footpath within plot 03,<sup>313</sup> as shown on Order replacement sheet 30.

#### **E21 Hill House 1**<sup>314</sup>

296. This crossing was dealt with by way of written representations at the inquiry.

#### **E22 Great Domsey**<sup>315</sup>

297. E22 is located on the GEML. The PROW traversing the crossing (footpath EX/78/3) is severed from the PROW network to the south by the A12. Anyone traversing the crossing today therefore has to utilise the existing segregated footway/cycleway along the A12 to continue their existing journeys.

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<sup>312</sup> See, in particular, ST PoE para 2.17.17

<sup>313</sup> Mr Kenning confirmed in XIC that this slight tweak had been made to avoid existing vegetation. The proposed change was subject to consultation in 2017 (and again in 2018): see NR 105.

<sup>314</sup> Order replacement sheet 31

<sup>315</sup> Order replacement sheet 32

298. NR had originally proposed to extinguish footpath EX/78/3, with users instead being diverted to Hill House 2 level crossing (a public bridleway). However, following discussions with ECC and feedback received through consultation, NR considered that a replacement route needed to be provided, and it is now proposed that users of the level crossing will be diverted east via a new section of PROW to Domsey Chase, an existing private track, and then proceed south to the footpath/cycleway on the A12 to continue their onward journeys. No physical works are proposed to the track: merely dedication of rights.

299. Ms Tilbrook explained why NR considers this route to be a suitable and convenient replacement for existing users: and in particular that she does not consider the proposed route gives rise to safety concerns (a concern expressed by Ms Partridge (Obj 205)). Ms Tilbrook stressed,<sup>316</sup> that consideration had been given to the potential conflict between vehicles turning into Domsey Chase from the A12, and walkers on Domsey Chase (or on the footway/cycleway along the A12) but that due to the geometry of the junction, the speed with which vehicles were likely to be turning in, and availability of verge for pedestrians to stand in (which could be subject to some vegetation removal, if required), she did not consider this would be a cause for concern. As regards potential conflicts of vehicles/pedestrians using Domsey Chase itself, Ms Tilbrook explained that, in her view, such conflicts were unlikely to arise, not least having regard to the likely usage numbers, and the fact that vehicles would no doubt adopt an informal ‘give way’ system. As Ms Partridge confirmed in her evidence, the track is of insufficient width to accommodate two vehicles today, so such an arrangement must already be in place today.

300. Whilst Ms Partridge’s concerns are therefore acknowledged, NR maintains that the Secretary of State may be satisfied, from Ms Tilbrook’s careful, experienced and objective appraisal of the proposed route, that there is no reason to conclude that the proposed diversion route would not provide a suitable and convenient replacement for existing users of the crossing – or would materially affect the usage of the track by those entitled to use it today.

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<sup>316</sup> In XIC Day 39

301. Similarly, whilst Ms Partridge has raised concerns about potential security issues for her property if Domsey Chase is dedicated as a PROW and members of the public are permitted to walk down the track, that concern must be considered in the context of the current usage of the track. This is not a gated track accessible only by the property owners along it. It is an open access to the A12, and the track serves not only the 5 houses neighbouring Ms Partridges's house, but also the farm and business to the west. As Ms Partridge fairly accepted in XXC, Domsey Chase is therefore usable, and used, by 'strangers' today.

302. Ms Partridge also raised a concern about services passing under the road, and the ability to access the same if the track was dedicated as a PROW. NR has responded to this concern by way of Note provided after this crossing was heard at inquiry.

303. NR maintains, therefore, that the Order may properly be confirmed without modification.

#### **E23 Long Green**<sup>317</sup>

304. This crossing was dealt with by way of written representations at the inquiry.

#### **E25 Church No 2**<sup>318</sup>

305. E25 is situated on the GEML. It is currently closed under a TTRO, due to concerns as to the condition of the steps built into the embankments on either side of the level crossing.

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<sup>317</sup> Order sheet 33

<sup>318</sup> Order replacement sheet 34

306. E25 is traversed by footpath EX/149/29. Footpath 29 (and the crossing) was, effectively, severed from the ongoing PROW to the south (footpath EX/128/1) by the construction of the A12 in the 1970s. NR's proposals would formalise the existing arrangement used to access the PROW network to the north of the railway from the PROW network to the south, via Turkey Cock Lane. No road safety problems were identified in the RSA.<sup>319</sup> The highway authority (ECC) is supportive of the proposed diversion.<sup>320</sup>

307. This crossing was dealt with by way of written representations at the inquiry.

308. NR maintains that the Order may properly be confirmed without modification

#### **E26 Barbara Close**<sup>321</sup>

309. At E26, NR is proposing to close the crossing to all users, extinguishing footpath EX/285/18 from the western side of the railway to where it meets Roche Avenue to the east.<sup>322</sup> Users will be diverted to an existing underpass on Ironwell Lane, via existing PROW – footpath EX/285/21 and byway EX/285/19. It is, therefore, technically an extinguishment: E26 is in Part 2 of Schedule 2 to the draft Order. However, NR has acknowledged that this is a case where there needs to be a diversionary route – but considers that a suitable and convenient replacement is provided by the existing highway and PROW network, such that provision of a new PROW is not required<sup>323</sup>.

310. Network Rail had originally proposed to upgrade the existing underpass, by providing a formal pavement on the northern side, but that proposal has been overtaken by events: a new tarmacked footway has already been provided in this location.<sup>324</sup>

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<sup>319</sup> ST PoE para 2.21.17.

<sup>320</sup> ST PoE para 2.21.19

<sup>321</sup> Order replacement sheet 66

<sup>322</sup> The alleyway to the north will be gated to maintain private access for residents

<sup>323</sup> For the purposes of s.5(6) TWA 1992

<sup>324</sup> See NR 139.

311. To the south of Ironwell Lane there is a site which has been allocated (and now consented) for residential development.<sup>325</sup> In line with NR's proactive approaching to managing risks at level crossing, as Mr Kenning explained in XIC, the proposal to close this crossing now by way of diversion will "*deal with a problem that could arise in the future*"<sup>326</sup> – although it is not expected, from the location of the new development in relation to open spaces and facilities/services that E26 would be a key link for the new development.<sup>327</sup> Ms Tilbrook confirmed that the consented development did not affect her assessment of whether the proposed diversion was suitable and convenient for existing users.<sup>328</sup>

312. Ms Tilbrook confirmed, in evidence, that there were no road safety concerns associated with the proposed diversion,<sup>329</sup> and that the having regard to the purpose for which the crossing was being used today, and the comparatively short additional distance (a maximum of 700m) she considered the proposed diversionary route would provide a suitable and convenient alternative for existing users.

313. NR maintains, therefore, that the Order may properly be confirmed without substantive changes to what is proposed.

### **E28 Whipps Farmers**<sup>330</sup>

314. At this crossing, NR is proposing to extinguish both public and private rights of way.

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<sup>325</sup> AK refers to the allocation at para 27.7 of his PoE. A copy of the planning permission was submitted by the Ramblers at inquiry: RA-04

<sup>326</sup> Day 14

<sup>327</sup> AK in XXC in respect of open spaces (Day 14), ST in XIC explaining that the main shops and services in Rochford are really to the south and east of Ironwell Lane (Day 15).

<sup>328</sup> Ms Tilbrook clarified in XIC that whilst Mott MacDonald had been aware of the allocation when the application was being prepared, they were not aware of the planning permission, but had considered it subsequently and it did not change the outcome of the assessment.

<sup>329</sup> XXC Day 15 in response to questions from MG. The RSA did not identify any potential safety problems: ST PoE para 2.22.12

<sup>330</sup> Order replacement sheets 56 & 57

315. In respect of the public rights of way, NR's proposal is to extinguish footpath 179 to the south, and a section of footpath EX/272/178 to the north, to a point where a new footpath will be created running east-west to Warley Street. A further section of new footpath will be created in field-edges to the west of Warley Street, running south towards the railway and then west to Puddle Dock level crossing. The new footpath will extend further west beyond the crossing, to the point where it meets footpath EX/272/183, taking users west under the M25. On the southern side of the railway, access to Puddle Dock level crossing is provided via St Marys Lane and footpath 177.

316. Mr Fisk confirmed in XIC that it is not considered that diverting users from E28 to Puddle Dock will increase the risk at Puddle Dock such that any intervention would be required.<sup>331</sup>

317. In terms of the private rights of way, the Order, if approved, would extinguish the private rights of way over the crossing which currently provides access from the north of the railway to a small parcel of land to the south. The Order would, instead, grant a new private right of way over the existing private track running north from St Mary's Lane today, to provide access to the severed field.<sup>332</sup>

318. There were three main issues raised by objectors to the proposed closure of the public rights of way at this crossing:

- i. The length of the diversion;
- ii. Road safety concerns;
- iii. Impact on private land.

319. Ms Tilbrook explained, by reference to the wider mapping,<sup>333</sup> how the PROW crossing E28 sits within the network, and how people would, in reality, be accessing it today. It is clear – and this appeared to be common ground with Mr Bird for the Ramblers – that it would be used as part of longer walks. For example, Mr Bird

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<sup>331</sup> DF XIC Day 36. Mr Fisk confirmed that Puddle Dock has an ALCRM score C10.

<sup>332</sup> The landowner whose rights are to be extinguished under the Order, Mr Gemmill, has not objected to the Order. The landowner who owns the private track to the south of the railway has: Obj/204 E.G. White & Sons. NR has responded to Mr White's objection, a copy is in the correspondence bundle (NR112)

<sup>333</sup> ST Appendices Tab 9 pg 476



indicated the walks he had undertaken to Bulphan, which he agreed would start somewhere south of St Mary's Lane. As Ms Tilbrook explained, in the context of those wider walks, and, given the purpose for which E28 is considered to be used today, the additional distance which the diversion would add is not such that it would not be a suitable and convenient replacement for existing users.<sup>334</sup> In fact, as Ms Tilbrook identified in her evidence, the diversion route would, in fact, reduce journey time for some users.<sup>335</sup>

320. Understanding how the route is used today also provides context for the road safety concerns which have been raised.

321. As Ms Tilbrook explained, the onward PROW connections in this area are, essentially to the north and south. E28 is some distance from E29 and the PROW network to the east. Whilst there are a scattering of properties to the east, it is unlikely that people are approaching E28 from the east today, or would be wanting to head east if the crossing is closed.

322. In reality, anyone wishing to access E28 from the PROW network to the south today, or to continue their onward journeys to the south having traversed E28 from the north, has to walk along St Mary's Lane today. It is part of the route that existing users are undertaking. To use the formulation which was put to Ms Tilbrook in XXC on her strategic evidence,<sup>336</sup> given that people are using St Mary's Lane as part of the existing route today, it is difficult to see on what basis they will not use the diversionary route because it may involve the use of St Mary's Lane if the crossing is closed.

323. It is against that background that Ms Tilbrook's evidence as to why it was not considered necessary to provide a new footway along St Mary's Lane, despite the recommendation in the RSA, must be read. It is not, as suggested by the Ramblers Association, NR simply saying that nothing need to be done because no one would,

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<sup>334</sup> XIC and see ST PoE 2.23.12 – 2.23.17

<sup>335</sup> ST PoE 2.23.15

<sup>336</sup> By MG in XXC on strategic matters

really be using that section of St Mary's Lane (§ 228 of the Ramblers' Closings). Rather, NR's position, in brief, is that:

- i. As that section of St Mary's Lane has to be used today by existing users of E28 in order to either reach the level crossing or to continue their onward journeys south, it is difficult to see on what basis it can logically be said that use of that section of St Mary's Lane suddenly becomes neither suitable nor convenient for existing users of E28 if the level crossing is shut; and
- ii. Given that the proposed diversion route would take users over the railway at Puddle Dock to the west; the lack of onward connections to the PROW network to the east; and the very small number of properties to the east of FP179, the acquisition of rights over private land to create a new footway along St Mary's Lane could not be justified.

324. It should also be noted that the highway authority, the LB of Havering, have not raised any concerns over the safety of the proposed diversionary route.

325. Similarly, Mr Russell's suggestion that a new crossing point should be provided where footpath 177 meets St Mary's Lane must also be considered in the context of how that route is used today. As Mr Russell agreed in XXC, anyone wishing to access footpath 177 from the PROW network to the south, or to reach that ongoing network having travelled across Puddle Dock level crossing has to cross St Mary's Lane today.<sup>337</sup> There is no crossing point there today. The highway authority has not raised any suggestion that a more formalised crossing point is required than is provided for today.<sup>338</sup> No issues were raised with crossing St Mary's Lane to access FP 177 in the RSA. NR maintains that there is no need for new crossing point in this location, and that the Secretary of State may properly conclude that the proposed diversion route is suitable and convenient for existing users without it.

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<sup>337</sup> Day 36

<sup>338</sup> Mr Russell confirmed in XXC that he was not aware of any such suggestion from the highway authority

326. An issue was also raised about the proposed crossing point<sup>339</sup> on Warley Street to the north of the railway, which connects the two sections of proposed new footpath. No issues were raised on the RSA. Nor was this a point of concern raised in Mr Russell's PoE.<sup>340</sup> Ms Tilbrook explained in her evidence that there were no concerns about visibility at this location: DMRB visibility distances could be achieved in this location (having regard to the 85 percentile speed recorded on the ATC data). There was good visibility on approach: this was the "*optimum crossing point in this location*".<sup>341</sup> Ms Tilbrook also explained that any concerns around overgrowing vegetation would not be footpath specific: it would also be an issue for vehicles accessing the trading park. As such, if the issue did arise, it would be an existing issue to be dealt with by way of highway maintenance.<sup>342</sup> Mr Russell, notably, did not put forward any evidence that appropriate visibility was not possible in this location.<sup>343</sup> Nor is there any suggestion of the same in the Technical Note submitted to inquiry on 5<sup>th</sup> February.<sup>344</sup>

327. A further concern raised by the Ramblers was that walkers would not use the proposed diversion route but would instead take a short cut on Warley Street. Given the emphasis placed by the Ramblers during this inquiry as to the undesirability of on-road walking routes replacing off-road paths, it is perhaps surprising that they are suggesting that walkers would choose to use Warley Street in preference for the field-edge PROWs being created. As the routes in this location are used for leisure walking, NR maintains there is no obvious impetus for walkers to select the 'short cut' as opposed to the slightly longer, field-edge footpaths being created. Similarly, there is no merit in Mr Russell's suggestion that a walker reaching St Mary's Lane from the south would 'see' the route along Warley Street whereas they would not 'see' the diversion route (i.e. footpath 177), or it would be a 'more attractive route'. As Mr Russell had to agree in XXC, that same issue exists today for users reaching St Mary's Lane from footpath 194 – they can 'see' Warley Street directly ahead of them,

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<sup>339</sup> The proposed crossing is not a new, 'formal' crossing point, but rather demarcation of the points where people should stand to cross

<sup>340</sup> It being raised, for the first time, in his oral evidence.

<sup>341</sup> Cf the crossing point further to the north which would have been required for the alternative route suggested on behalf of Mr Padfield, but now not pursued.

<sup>342</sup> XXC in response to questions from MG Day 36

<sup>343</sup> XXC

<sup>344</sup> RA - 19

but not footpath 179 which is around the bend to the east. With respect, this is simply a non issue.

328. Mr Padfield (Obj/155), the landowner to the west of Warley Street, objects to the closure of the crossing, primarily due to the impact of the new PROW on his land. As set out at inquiry, it was Mr Padfield's position that:

- (i) He objected to the closure of E28 because the diversion route was not suitable;
- (ii) If E28 was closed, he objected to the western extension of the new footpath to the west of E27 which he did not consider was required; and
- (iii) If E28 was closed, he had proposed an alternative route which should be taken forward instead.

329. By letter dated 29<sup>th</sup> January 2019, Strutt and Parker confirmed that points (ii) and (iii) were no longer being pursued, and that the objection was maintained only on point (i). Mr Kenning and Ms Tilbrook have explained, in evidence, why the proposed new PROWs are considered to be required, suitable and convenient. As regards the extension of the new footpath beyond Puddle Dock, Ms Tilbrook explained<sup>345</sup> that although that link had come in when a holistic solution was being considered for closure of both E28 and Puddle Dock, the additional section of footpath reflected a real desire line to the west. In reality, if people were wishing to travel west, it is likely they would travel along that section of the field in any event to the underpass of the M25 rather than heading north along footpath EX/272/180, west along footpath EX/272/179, and then south again to the underpass along footpath EX/272/183.

330. NR maintains that it has struck the balance correctly between the needs of existing users of the level crossing and the interests of affected landowners in respect of its proposals for E28. The Order may properly be confirmed without modification.

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<sup>345</sup> XIC Day 36

## **E29 – Brown & Tawse**

331. At this level crossing, NR is proposing to extinguish the PROW over the level crossing, and a section of footpath EX/313/39, and to create three new sections of PROW: one running along the southern boundary of the railway connecting footpath 4 to Childerditch Lane; one running to the north of the existing industrial units connecting footpath EX/313/39 to Childerditch Lane, and one running north-south to the western side of Childerditch Lane.<sup>346</sup> The footpath immediately to the north of the level crossing has a history of obstruction. Both Mr Kenning and Ms Tilbrook confirmed that this had not factored into NR's assessment of the proposed diversion route.<sup>347</sup>
332. Users of the level crossing will be diverted, via these new sections of PROW, to cross the railway at Childerditch Lane overbridge, with steps either side to bring users up from the field to the bridge.<sup>348</sup>
333. The main issues in dispute on this crossing at inquiry centred on road safety. A common concern between objectors was the use of the Childerditch Lane overbridge, specifically as regards visibility.
334. Mr Burbridge of Iceni Projects<sup>349</sup> also took issue with the basis on which NR had rejected an alternative route that it was considering during consultation in favour of that which it had put forward in the Order.<sup>350</sup> Ms Tilbrook set out in her PoE why

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<sup>346</sup> Contrary to what is suggested by Mr Burbridge in his closings, NR is well aware that the proposed diversion route sits partly within Essex and partly within Thurrock. As confirmed by ST in Re-IX, ECC maintain Childerditch Lane down to the junction with St Mary's Lane. Ms Tilbrook also confirmed that both ECC and Thurrock Council would have to certify the proposed new PROWs before the crossing could be closed. Whilst it is acknowledged that discussions in respect of E29 were undertaken with ECC rather than Thurrock per se during development of the Order proposals, the more general statement made in Mr Burbridge's closings that RSAs were only shared with ECC is not accepted.

<sup>347</sup> Day 33

<sup>348</sup> The height distance to be overcome is between 4.5 – 5 m, which will require around 3 flights of 12 steps (or less): ST XIC. More details are set out in NR-152 §10-15. NR does not agree with the conclusions reached by those objecting to this proposal as to the effect these steps will have on the "accessibility" of the diversion route for existing users. Any such appraisal must take into account the context in which the crossing being used today, and the wider journey of which it forms part.

<sup>349</sup> As clarified, in response to questions in XXC, Iceni Projects were instructed by I2 Developments on behalf of E & A Strategic Land (the original objector). As NB confirmed in XIC, E & A Strategic Land hold options to develop part of the land affected by the new PROW.

<sup>350</sup> Ie why the red route shown on the round 1 consultation plan was rejected in favour of the blue route. A copy of the round 1 consultation proposals is at Tab 2, page 145 of ST's Appendices (NR32-2)

the other route was not taken forward. In respect of the ‘table’ produced by Mr Burbridge in his PoE setting out how he considered the two routes compared, she confirmed in XIC that whilst they were all relevant factors, there was “limited relevance” to breaking those issues down to their individual elements. Those matters had to be looked at as a whole: *“all of those issues roll in together and have to be considered together”*. Mr Russell suggested introduction of a priority working system on the bridge. Ms Tilbrook explained why that would not be feasible in this location. Mr Russell acknowledged, in XXC, that if that was something that was necessary to ensure safe use of the bridge, he *“would have expected”* it to be raised by the highway authority.

335. Ms Tilbrook explained, in XIC, how the proposals had been amended, as the proposal was developed, to bring the pedestrians out closer to the crest of the bridge, where visibility is clearer, and noted that ECC had not objected to the proposals for this crossing, following sight of those amended proposals.<sup>351</sup> The RSA also did not identify any issues with the use of Childerditch Lane.<sup>352</sup>

336. Ms Tilbrook set out the forward visibility available over the bridge in a Note provided in response to Mr Burbridge’s rebuttal PoE before the crossing was heard at inquiry: NR-152.<sup>353</sup> As set out in that Note, pedestrians entering Childerditch Lane from the steps up to the embankment will have varying visibility between 48m and 72.1m over the first 5m of the on road walking route. Thereafter, pedestrians will have the visibility of 72.1m (that identified by Mr Burbridge as required by reference to MfS) for 30m of the on road walking route. Visibility is then again more limited to between 72.1m and 48m over the last 5m section of the on road walking route. Is it therefore acknowledged that there is not visibility in line with MfS over the entire section of the footbridge.<sup>354</sup>

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<sup>351</sup> ECC had previously raised concerns over use of the road bridge at an early stage of the Order development: see the meeting minutes of 5 August 2016 (ST Appendices Tab 5, pg 361. The ‘blue route’ refers to the blue route shown on the round 1 consultation plan – ST Appendices Tab 2 pg 145)

<sup>352</sup> ST PoE para 2.24.14

<sup>353</sup> There is also a difference of opinion between Ms Tilbrook and Mr Russell as to the height to which vertical visibility should be measured: Ms Tilbrook’s position is set out in NR174.

<sup>354</sup> ST XIC Day 33

337. The Note also considered the proposed route as against the guidance used by ECC – ‘Assessment of Walked Routes to School’, noting that the stopping sight distance set out in the Highway Code are available over the entirety of the bridge. Mr Russell and Mr Burbridge take issue with the use of that guidance. To be clear: NR is not suggesting that it supplants DMRB or MfS in designing new road schemes.<sup>355</sup> However, given that that is the guidance which ECC’s road safety experts have used in assessing the suitability (or otherwise) of the alternative routes proposed under the Order, NR maintains that it is properly an assessment to which the Secretary of State may have regard, in appraising the suitability of the proposed diversion route.<sup>356</sup> As Ms Tilbrook stated in XXC, *“It is not a starting point for highway designers, but in terms of assessing where it is safe to walk it is a relevant document to assess these routes against.”*<sup>357</sup>

338. Ms Tilbrook explained, in XIC, why having regard to traffic levels, and speeds, in this location, the visibility which was available over the road bridge, and her own assessment of walking over the bridge (including being passed by vehicles) she considered that there *“is no safety issue with using this stretch of Childerditch Lane.”*

339. Mr Burbridge and Mr Russell clearly disagree. NR maintains, however, that the Secretary of State may properly conclude, on the basis of Ms Tilbrook’s evidence, that the proposed diversion route will be a suitable and convenient replacement for existing users.

340. The Order may properly be confirmed without modification.

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<sup>355</sup> Ms Tilbrook was clear, in XXC in response to questions from MG, that in considering visibility, their first stance was to look at DMRB, and if visibility could be achieved in line with DMRB that was the “best case”. She also made clear that MfS had generally been considered and that when Mott MacDonald had had survey data, they could relate that to MfS. She made clear that the Highway Code had not been referenced at the time the proposal was being developed, but given that ECC has used the Assessment of Walked Routes to School, which referenced the Highway Code SSDs, it had been looked at in that context.

<sup>356</sup> The suggestion that Ms Tilbrook was “increasingly clutching at straws” in her reference to the same as the inquiry progressed (as suggested at §239 of the Ramblers’ Closings) is refuted in the strongest terms.

<sup>357</sup> In response to questions from CB

### **E30 Ferry<sup>358</sup> and E31 Brickyard<sup>359</sup>**

341. E30 and E31 are located on the Fenchurch Street to Shoeburyness railway line, close to Benfleet Station. E30 has been closed under a series of TTROs since 2014, and remains closed due to insufficient sighting. At the time of the inquiry, E31 was also closed under a TTRO, on the basis of insufficient sighting due to vegetation.<sup>360</sup>

342. The proposed diversion route for E30 and E31 is, to a large degree, common to both crossings. Specifically, the closure of both crossings is dependent upon the provision of a new footpath along the southern edge of the Benfleet station car park, continuing on to a new PROW along the southern boundary of Hadleigh Country Park (within NR land), connecting into footpath EX/BENF/60.

343. To be absolutely clear. Under the terms of the Order, the new footpath must be provided to close E30 and also, separately, to close E31. As Mr Kenning explained,<sup>361</sup> this means, in practice, that it would not be open to NR to close one of the crossing points and keep the other open. That is because in order to create the new footpath through the station, NR will move the existing boundary fencing between the car park and NR operational land 1.5m into NR land to provide the necessary space for the footpath. This, in turn, would further restrain the sighting available at either E30 or E31: sighting would not be sufficient. Mr Kenning also explained why the provision of technology in this location would be complex, given the proximity to the station and need to warn of both stopping and non-stopping trains.<sup>362</sup> He also confirmed that whilst there would be a need for some reconfiguration of existing car parking spaces (in particular, the disabled parking spaces at the western end of the car park) the same number of spaces would be retained. Given Mr Kenning's clear evidence to this effect, it is surprising that ECC suggest in their Closings (§44) that there is some question as to whether that reorganisation can be achieved.

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<sup>358</sup> Order replacement sheet 64

<sup>359</sup> Order replacement sheet 64

<sup>360</sup> Details can be found in NR-166

<sup>361</sup> Day 11 of the inquiry

<sup>362</sup> Day 11



344. None of those matters were otherwise understood to be put in issue.

345. The matters at issue in respect of these crossings therefore centre on whether the proposed diversion routes are suitable and convenient replacements for existing users. Three main points were raised by those objecting to the closures: (1) length of the diversion, (2) the directness of the diversion; and (3) the environment through which users would pass. It was common ground that the diversion had to be considered in the context of the wider journey of which it formed part<sup>363</sup>: not in isolation.

346. In respect of length, NR maintains that looking at the crossing in the context of the purpose for which it is used (it appeared to be common ground that it was for leisure / recreational use), and the wider journey of which it forms part, the additional distance is not such as to deter people from making that journey - or to render the diversion not suitable and convenient. Both AK and ST fairly acknowledged that the additional distance would have the greatest impact on those travelling to/from Canvey Island – but drew attention to the walks that people would already be undertaking to reach the Country Park from Canvey Island (or vice versa). ST also, fairly, accepted in XXC that users from the south would not, necessarily, be travelling from Canvey Island,<sup>364</sup> but stressed that what has to be considered is “*an overall assessment of usage here. We can’t only consider the potential impact on one property. We have to be reasonable in the way we look at usage. There will always be someone who sees the impact more than other people. Some will see a benefit, some will see impact.*”<sup>365</sup> Ms Tilbrook also stressed in evidence that it was unlikely that the destination of anyone using the crossing(s) to access the Country Park would be just the other side of the crossing, and that they would be likely to be moving further into the Park, and noted that the main facilities in the Park were located some distance to the north east of the crossings.<sup>366</sup>

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<sup>363</sup> Mr Lee in XXC Day 11, Mr Bird in XXC Day 11

<sup>364</sup> In response to questions from EV Day 12

<sup>365</sup> XXC in response to questions from EV Day 12

<sup>366</sup> XXC in response to questions from MG, Days 11/12

347. Similar concerns were raised in respect of the directness of the proposed diversion – specifically the apparent ‘dog leg’ for walkers seeking to access the Country Park from Canvey Island, or generally from the east of the level crossings. Ms Tilbrook explained in evidence why she considered, overall,<sup>367</sup> the proposed route of the diversion would not deter users – and why it was a suitable and convenient route when looked at in the context of the journeys which people would be making and the purpose of the journeys being undertaken.

348. Finally, in terms of the environment, as Mr Lee accepted, fairly, in XXC, users accessing the Park from Canvey Island today have to cross the causeway – which is an urban environment. Similarly, he accepted, that if they are coming in from Benfleet, they are in a built environment. NR would also highlight that anyone travelling by bus to Ferry Road to access the Park today is already having to traverse the environment proposed as part of the diversionary route (i.e. walking along Ferry Road), and similarly, an individual arriving by train will have to utilise the underpass and Ferry Road if seeking to access the Park by means of the crossings, as opposed to the main entrance uphill from the station. The inquiry will also recall, in this regard, Mr Bird’s evidence as to where he parks when starting a walk from this location, or where he meets fellow walker(s).

349. In terms of road safety concerns, two concerns were raised in ECC’s Road Safety Assessment. ECC confirmed, at inquiry, that the proposed fencing of the footpath from the car park, and Ms Tilbrook’s confirmation that, if required, the verge could be reprofiled on the north side of the private road just to the east of E31 to provide a step-off, had addressed its concerns, and as such ECC did not need to call Mr Seager to give evidence.<sup>368</sup> Ms Tilbrook also confirmed in XIC<sup>369</sup> that she had considered the accident data provided in Mr Cubbin’s proof.

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<sup>367</sup> It is important that the acknowledgment by Mr Kenning and by Ms Tilbrook that the diversion would be more inconvenient than the present for some of the existing users of the crossings is not taken out of context in this regard: see §43 of ECC’s Closings.

<sup>368</sup> Day 12 of the inquiry

<sup>369</sup> Day 11

350. It appeared to be common ground that the provision of the new footpath through the car park will in fact improve accessibility for the Country Park<sup>370</sup> - albeit Mr Lee and Mr Bird made clear they did not consider this overcame their objection to NR's proposals.<sup>371</sup>

351. There is clearly a difference of opinion between ECC, the Ramblers Association, and NR as to whether the proposed diversion route is suitable and convenient. Network Rail maintains that the Secretary of State can, however, be satisfied that the proposed diversion route provides a suitable and convenient replacement for existing users, having regard to the purpose for which the crossings are used today and in the context of the wider journeys that users are likely to be undertaking, for the reasons given by Ms Tilbrook in her evidence.

352. NR therefore maintains that the Order can be confirmed without modification.

### **E32 Woodgrange Close**<sup>372</sup>

353. E32 was dealt with by way of written representations at the Inquiry.

354. Ms Tilbrook emphasised, in response to questions, that whilst the maximum additional distance for users taking the step-free route would be in the region of 960m (approx. 10-15 mins), it should be borne in mind that there were no critical services located on either side of the crossing (the main facilities were primarily to the west) and that it is not possible, today, to access the playing fields immediately to the north of the crossing from footpath FP/189 – people would have to traverse the length of FP/189 and then enter via the school entrance to the east. She also confirmed that LIDAR data had been considered for this route, and that it was, broadly 1:20 (although there might be some sections that were slightly steeper). Overall, she was satisfied that the replacement route was in line with *Inclusive Mobility*.

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<sup>370</sup> Mr Lee in XXC Day 12,

<sup>371</sup> Mr Lee said, in XXC, that he could “see the merits” of the proposed footpath, and that it would be in line with improving accessibility, but “it should not be at the price of removing existing connectivity”. Mr Bird confirmed in Re-IX that he would prefer for E31 to remain open.

<sup>372</sup> Order sheet 67

355. Mr Fisk drew attention to the history of incidents at this crossing, and identified that this was a crossing that would ‘keep the LCM awake at night’. The proximity to a school, and fact so many of the incidents recorded at the crossing involve young people, is obviously a key point of concern. Mr Fisk also highlighted that this would not be a crossing where they could be satisfied that installation of technology would overcome the safety concerns: given the nature of the incidents recorded at the crossing,<sup>373</sup> there would be real concerns that people would simply choose to ignore the lights.

356. Again, whilst NR does not seek to justify closure of a crossing based on its specific safety features, this is a clear example of a crossing where the benefits of closure, even from a safety perspective alone, are apparent.

357. NR maintains that the Order may properly be confirmed without modification

### **E33 Motorbike**<sup>374</sup>

358. E33 is a whistle-board protected crossing on the Grays – Pitsea line. Mr Kenning explained in XIC (in response to matters raised in the objection on behalf of Cromwell Manor Functions<sup>375</sup>) the difficulties that are likely to arise in managing risk at this crossing in the future.<sup>376</sup> As he emphasised in his evidence, by reference to the requirement in ‘Transforming Level Crossings’, that all (remaining) passive crossings were to be made active by 2039, closure is “*a better option*” here.

359. E33 is considered to be used to access the wider footpath network to the south of the railway from properties in Vange and Pitsea to the north.<sup>377</sup> There are also ongoing walks to the east.<sup>378</sup> It is a ‘leisure’ rather than a utility route.

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<sup>373</sup> See para 32 of DF’s supplementary PoE (NR 31-5)

<sup>374</sup> Order replacement sheet 63

<sup>375</sup> Obj 129

<sup>376</sup> Mr Kenning highlighted, in particular, the active crossings in the vicinity of this crossing, with E33 in the middle; the limited sighting; inability to extend warning times if vulnerable users were detected at the crossing; problems of identifying where to put the strike-in if overlay MSL were to be required; and needing to move the protecting signal for Pitsea Hall level crossing if integrated MSL were to be provided.

<sup>377</sup> ST PoE paras 2.27.4 - 5

360. It is acknowledged that the diversion will involve users walking for longer (both in terms of distance and time) to access the marshes and ongoing footpath network to the south of the railway. Ms Tilbrook, also, fairly acknowledged that that impact is likely to be greatest on those closest to the crossing undertaking a short walk into the marshes<sup>379</sup> - although *“I think we are talking about a limited number of people who would be most impacted. Those using from further away, if they are choosing to use that crossing, in terms of the added distance and time, it becomes less of an impact in terms of the overall walks they would be doing”*.

361. Having regard to the purpose for which the crossing is used, and how it sits within the wider network, Ms Tilbrook remained of the view that it would provide a suitable and convenient replacement for existing users.

362. Ms Tilbrook also explained that the use of Pitsea Hall Road had been subject to a RSA, in response to which the two new crossing points were included in the scheme proposals, to enable pedestrians to walk along the existing footway on the eastern side of the road, rather than in the carriageway on the western side.<sup>380</sup> ECC have not raised any concerns in respect of the proposed diversion. NR would note that the proposed new crossing points will, additionally, provide an improvement for pedestrians seeking to travel east-west across Pitsea Hall Lane today.

363. Mr Bird, for the Ramblers Association highlighted that E33 provides access to the RSPB nature reserve. Ms Tilbrook emphasised, in XXC, that the link to the nature reserve would be maintained through the diversion route, and drew attention to RSPB’s response to the round 2 consultation set out in the Statement of Consultation, which set out that the proposed re-routing *“looks fine from the perspective of maintaining foot access to the RSPB reserve at Vange Marsh, assuming the surface is reasonably level and it will be way-marked appropriately from Pitsea Hall Lane and then throughout the route to connect with the footpath immediately to the south of the existing railway crossing”*.<sup>381</sup> NR would highlight its response to the Ramblers

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<sup>378</sup> ST discussed ongoing walks to Benfleet in the east (some 4.5km) in XIC

<sup>379</sup> ST in Re-IX

<sup>380</sup> ST PoE paras 2.27.16 –2.27.20

<sup>381</sup> NR5 page 185

objection letter in this regard,<sup>382</sup> noting that visitors parking at the Wat Tyler Country Park would need to walk north on Pitsea Hall Lane in order to access the RSPB nature reserve via E33 today.

364. Concerns were raised by Mr Gandy, on behalf of Mr Liddell and Cromwell Manor Functions, as to the impact of the Order proposals on Cromwell Manor and the events business run there. Ms Tilbrook, Mr Kenning and Mr Billingsley explained how NR had sought, and would continue to seek, to reduce the impact on Cromwell Manor.<sup>383</sup> Mr Billingsley expressed the view, in XIC, that, having regard to the fact the footpath sat at the southern end of the venue site, and that NR had indicated that they were willing to discuss other screening measures in addition to what is already there<sup>384</sup>, he had “*difficulty in seeing*” how the new PROW would impact on the business. Mr Gandy clearly disagreed. However, as was put to Mr Gandy in XXC, no documentation, or calculations were provided to the inquiry setting out how likely it was that there would be an impact on Cromwell Manor or what that impact might be - the information before the inquiry is limited to what is set out in the Statement of Case.

365. NR maintains that it has identified a suitable and convenient alternative replacement for existing users, and has correctly struck the balance between the needs of those existing users and the affected landowner. The Order may properly be confirmed without modification.

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<sup>382</sup> A copy is at Appendix 4 of the Ramblers Appendices

<sup>383</sup> AK PoE para 32.7. ST explained, in XIC, how the proposals had been amended following the round 1 consultation further to feedback from the landowner

<sup>384</sup> ST explained, in XIC, that there was a “*good level of screening on access into the hall, it is well vegetated and we are on the edge of the marsh land area*”.

366. E35 is located on the Braintree branch line. NR proposes to divert users of the level crossing to an existing underpass, located a short distance to the south east. Short lengths of footpath EX/74/14#1 and footpath EX/74/14#2 will be extinguished either side of the crossing, with new sections of PROW taking users to, and through, the underpass.

367. The underpass is situated within a golf course, and the underpass used today by players moving around the course. The headroom at the underpass is somewhat restricted (1.75m) and the underpass is quite narrow (1.1m at its narrowest<sup>386</sup>). However, as Mr Kenning explained, even with those restricted dimensions the underpass is considered suitable for use, as it is only 10m long with clear vision through, such that there should be no need for users to have to pass within the underpass.<sup>387</sup> Mr Kenning confirmed in XIC, by reference to the minutes of meetings with ECC during Order development,<sup>388</sup> that ECC had not raised any concerns regarding the height of the underpass, and considered it adequate “as a one-off route”.

368. A concern was also raised about potential flooding (or ponding) issues around the underpass. Neither Mr Kenning nor Ms Tilbrook had any concerns that this was not something that could be addressed during detailed design, if necessary. As Ms Tilbrook stated in XXC, “*we have confidence that it is not a significant flooding issue in that there is a huge amount of land that is all draining into this location. It is more about a bit of standing water, not in the immediate entrance, not getting away. It is a matter of resolution at detailed design stage, to the satisfaction of the highway*

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<sup>385</sup> Order replacement sheet 26

<sup>386</sup> As Mr Kenning explained in XXC (Day 17), the walls of the underpass are angled outwards, so although at floor level it is 1.1m, it is wider at waist height.

<sup>387</sup> AK PoE 33.4. Ms Tilbrook made a similar point in her evidence: ST PoE para 2.28.8 “*The underpass is straight with good sightlines. It is considered that shared use of the underpass would be self enforcing and conflicts would be avoided by users.*” Mr Evans raised a concern, in his rebuttal PoE that users would not be able to pass, particularly if one was a golfer with kit. ST reiterated in XIC that the self-enforcement referred to being able to see if someone was approaching from the other side, or already in the underpass. She noted that that was clearly what was happening at the moment, with users of the golf course, and commented that whilst you might have a case of golfers interacting with users of the PROW, “*that will not happen on a frequent basis*”.

<sup>388</sup> ST Appendices Tab 5 pg 371

*authority.*<sup>389</sup> The suggestion<sup>390</sup> that Network Rail has not properly considered this issue is simply not accepted: it is, properly, a matter for detailed design, in consultation with the highway authority and the golf course, both of whom will have an interest in the drainage arrangements at this location. Similarly, the exact details of the slope required to link the footpath on the north east to the underpass will be a matter for agreement with ECC, but as Ms Tilbrook confirmed, in response to questions from the Inspector, it is anticipated that a slope of between 7 and 8 % can be achieved there, which the inquiry will recall (from E05) is less steep than the desirable minimum (1 : 12 – or 8%).

369. For the reasons set out by Mr Kenning and Ms Tilbrook in their evidence, Network Rail maintains that the Secretary of State can confidently conclude that the proposed alternative route will be suitable and convenient for existing users. The Order may properly be confirmed without modification.

#### **E36 Cranes No 2**<sup>391</sup>

370. This crossing was dealt with by way of written representations at the inquiry.

#### **E37 Essex Way**<sup>392</sup>

371. E37 is a footpath level crossing situated on the Braintree branch line. E37 is traversed by footpath EX/120/13 from footpath EX/74/37 running from the north east, where it meets the B1018, to the south west where it meets footpath EX/120/13 just to the north of the River Brain. Through the Order, NR seeks to extinguish this cross field footpath, and to divert users to an existing underpass to the south east of the level crossing, via new footpaths to the north and south of the railway.

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<sup>389</sup> In response to questions from MG Day 17

<sup>390</sup> At §268 – 9 of the Ramblers Closings

<sup>391</sup> Order sheet 27

<sup>392</sup> Order replacement sheet 28



372. Mr Kenning and Ms Tilbrook set out in their evidence how the proposal for this Order were developed, including alternatives considered during that development,<sup>393</sup> and why the proposed diversion route will provide a suitable and convenient replacement for existing users.

373. Concerns were raised by both Mr Philpott and the Ramblers Association as to flooding at the underpass. Ms Tilbrook set out in her evidence that the majority of the underpass was shown on the EA flood map as being in flood zone 1 (low risk) and that no concerns had been raised by ECC in this regard.<sup>394</sup> Both Mr Kenning and Ms Tilbrook were confident that any issues with drainage (or flooding) would be able to be addressed.<sup>395</sup> Ms Tilbrook also addressed, in XIC, the concerns raised by Mr Evans regarding flooding on the new section of footpath running alongside the River Brain by reference to the EA flooding maps submitted with Mr Evans' rebuttal proof. Ms Tilbrook highlighted that footpath 13 is already situated within that flood zone: the new PROW is not, therefore, introducing an issue (or constraint) which does not already exist on the route that is being used today. Ms Tilbrook also confirmed, in XIC, that if, and to the extent, that any issues arise with surface water on the footpath, this could be addressed in detail design – or indeed, if they arose during the 12 month period for which NR is responsible for maintaining the footpath, during that period.

374. Ms Tilbrook confirmed in XXC<sup>396</sup> that she was confident that a feasible solution could be delivered – noting that ECC would have to be satisfied that the route was suitable.<sup>397</sup> She also stressed that she was speaking from an experienced point of view, having implemented and introduced footpaths in flood zones, and adjacent to rivers, and in agricultural areas with watercourses previously. Having regard to Ms Tilbrook's experience, the evidence she gave around flood mapping data (and what can be taken from it), taken in the overall context of the work done by her team in appraising the proposed routes during development of the Order, NR submits that the

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<sup>393</sup> AK in XIC (Day 26), ST PoE para 2.30.12

<sup>394</sup> PoE para 2.30.8

<sup>395</sup> AK in XXC in response to questions from MG and from Mr Philpott, ST in XIC

<sup>396</sup> In response to questions from MG (Day 26)

<sup>397</sup> Ms Tilbrook also stressed, in XXC, that she was speaking from experience of having implemented and introduced new footpaths in flood zones,

Secretary of State may have no qualms in accepting Ms Tilbrook's evidence that a suitable and convenient replacement, can and will be provided here.

375. Mr Philpott also raised a concern about fencing, given the proximity of the underpass to his paddocks with horses and foals. Both Mr Kenning and Ms Tilbrook confirmed that this would be a matter to be discussed further with the landowner (along with the highway authority) as part of detailed design. Similarly, Ms Tilbrook confirmed that there would need to be ongoing engagement regarding any drainage proposals.

376. Mr Philpott has also suggested an alternative route for the section of footpath to the north of the underpass, which would place the new PROW on the western, as opposed to eastern, side of a small watercourse/ditch. Whilst NR maintains that the route it has proposed would provide a suitable and convenient replacement for existing users, for the purposes of s.5(6) TWA 1992, it has confirmed, in its response to Mr Philpott's consultation, that it would not object to that alternative proposal if the Secretary of State was minded to amend the Order as requested by Mr Philpott.

377. NR maintains that the Order may properly be confirmed.

### **E38 Battlesbridge**<sup>398</sup>

378. E38 is located on the Wickford to Southminster branch line.<sup>399</sup> It is traversed by footpath EX/229/23 which runs between Battlesbridge to Runwell-Wickford (a distance of some 2.4km. The crossing itself is accessed by steps: a flight of some 15/16 steps on the south side of the crossing – which Ms Tilbrook confirmed in XIC was beyond the limits set out in *Inclusive Mobility*<sup>400</sup> - and 6 steps on the northern

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<sup>398</sup> Order replacement sheet 65

<sup>399</sup> Mr Kenning confirmed in XIC (Day 12) that whilst this was a branch line, due to the interface with other lines at Wickford Station, delayed trains, or trains out of sequence could lead to interference with the main line service to Liverpool Street via Shenfield. Mr Kenning confirmed that he did not have the details of any specific incidents arising from E38. He also highlighted that this might be a line where there was the potential to operate 2 trains an hour, as opposed to the current pattern of 3 trains every 2 hours.

<sup>400</sup> NR 137

side. Mr Fisk explained, in XXC,<sup>401</sup> that the “decision point” for crossing the railway was two steps down from the crossing level: users would be expected to stop, look for the train, and then travel to the top of the steps and over the crossing. It might not be a ‘high risk’ crossing in ALCRM terms, but there were tangible safety concerns with this crossing.<sup>402</sup>

379. NR’s proposal is to divert users of the crossing onto the existing A1245 overbridge. The overbridge would be accessed by steps on either side. Ms Tilbrook explained in XIC that this was likely to involve 5 flights of 12 steps on the south side,<sup>403</sup> and the same number of flights, but with slightly fewer steps, on the north side in order to accommodate the substantive level difference – which was apparent on site. Ms Tilbrook confirmed that the steps provided would comply with the guidance in *Inclusive Mobility*, although the exact details (for example, material and facings) would be a matter for detailed design, and subject to the approval of ECC.

380. In order to accommodate the proposed diversion over the A1245 overbridge, it will be necessary to create gaps, with appropriate overlaps, in the existing Vehicle Restraint System (“VRS”) on the A1245 overbridge.<sup>404</sup> As Ms Tilbrook explained in XIC,<sup>405</sup> a VRS is there to protect the occupants of a vehicle from a hazard and, in some cases, the hazard from a potential vehicle incursion. The level of containment required, and length of VRS required, would come out of a RRRAP<sup>406</sup> Assessment.<sup>407</sup> In terms of the current arrangement,<sup>408</sup> there is a very high level of containment where the overbridge passes over the railway, and an H2 (a higher level) containment on the approaches to the parapet. There is then a section of a normal level of containment

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<sup>401</sup> In response to questions from MG, Day 13

<sup>402</sup> Mr Fisk also referred to the sight line on the approach to the southern side of the railway not being ideal – including a pillar box blocking the line of sight

<sup>403</sup> NR notes the surprise expressed by those objecting to the order at the number of steps proposed here. The fact that is a significant level difference to be overcome, is, however, apparent on site.

<sup>404</sup> This is set out expressly in ST’s PoE para 2.31.7, the Statement of Case and the Design Guide (NR12) (pg 57) and the fact that the VRS is to be amended expressly stated on the Design Freeze Plan. It is therefore somewhat surprising that Mr Russell did not realise until Day 13 of the inquiry that Network Rail’s proposals involved creating gaps in the existing VRS.

<sup>405</sup> Day 13

<sup>406</sup> Road Restraint Risk Assessment Process

<sup>407</sup> Ms Tilbrook confirmed, in XIC and XXC, that she did not consider that given the VRS was already in place, a RRRAP of the proposed amendments would return a different output. NR was just proposing a gap in the VRS. There was no change to the hazard it was designed to protect.

<sup>408</sup> Which can be seen in the photograph on page 161 of DF’s PoE

continuing on from the H2 containment. Ms Tilbrook explained that NR will be required to leave a minimum distance from the bridge before it creates the gaps in the VRS (to ensure that the VRS continues to operate as a stand-alone system) and that an overlap length of barrier will be provided, which she illustrated by reference to the layout in figure 3.11 of TD 19/06.<sup>409</sup> She highlighted that the design will need to ensure both that the barrier system will work the way it should, but also that pedestrians can get through the gap, and stressed that TD 19/06 does not require specific allowance to be made between the two sections of barrier for both the ‘working width’ of the barrier (i.e. how far the barrier will deflect if struck) plus a clear walking area for pedestrians.<sup>410</sup> She also made clear that there may have to be some works to the embankment to ensure that the amended system can be accommodated, and that it might be necessary to consider some slight alteration to the alignment of the VRS. However, she stressed that would necessarily be a matter for detailed design, and would require the sign-off of ECC both in terms of the proposed amendment of highway structure, and also on the stage 2 RSA that would have to be undertaken. Network Rail has been clear throughout the inquiry that the highway authority would be the overseeing organisation on any stage 2 RSA (cf the suggestion at § 152 of the Ramblers’ Closings).

381. Ms Tilbrook confirmed that she was confident that any such changes could be delivered, and barrier amended in accordance with standards and the powers conferred by the Order (if granted).

382. In the event, Ms Tilbrook’s evidence on these matters was not seriously challenged. It was clear from Mr Corbyn’s evidence in XXC that he was not taking issue with Ms Tilbrook’s evidence that an engineering solution could be found for the proposed amendments, as a technical point of view. The suggestion, in ECC’s Closings (§52-53) that there may be some doubt as to whether the necessary amendments to the VRS can be achieved, was therefore somewhat surprising.

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<sup>409</sup> NR 134, page 3/30

<sup>410</sup> Cf the suggested width of 1 – 1.5m + 0.6m for pedestrians suggested in ECC’s the rebuttal proof of Mr Corbyn and Mr Seager

383. It was also clear from Mr Corbyn’s evidence that he was not suggesting any fundamental flaw in the work that Mott MacDonald had undertaken. Mr Russell also did not call into question the deliverability of the proposed amendments at this location: his focus was more on the need to provide an appropriate ‘separation distance’.<sup>411</sup> As Ms Tilbrook confirmed in XIC, no such requirement is specified in TD 19/06. Mr Russell’s attempt to import such a requirement by reference to the guidance referred to in TD 19/06 at para 3.36 was, to put it politely, tenuous at best. As pointed out in XXC, para 3.36 is expressly concerned with locations where there is a “*defined movement of equestrians/farm animals along the verge*”.<sup>412</sup> That is, quite simply, not the situation here. Mr Russell also accepted, in XXC, that the question of how walking spaces was demarcated, or extent to which any ‘separation distance’ might impact on the space available for the footpath, would be a matter for detailed design that would have to be approved by the highway authority.

384. Ms Tilbrook is an experienced highways engineer. She has provided detailed, and careful evidence, as to what need to be provided, and is confident that it can be provided. Any changes will, in any event, have to be signed off by the highway authority – and subject to a stage 2 RSA. There need be no concern, therefore as to deliverability of suitable amendments to the VRS to facilitate the proposed diversion over this overbridge.

385. In reality, the dispute between the parties really centred on (1) perceptions of safety and (2) the suitability and convenience of the proposed diversion route having regard, in particular, to the steps necessary to reach the overbridge.

386. In respect of safety, as Ms Tilbrook stressed in her evidence, there is no objective safety concern with the proposed diversion route.<sup>413</sup> Pedestrians will only be using the overbridge for a short distance – and a correspondingly short time (she

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<sup>411</sup> Mr Russell set out his evidence on the proposal to amend the VRS in a Technical Note submitted on Day 14 – RA/02. Ms Tilbrook’s has responded to that evidence by way of written note: NR/160.

<sup>412</sup> NR 135 g 3/6

<sup>413</sup> The NR commissioned RSA did not identify any issues – PoE para 2.31.14 – and notably the recommendation of the ECC commissioned Road Safety Assessment was limited to the recommendation that further details as to what was proposed for the VRS be provided.

suggested less than 3 minutes in XXC<sup>414</sup>). Mr Kenning, too, indicated that he would have no concerns about using the overbridge, noting the wide verges available where the bridge passes over the railway itself.<sup>415</sup> Mr Lee and Mrs Evans take a different view.

387. Similarly, in respect of the steps, both Ms Tilbrook and Mr Kenning stressed that the acceptability, or otherwise, of those steps (and potential accessibility constraints they present) has to be considered in the context of how the crossing is being used today, and the accessibility constraints which exist today. It forms part of a long distance walk – with the need to access the crossing via steps today, which steps are not in line with *Inclusive Mobility*. The evidence is to the effect that this route is little used. In that context, Network Rail submits that the provision of steps to access the overbridge is neither likely to preclude the use of the diversionary route by individuals who may be using the crossing today – ie the existing users – nor to deter them from using it.

388. Again, Mr Lee and Mrs Evans take a different view – although Mr Lee fairly accepted in XXC that the level crossing will not be accessible to all today.<sup>416</sup>

389. There is clearly a difference of opinion between Ms Tilbrook and Mr Kenning, on the one hand, and Mr Lee and Mrs Evans on the other. There is clearly some degree of personal judgment involved. However, as Network Rail has reiterated throughout the inquiry, what has to be considered is whether, overall, the diversionary route is suitable and convenient for existing users assessed objectively. Network Rail maintains, for the reasons given by Ms Tilbrook and Mr Kenning that the Secretary of State can properly be satisfied that the proposed diversion route for E38 is a suitable and convenient replacement for existing users

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<sup>414</sup> In response to questions from EV, Day 13

<sup>415</sup> The inquiry may also recall Mr Kenning's now infamous deckchair analogy

<sup>416</sup> Day 13

**E41 Paget**<sup>417</sup>

390. The case for and against the closure of E41 was canvassed over 2 days at the inquiry. There is no doubt that it is a well-used crossing which is highly valued by those who use it, and the community more widely.

391. It is also, however, one of the higher risk crossings in this Order.<sup>418</sup> The constraints on sighting in this location are such that a temporary speed restriction of 20mph has had to be imposed on the down line.<sup>419</sup>

392. As set out earlier in these submissions, NR does not pursue this Order on the basis of the ‘risk’ posed at a specific crossing per se, or the constraint that a particular crossing poses on the current operational efficiency (or resilience) of the railway, or a future enhancement scheme. However, this level crossing is a tangible example of the conflict that can arise between the need to ensure that those seeking to use a level crossing have the time to cross safely, and the Licence conditions under which NR must operate.<sup>420</sup>

393. Similarly, Mr Kay’s suggestion that the safety concerns could be addressed by simply reducing the line speed to 35mph would also conflict with those Licence conditions.<sup>421</sup> It would not, in any event, address the issue with insufficient sighting which has led to a TSR needing to be imposed.<sup>422</sup>

394. Mr Kay takes issue with the ‘need’ for the 20mph speed restriction in this location. He queried, in particular, the justification for the traverse time used to calculate required sighting having been increased to allow for vulnerable users; the

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<sup>417</sup> Order replacement sheet 45

<sup>418</sup> As set out in Mr Kay’s revised PoE (W3), it is the 25<sup>th</sup> riskiest footpath crossing in the Anglia region. A number of objectors queried the safety case for closure of this crossing. NR would note, however, that Mrs Clarke volunteered in XXC that *“if it is dark, I probably don’t use the crossing, I use the road”* (although, in fairness, she also stated in XIC that she considered that *“the view along the rail track in both directions is good”*). Similarly, Mr Kay volunteered in his questions to DF in XXC that *“Wivenhoe parents don’t allow their children to use this crossing”* (Day 20)

<sup>419</sup> DF PoE para 168. As set out below, this is because there is insufficient sighting on the ‘up’ line which has to be mitigated by whistle boards, and where a whistle board is fitted for one direction it must also be fitted for the other. The physical constraints are such in this location that the whistle board on the down line can only be positioned so as to provide sufficient warning if the line speed is reduced to 20mph.

<sup>420</sup> As set out at para 2.4.18 of Dr Algaard’s PoE the TSR at Paget’s has added an additional 40s journey time for passengers travelling in the down direction on this line.

<sup>421</sup> MB rebuttal proof to the evidence of Mr Kay and Cllr Liddy para 7.1 (NR 27-4-1); AK in XIC (Day 19)

<sup>422</sup> As DF explained in XIC (Day 19)

way in which the available sighting has been assessed; and the requirement for a whistle board on the down line in addition to that on the up.

395. Contrary to Mr Kay's submission, the allowance for vulnerable users is entirely in accordance with NR's standards.<sup>423</sup>

396. As regards assessment of available sighting, as Mr Fisk explained in XIC, the training which LCMs receive makes clear that *"you must take your sighting from the 2m point and it must include full sighting to the front of the train to the users, which must remain visible for the entire period the train is approaching the level crossing."* Whilst it may well be the case that an individual standing 1.8m from the line (rather than the 2m decision point) may not lose sight of the train,<sup>424</sup> or that parts of some trains may be visible at all time, the LCM responsible for this crossing has assessed, in accordance with the training and requirements set down in NR's standards, that there is insufficient sighting to comply with industry standards.<sup>425</sup> There is simply no basis for displacing that structured expert judgment with the assessment undertaken by Mr Kay.

397. In respect of the whistle board, Mr Fisk explained, in XIC, that the 20mph speed restriction on this line is in place to ensure that the whistle board provides sufficient warning for users. The positioning of the whistle board has to be approved by a Signal Sighting Committee. The whistle board in this case provides very little more<sup>426</sup> than the 11.42s it takes for a user to cross the level crossing. It is not possible to locate the whistle board further away from the crossing, due to the constraints of the retaining wall between the level crossing and the station.<sup>427</sup> Mr Fisk explained that

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<sup>423</sup> As is expressly stated in para 5.3.6.1 of NR's Level Crossing Guidance Document 'Census Good Practice' (Tab 3 of DF's Appendices – NR 31-2) the "illustrative examples" which Mr Kay pointed to on pg 13 of the document, *"does not offer a ratio or application, nor does it take precedence over structured expert judgment where, for example, an assessor considers it an essential requirement to protect a minority group or single person .... Deciding on whether there is higher than average vulnerable usage is prevalent should always be based on structured expert judgment and assessor's acquired knowledge..."*

<sup>424</sup> The Wivenhoe Society suggest, for example, that *"...an ordinary person would stand much closer to the track to see if a train was approaching...By standing closer to the track I would argue that a person has a clear view of any train approaching, even when coming round the bend in the track."* (Closings para 7). As DF made clear in his evidence, that is not an approach that NR is entitled to adopt.

<sup>425</sup> DF also confirmed, in XIC, that he had been out on site and taken his own measurements and they that corresponded with those set out in his PoE

<sup>426</sup> It provides 11.54s warning

<sup>427</sup> DF in XIC by reference to the photograph at para 38.5 of his PoE (pg 166)



the whistle board is required on this line because NR could not provide a warning by way of whistle board in the up direction and not also in the down direction. Mr Kay took issue with that – at inquiry, in subsequent submissions, and in his closings. NR’s position is set out a letter sent to Mr Kay after the hearing: NR-163. In short, it is an ORR requirement. It is also eminently sensible. It is difficult to see, in practice, how NR could maintain a level crossing on its network where users were required to look for a train in one direction, and listen for a train from the other.

398. NR’s proposal is to extinguish such PROW as may exist over the crossing,<sup>428</sup> to create a new footpath within NR land and to dedicate new PROW over two sections of existing private road/track on the northern side of the railway. Users of the level crossing will instead cross the railway at Anglesea Road overbridge to the east, or High Street bridge to the west. Some widening works are proposed to the existing footway over High Street bridge although, as acknowledged by ST in XIC,<sup>429</sup> it will not be possible to achieve a 1.8m width along the full length of the bridge on both sides. Both the creation of the new PROW and works to the existing highway will need to be undertaken to the reasonable satisfaction of ECC before the crossing can be closed.<sup>430</sup>

399. More detail as to what is, indicatively, proposed in respect of those works to the High Street is set out in an email chain between Mott MacDonald, CBC and ECC, appended to Ms Tilbrook’s Rebuttal Proof to the Evidence to Wivenhoe Town Council.<sup>431</sup> In short, it is proposed to build out the footways along either side of the bridge to 1.8m. This is not achievable along the whole length of the bridge to allow for bus turning movements, but, as Ms Tilbrook stated in XIC, “*it will significantly improve what is there at the moment*”. The existing ‘give way’ line, to the north of the bridge, will be moved further north just to the other side of the Philip Road junction. The improved footway provision would give pedestrians the opportunity to see whether they could proceed south, and direct vehicles towards the centre of the

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<sup>428</sup> As set out in the Statement of Case (pg 126) there are no recorded PROW over the crossing

<sup>429</sup> Day 19

<sup>430</sup> E41 is contained in Part 1 of Schedule 2 to the Order. See also NR 118. Whilst certification of the works rests with ECC as highway authority, NR has confirmed, subsequent to the hearing of E41, that it will continue to liaise with CBC during development of the detailed proposals for the works to the High Street, notwithstanding that the formal approval of the works remains with ECC.

<sup>431</sup> NR 32-4-3, Appendix B

road – reflecting the narrowing of the carriageway previously provided by road markings in this location.<sup>432</sup>

400. Ms Tilbrook also explained, by reference to a plan which had previously been shared with CBC and ECC<sup>433</sup> that the proposed works to the High Street bridge would still accommodate bus turning movements.<sup>434</sup> She stressed, however, that this was not the “detailed design” plan: it simply represented work that Mott MacDonald had done to satisfy itself that what was being proposed was feasible. It did not represent either a detailed design, or scheme approved by, ECC who had seen, but not provided comments, on the same.

401. Ms Tilbrook acknowledged in XXC that the swept paths on the plan demonstrated that there would not be room for a pedestrian to walk along the footway on the eastern side whilst a bus was turning, and that people would be expected to “*self regulate*”. However, as she explained, that is how the bridge operates at present: the works proposed would provide an improvement to that existing situation.<sup>435</sup> She stressed that she was not relying on the fact that because the bridge was “*operating okay*” at the moment that that meant it was therefore acceptable.<sup>436</sup> However, that is clearly a relevant, and material, consideration to take into account when assessing the proposed diversion route.

402. Ms Tilbrook confirmed that the RSA had not identified any safety concerns with use of High Street bridge. She further explained why, having regard to how traffic was using High Street at the moment (from site observation), the 20mph zone<sup>437</sup>, and traffic flow data provided by CBC, as well as the feasibility appraisal

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<sup>432</sup> ST XIC Day 19

<sup>433</sup> And which was referred to in the email chain in Appendix B of her rebuttal proof, although not included within it. It was therefore submitted separately to the inquiry during consideration of E41 – NR- 146

<sup>434</sup> Some confusion arose during XXC of Ms Tilbrook as to whether this plan showed southbound or northbound bus movements. She confirmed in Re-IX that it showed northbound movements – as explained in the email chain in Appendix B to her rebuttal proof

<sup>435</sup> XXC in response to questions from MG, Day 20

<sup>436</sup> ST XXC Day 20

<sup>437</sup> Mr Kay took issue, during inquiry and in closings, with the reliance on this being a 20mph zone and suggested- at least during inquiry – that it did not meet the legal requirements necessary to qualify as a such as there was no ‘entrance feature’. With respect, this argument is not fully understood (nor did Mr Kay explain which legal provisions he was referring to). It is not, for example, specified as a requirement in s.84 of the Road Traffic Regulations Act 1984 for the imposition of a 20mph speed limit.

undertaken by Mott MacDonald, she was satisfied that a suitable route could be provided across the bridge.

403. As regards the other parts of the proposed diversion route, Ms Tilbrook explained in her evidence that those alternative routes<sup>438</sup> retain connectivity to services and amenities on both sides of the railway. The additional link via the new footpath on NR land, and Philip Road, provides a route with a lesser gradient than Queen's Road, and reduces the diversion length for users wishing to access amenities to the west. Measures to assist those using Queen's Road (a rest area and, as appropriate, handrails) have been included within the proposals, recognising the steeper gradient on this line of route. The additional distances involved in the diversion routes, and the environments through which those routes passed, are not considered such as to deter people from using the routes – or to mean that they are not a suitable and convenient replacement for existing users. NR also highlights that even those objecting to the Order volunteered, in evidence, that they are using such parts of those routes as exist today – at times, in preference to the level crossing.<sup>439</sup>

404. Again, other parties to the inquiry disagree. NR maintains, however, that the Secretary of State may properly conclude that on an objective assessment of what is proposed in this location, that the proposed diversions would provide suitable and convenient replacements for existing users of the level crossing.

405. Ultimately, what falls for consideration in this inquiry is the principle of diverting users via High Street bridge (and Anglesea Road bridge to the west) via the new PROW proposed and use of existing highway. The details are, necessarily, a matter for detailed design – subject to certification by ECC. NR is confident that a satisfactory scheme can be delivered here. Others have expressed scepticism as to whether a satisfactory solution can in fact be delivered. There was, however, no evidence presented to the inquiry to demonstrate that it could not: although a number of witnesses (who confirmed they did not have technical highways engineering backgrounds) expressed their views on the matter. Further, as Mr Kenning confirmed

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<sup>438</sup> Of which there are three: one via Anglesea Road, one via Queens Road to High Street, and one via Philip Road to High Street

<sup>439</sup> Mrs Clarke when asked about her trips to the Co-op by the Inspector stated, *"If it is dark I probably don't use the crossing, I use the road."* Mrs Clarke also stated that she used High Street to access the surgery on Philip Road today.

in XXC, if the Order powers are granted, it is ultimately NR who bears the risk of not being able to deliver a scheme to the satisfaction of the highway authority, as it cannot close the crossing without it.

406. NR maintains, therefore, that the Secretary of State may properly conclude, on the basis of Ms Tilbrook's evidence, that a suitable and convenient replacement for existing users will be provided. The Order may properly be confirmed without modification.

407. A few further matters need to be addressed in respect of this crossing.

408. Firstly, Mr Kay suggests in closings (on pg 2) that this inquiry has only been allowed to proceed on the basis that "*evidence on matters other than the alternative routes was **not** relevant to decision and would merely be 'reported' to the SoS*",<sup>440</sup> and takes issue with NR's "*perverse interpretation of s.5(6) that most evidence from objectors should be regarded as legally irrelevant to the decision*".

409. That suggestion that is refuted in the strongest, possible terms. It was made absolutely clear when the inquiry resumed in September 2018 (Day 4) that the question of how s.1 and s.5(6) of the Act should be approached was "*a matter for submission*", that the Inspector was "*here to hear evidence put forward by all parties and then take that forward and make recommendations to the Secretary of State*" and that "*all evidence put forward by all parties will be considered on all crossings and recommendation will be made on the basis of what has been submitted ... all matters are open for debate*". NR stressed, through counsel, that whilst it had put forward its position as to how the Order application fell to be determined, it had not sought to restrict the scope of the inquiry - nor would it, in fact, have any power to do so. The Inspector, similarly, reiterated that it was neither his, nor NR's intention, to stifle debate on the matters which parties considered should be taken into account. The suggestion that parties have in any way been restricted in the nature of the case they wish to advance at this inquiry is wholly without merit.

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<sup>440</sup> Emphasis in bold reflects Mr Kay's emphasis in italics

410. Mr Kay also made a number of, what I shall characterise as *unfortunately expressed*, comments about NR, its personnel and contractors during inquiry and in his closings. I do not propose to respond to the same here, save to stress that those comments are wholly unjustified, in particular insofar as they call into question the professional competence of the individuals involved. NR adopts the same approach in terms of Mr Kay's characterisation of its evidence in his closings.<sup>441</sup>

411. Nor are Mr Kay's criticisms of the "attitude" he says was displayed by NR at consultation events accepted. As Mr Kenning stressed, in XIC,<sup>442</sup> *"I don't concur that NR personnel had a view that they would close the crossing no matter what people say. We were looking at utilising the other crossing opportunities. We were looking for feedback. If we just thought we were going to close it, with the power within the [TWA] then we would have just said we would extinguish it and that is not where we are at."*

412. Mr Kay has also raised matters relating to a potential widening scheme to High Street bridge in 2008, and to the (alleged) need to reduce line speed in this location to overcome issues relating to the cant at Wivenhoe Station. With respect, those matters are not considered material to the issues which fall to be considered on this application, and NR does not, therefore, respond to them in these closings.

413. NR therefore invites the Secretary of State to confirm the Order without modification.

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<sup>441</sup> For example, in respect of the census undertaken by NR

<sup>442</sup> Day 19

## **E43 – High Elm**<sup>443</sup>

414. E43 is located on the Colchester to Clacton line, to the east of the village of Alresford. NR's proposal is to extinguish a section of FP/157/4 as it passes over the crossing to the point where it meets FP/157/5 to the north and St Osyth Road to the south. Users of the level crossing would be diverted to the existing road bridge on the B1027 (Tenpenny Hill), via existing PROW and highway.

415. The RSA commissioned by NR recommended that a footpath be provided on the NE side of Tenpenny Hill to avoid users needing to cross the road twice. The Order proposals have, instead, made provision for two new pedestrian refuge islands to be installed, at either end of the proposed diversion route along this stretch of highway, to provide for safe crossing points. It is common ground with ECC that the proposed pedestrian islands can be provided within Order limits as shown on Order replacement sheet 49.<sup>444</sup>

416. As Ms Tilbrook set out in evidence by reference to the wider mapping,<sup>445</sup> there is a gap in the PROW network in this location: in terms of accessing the network further south from the level crossing, this necessarily involves some road-walking. She acknowledged that the route over the level crossing offered the potential for circular walking, but highlighted that anyone wishing to reach the level crossing from within Alresford would need to interact with Tenpenny Hill today.<sup>446</sup> Mr Lee agreed, in XXC, that anyone wishing to access the level crossing from the west would need to cross the B1027 today, and that pedestrian facilities would improve the situation for those users today. The fact that existing users of the crossing will have to interact with the B1027 today is clearly relevant, in NR's submission, when considering the concerns expressed around 'perception' of safety of the proposed diversion route.

417. Ms Tilbrook stressed that the NR proposal would retain access into the woodland to the north of the level crossing – albeit as a 'there and back' route as

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<sup>443</sup> Order replacement sheet 49

<sup>444</sup> The details of the proposed pedestrian refuge island were the only issues raised in ECC's Road Safety Assessment for E43.

<sup>445</sup> ST Appendices Tab 9 pg 487 [NR32-2]

<sup>446</sup> ST rebuttal to evidence of ECC, para 3.7 [NR32-4-1]

opposed to a circular route. In terms of the additional distances (and times) involved in the diversion route, she explained that she did not consider they would deter existing users from using the diversion as part of a leisure route – either long distance or local walks.<sup>447</sup> Mr Kenning fairly acknowledged that the impact would be greatest for those living closest to the south of the level crossing from where FP/175/4 would be extinguished.

418. For the reasons set out by Ms Tilbrook in her evidence, NR maintains that the proposed diversion route would provide a suitable and convenient replacement for existing users. Others clearly disagree. NR submits, however, that the Secretary of State may properly conclude that the proposed diversion route will be safe, suitable and convenient and that the Order may be confirmed without modification.

#### **E45 Great Bentley Station & E46 Lords No.1**<sup>448</sup>

419. These two crossings are situated on the Colchester to Clacton line, in close proximity to Great Bentley Station.<sup>449</sup> E45 in particular is situated around 20m away from the station platforms which means, as Mr Kenning explained in XIC, when the new ten-car trains are introduced on this line, the trains stopping at the station will ‘sit back’ over this level crossing.

420. Mr Kenning also explained in evidence<sup>450</sup> how the proximity of the station, the active level crossing just to the west of the station, and the other crossings on this section of the line, mean that fitting technology to these crossings would be extremely difficult. Mr Kenning subsequently provided a Note to the inquiry, setting that

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<sup>447</sup> XIC (Day 23). Additional distances and times are set out in ST PoE paras 2.33.10 – 13 and ST rebuttal to the Ramblers Association paras 10.2 – 10.3 [NR32-4-2]

<sup>448</sup> Order replacement sheet 50

<sup>449</sup> The proximity can be seen on the aerial photograph at pg 180 of DF’s PoE

<sup>450</sup> In response to the question raised in Great Bentley Parish Council’s SoC, which was the basis of their evidence at the inquiry

explanation out in writing, accompanied by a signalling plan for this section of line, which illustrates the difficulties he described: NR/147.<sup>451</sup>

421. Again, NR does not rely on those signalling difficulties as its “case” for closure of E45 / E46. However, these crossings provide a tangible example of the difficulties that can arise when seeking to manage risk through installation of technology: it is not as simple as merely installing the red and green lights.

422. Similarly, E45 also presents a tangible example of the constraints that level crossings can impose on non-railway development in an area. As set out in the PoE submitted by Christopher Glegg on behalf of Mr and Mrs Irwin, planning permission for residential development to the south of the railway is subject to a condition restricting occupancy until the level crossing is closed. Again, NR does not rely on this restriction as justification for closure of the crossing, but would highlight the recognition recorded at para 19 of the Appeal Decision that *“the development of 150 dwellings would result in an increase in the use of the pedestrian level crossing of the Colchester to Clacton railway line (Footpath FP8 Great Bentley E45) and that this would result in harm to both rail and pedestrian safety if it is not closed”*.<sup>452</sup>

423. NR’s proposal at these crossings is to extinguish the PROWs passing over E45 and 46 and divert users to Great Bentley CCTV level crossing (on Plough Road)<sup>453</sup> via the existing highway network to the north, and a new PROW running east-west from footpath EX/165/8#1 to Plough Road.

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<sup>451</sup> Mr Kenning also explained in evidence – in XXC by MG (Day 22) – why diverting users via the station platform was not a feasible option. The reasons for this were two-fold (cf the suggestion in para 319 of the Ramblers’ closing submissions): (1) Greater Anglia (the station operator) saw this as a risk they would not want to introduce onto the platform (“you cannot fence a platform”) and (2) it would raise issues in terms of revenue control. As AK explained, *“It is easy for a member of revenue collection staff to stand at the end of the platform and ignore users of the footbridge, and everyone walking towards you should have a ticket. If you had the footpath along [the platform] it would be a much more difficult thing to police”*

<sup>452</sup> A copy of the Appeal Decision was submitted by the Ramblers: RA-14.

<sup>453</sup> Mr Fisk confirmed in XIC (Day 23) that this crossing is well used by pedestrians today (approx. 450 users per day). He emphasised that *“it is a fully protected crossing. It is the safest type of level crossing we have”*.



424. NR acknowledges that this would introduce additional distance for those travelling north-south across the crossings today – specifically, over E46. However, based on the location of the crossing points, and purposes for which the crossings are used – primarily for leisure purposes to provide access to the wider PROW network – NR maintains that the additional distances resulting from the proposed diversions are acceptable – and do not support the suggestion that the proposed diversionary routes are not suitable and convenient replacements for the purposes of s.5(6) TWA. NR maintains that the proposed diversion routes, via the active level crossing (or, indeed, the station footbridge when the barrier is down on the level crossing) maintain connectivity to both sides of the railway to access the wider footpath network for leisure use, and to access services within Great Bentley. The closures, notably, would not preclude access to the village green to the north, albeit it would alter the route by which it was accessed for those travelling from the PROW network to the south.

425. The proposed diversion route has been subject to an RSA which did not identify any safety concerns.<sup>454</sup> Ms Tilbrook confirmed in oral evidence, in response to concerns raised by the Parish Council regarding the lack of footways on some roads in the area and the potential for conflict at the entrance to the station car park, that having regard to traffic speeds, and existing use of those facilities,<sup>455</sup> she did not consider this to present a cause for concern

426. NR maintains that the Order may properly be confirmed without modification

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<sup>454</sup> Post Transport and Works Act Order (TWAo) Anglia Route Essex Road Safety Audit Stage 1 28 September 2017. A copy is appended to ST's rebuttal proof to the Ramblers at Appendix D [NR32-4-2] Ms Tilbrook explained, in response to a question from the Inspector, why this audit had been carried out later than the others.

<sup>455</sup> As Ms Tilbrook stated in XIC (Day 23) *"People are in that environment at the moment and it is operating satisfactorily at the moment"*.

## **E47 Bluehouse**<sup>456</sup>

427. At this crossing, NR's proposals are to extinguish footpath EX/164/16 as it passes over the level crossing to the point where it reaches Pork Lane to the south. Existing users would be diverted to the active level crossing on Pork Lane (an AHB) via a new section of footpath running along the northern side of the railway, and Pork Lane to the south.

428. Mr and Mrs Roberts (Obj 101) object to the proposed closure, as they do not consider that NR has justified closure of the crossing, and object to the provision of a new PROW within their farmholding. Mr Roberts also expressed concerns about the safety of pedestrians using Pork Lane itself.

429. Ms Tilbrook explained that, even though low usage had been recorded on the census survey carried out<sup>457</sup> it was considered that a replacement route was required if the crossing was closed, as there was usage observed at the crossing, and it formed part of the PROW network in this area.<sup>458</sup> She confirmed that she did not consider that there were any road safety concerns with the use of Pork Lane. She confirmed that users of the new footpath would be able to stand (and if needs be, wait) within the footpath as it reached Pork Lane until they were able to cross the railway at the AHB, and that there was a segregated area for pedestrians over the level crossing itself. Both Mr Kenning and Mr Fisk confirmed that as pedestrians emerged from the footpath, there was no reason to think they would not see the warning signs about the level crossing - and that as the half barrier was on that side of the road, that would provide additional protection as well.<sup>459</sup> Ms Tilbrook also confirmed that she did not anticipate there would be any issues for pedestrians accessing the AHB from the south side of Pork Lane.<sup>460</sup>

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<sup>456</sup> Order replacement sheet 51

<sup>457</sup> Which were also reflected within the NR ALCRM scores for this crossing,

<sup>458</sup> XIC Day 22

<sup>459</sup> In XXC, Day 22

<sup>460</sup> XXC, Day 22

430. Mr Kenning explained how fencing had been introduced into NR's proposals to address concerns expressed by the landowners following consultation. Mr Billingsley explained in evidence the compensation provisions that would apply in respect of the creation of the new PROW, and temporary use of, the landholding.<sup>461</sup>

431. NR maintains that it has struck the balance correctly between the needs of existing users of the level crossing and the interests of affected landowners in respect of its proposals for E47. The Order may properly be confirmed without modification.

#### **E48 - Wheatsheaf**<sup>462</sup>

432. E48 is situated on the Manningtree to Harwich line, within the Parish of Wrabness. NR's proposal is to extinguish footpath EX/184/19 from a point to the north of the level crossing to Station Road to the south. Users of the crossing would be diverted to the existing bridge over the railway on Church Road, via a new section of footpath to the north and existing highway.

433. The main issues raised at inquiry related to the loss of this section of footpath (including that passing through Great Brakey Wood to the south of the railway); concerns about road walking, and the impact of proposed new PROW on the use of the land to the north of the railway.<sup>463</sup> Mr Kenning confirmed, in XIC, that there was no reason why the section of footpath EX/184/19 could be not retained on the south up to the railway boundary if the Secretary of State was minded to consider that the proposed extinguishment was too extensive, and that would not affect the appraisal of whether the proposed diversion route was suitable and convenient replacement for existing users of the level crossing.

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<sup>461</sup> Day 22. Mr Billingsley's PoE also summarises the response provided by NR to Mr and Mrs Roberts' letter of objection, including their road safety concerns, and measures that had been discussed regarding impact of the new PROW on their landholding: pgs 59-62

<sup>462</sup> Order replacement sheet 40

<sup>463</sup> Mr Hutley (Obj 85) also raised a number of issues around consultation and service/display of notices in his written evidence. NR has responded to those matters in its written evidence: see for example section 8.20 of Mr Billingsley's PoE

434. The RSA commissioned by NR did not identify any concerns with the proposed use of Station Road/Church Road.<sup>464</sup> The Road Safety Assessment commissioned by ECC, however, raised concerns about the use of the southern section of Church Road where the verge was relatively high.<sup>465</sup> Ms Tilbrook confirmed that it would be necessary to work with ECC during detailed design to ensure that there was space for pedestrians to step off the carriageway, and it might require some reprofiling as opposed to just cutting back vegetation.

435. A further concern was raised, orally, by Mr Seager for ECC regarding visibility at the southern end of the diversion route. Ms Tilbrook confirmed in her evidence that she was satisfied that sufficient sight lines could be achieved.<sup>466</sup> Mr Seager confirmed he had not, himself, carried out any calculations. NR submits that Ms Tilbrook's evidence may properly be preferred, in this regard.

436. Having regard to the volumes and speed of traffic on the road here, Ms Tilbrook confirmed that she was satisfied that users could safely walk in the carriageway and step off the carriageway as necessary. Similarly, she did not consider that there would be an issue with visibility for users passing over the bridge having regard to the speed at which vehicles would be travelling in this location: *"for pedestrians approaching that junction they have the visibility they need to know they can make their way onto Station Road"*.<sup>467</sup> Similarly, she did not consider there to be any cause for concern for pedestrians entering Church Road from the new footpath: she confirmed that there was a verge there where pedestrians could wait, allowing time to stop, look and listen, and if, necessary, vegetation on the boundary could be lopped under the powers in the Order.

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<sup>464</sup> ST PoE para 2.36.17

<sup>465</sup> Marked C-D on the plan appended to ECC's road safety assessment (Appended to Mr Seager's PoE). Mr Seager confirmed, in XIC, that the information in ST's rebuttal proof had addressed the other concern which ECC's Road Safety Assessment had identified regarding the ditch where the proposed footpath meets Church Road

<sup>466</sup> By reference to those set out in the Highway Code, as provided for in Assessment of Walked Routes to School. Mr Seager confirmed, in XXC, that it was the Highway Code figures that could be considered, given they were looking at the routes in the context of the Assessment of Walked Route to School.

<sup>467</sup> XIC Day 21

437. Overall, Ms Tibbrook considered that the proposed diversion route would be a suitable and convenient replacement for existing users. Others clearly disagree. There is also, clearly, a disagreement as to comparative ‘amenity’ values of the current route as opposed to the proposed replacement route. However, NR maintains that the Secretary of State may properly conclude, for the reasons given by Ms Tibbrook, that a suitable and convenient replacement will be provided for users of this crossing.

438. In terms of the impact on the landholding to the north, Mrs Hutley queried why the proposed line of the PROW had been drawn out into the field, rather than being closer to the field boundary. Ms Tibbrook explained, in XIC, that it had been drawn to follow natural features on the ground. Subsequent to consideration of E48 at inquiry, NR undertook a site visit to the field in question, and has produced a revised Order plan which pulls the proposed line of the PROW closer to the boundary.<sup>468</sup> NR confirmed during the Modifications session that it is promoting that modification to the Order, and has consulted on it accordingly.<sup>469</sup> Mr Kenning also confirmed, in XIC, that there were further measures that could be explored during detailed design to mitigate the concerns expressed by Mr and Mrs Hutley regarding the impact of the new PROW on the use of their field for horses – including the opportunity to provide segregation by way of fencing (if required) and measures to reduce risk of vehicular trespass at the point where the new footpath would meet Church Road.

439. NR maintains that it has struck the balance correctly in respect of its proposals for E48. The Order may properly be confirmed with the proposed modification.

#### **E49 Maria Street**<sup>470</sup>

440. This crossing was dealt with by way of written representations at the inquiry.

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<sup>468</sup> NR-157

<sup>469</sup> See the note at NR-157

<sup>470</sup> Order replacement sheet

## **E51 Thornfield Wood & E52 Golden Square**<sup>471</sup>

441. E51 and E52 are situated on the Marks Tey-Sudbury line, also known as the ‘Gainsborough line’. They are among the lower risk crossings in the Order. There are no committed enhancements schemes in immediate prospect - although Mr Fisk stated in XXC that as part of the new franchise commitments, there is a plan to run trains from Sudbury to Colchester Town, such that there would be an interface with the main line.<sup>472</sup>

442. That these are lower risk crossings, on a branch line, with no immediate improvement scheme in prospect does not mean that there is no ‘case’ for their closure under this Order. As set out earlier in these Closings, the strategic objectives sought to be achieved through this Order apply equally to the branch lines as they do to the mainlines.

443. NR’s proposals are to extinguish the east-west footpaths passing over each of the crossings and to divert users to two existing road bridges over the railway via new sections of footpath (running north-south) and some sections of the rural road network. East-west access is also maintained.<sup>473</sup> NR considers that its proposed diversion routes maintain links and connectivity within the wider network, which already includes the use of rural road walking, and thus provides a suitable and convenient replacement for existing users, given the purpose and characteristics of the existing route, and how it sits within that wider network. It does not, contrary to the suggestion made by CBC, “*result in network dislocation inhibiting the provision of continuous network*”.<sup>474</sup> As Mrs Forkin accepted in XXC, neither the eastern nor western ends of the footpaths passing over with E51 or E52 connect directly to other

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<sup>471</sup> Order replacement sheets 35, 36 and 37

<sup>472</sup> NR would also draw attention to the desire for continued investment in branch lines, including increasing line speed and frequency, on branch lines in the East Anglia Rail Prospectus (NR-132) at page 5, and the identified need to address constraints - including level crossings – to those branch lines, including the Gainsborough line (pg 26). Contrary to Mrs Forkin’s suggestion in XIC (Day 41) that nothing in the Rail Prospectus supported the closure of these crossings, the proposed removal of these crossings is clearly in line with its aspirations and “visions”. Further, as Mr Kenning stated in XXC (in response to questions from MG, Day 30) “*it is fragile business case, and the crossings do not help that. In this ever more stringent world, the three crossings along this line may tip the balance into being attractive for an enhancement.*”

<sup>473</sup> ST XIC Day 30

<sup>474</sup> Para 14 of the PoE of Paul Wilkinson for E51 and for E52.

PROWs). To the contrary: it in fact provides a new N-S PROW connection where there was previously a ‘gap’.

444. Concerns have been expressed by various objectors about the road-walking proposed as part of the diversion routes: specifically, the use of the two road bridges, and Fordham Road.<sup>475</sup>

445. The RSA commissioned by NR did not identify any issues with the proposed routes.<sup>476</sup> The Road Safety Assessment commissioned by ECC, similarly, did not raise any concerns about use of the road bridges. Ms Tilbrook confirmed in evidence, that there was sufficient forward visibility over the bridge on Jankes Green Lane,<sup>477</sup> and drew attention to NR’s proposals, as set out at pages 42 & 43 of the Design Guide to clear vegetation over the two bridges and on their approaches to ensure a safe standing area for pedestrians.

446. As regards the proposed road walking generally, a number of objectors suggested that it was unsafe, or indeed “dangerous”,<sup>478</sup> and that there was insufficient provision for walkers to step off the road if a vehicle approached.

447. Ms Tilbrook’s evidence, in contrast, was that she had walked the proposed diversion routes for both E51 and E52, and had done so perfectly safely. In respect of E51, she confirmed that she had walked the route, not wearing PPE, and felt “*very safe in that environment*”. She accepted that there were some steep banks (indicated in photographs A-D of the supplementary photographs submitted by ECC<sup>479</sup>) but identified that there was opportunity for vegetation cut-back and re-profiling on the other side of the bend. She acknowledged that the availability of step off points

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<sup>475</sup> Ms Hobby also raised a concern that walkers would use Bures Road instead of the proposed diversion route proposed for E51. That is not part of NR’s proposed diversion route and NR, clearly, cannot prevent walkers choosing to use it instead. NR maintains that its proposed diversion provides a suitable and convenient replacement, and that is what falls to be assessed on this application.

<sup>476</sup> ST PoE para 2.39.14

<sup>477</sup> XIC (Day 30) in response to the concerns raised in Appendix 2 to Dr Thompson’s SoC. Mr Kenning similarly confirmed, in response to questions from Dr Thompson in XXC regarding the situation of a pedestrian encountering a vehicle on the overbridge (to the N of E52), that “because of the nature of forward visibility on the road, none of the vehicles were going that fast and would have been able to stop.”

<sup>478</sup> RL for ECC in Appendix 2 to his Proof.

<sup>479</sup> ECC-07

would vary from side to side, and might not be available for the whole of the route, but she did not consider that to be an issue, given the ATC data for the roads at issue.<sup>480</sup> In respect of E52, Ms Tilbrook's evidence was that there were sections of verge that walkers could step on to, and that sufficient areas could be achieved along that route for users to step off the carriageway, and, again drew attention to the level of traffic volumes (and speed) of vehicles using that route.<sup>481</sup>

448. Mr Kenning similarly confirmed that he had walked the routes, and been able to step off the carriageway when he encountered a vehicle – although he acknowledged that there was not a continuous verge, or always places to step off on the right hand side.<sup>482</sup>

449. NR would also highlight that Fordham Road is currently used by pedestrians, as part of the wider network, and, as pointed out by Ms Hobby in her PoE, forms part of the National Cycle Network.

450. NR maintains, therefore, that its proposed diversion routes are safe, and suitable.

451. Objections were also raised to the proposed realignment of existing footpath EX/152/7 from its definitive line to the field edge to the north including visibility for pedestrians emerging onto Chappel Road. Mr Kenning explained, in evidence, that this change had been made in response to consultation feedback, indicating that that was the route walked at present.<sup>483</sup> Ms Tilbrook confirmed that consideration would need to be given to the exact works at that location, but that she believed that could be accommodated. However, as Mr Kenning confirmed in XXC,<sup>484</sup> there was no *requirement* for that footpath to be moved to facilitate the closure of E52, and that if the Inspector (and subsequently the Secretary of State) was “*minded to say don't move it*”, that that would not impact on the closure of the level crossing.

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<sup>480</sup> The ATC data is at pg 42 (plan at pg 44) of ST's Appendices (NR 32-2)

<sup>481</sup> The ATC data is at pg 84 (plan at pg 86) of Tab 1 to ST's Appendices

<sup>482</sup> XXC in response to questions from MH

<sup>483</sup> AK XIC Day 30

<sup>484</sup> In response to questions from MG (Day 30)



452. CBC have also raised concerns about two sections of hedgerows which will be affected by the creation of the new PROW. CBC considers they are “important hedgerows” under the Hedgerows Regulations 1997 and have provided survey data which concludes that the hedgerows are “important”.<sup>485</sup> Those surveys do not identify, however, nor is there anything else in CBC’s documentation to explain which of the paragraphs in Schedule 1 to the Regulations they are considered to qualify under – and indeed, an explanation was only provided in CBC’s closings once that deficiency had been pointed out in XXC.

453. In respect of the hedgerows at E52, it appears there is a simply a difference of professional opinion as whether there are sufficient woody species to meet the criteria in para 7 of the Schedule. However, in respect of E51, it is far from clear what the “footpath (road) bridal-way” [sic] which the hedgerow is identified, in the survey, as being adjacent to, is. Mrs Forkin suggested, in XXC, that this was a reference to Jankes Green Lane. However, that is not (as far as NR) aware a road: (i) a bridleway or footpath within the meaning of the Highway Act 1980; (ii) a restricted byway within the meaning of Part 2 of the Countryside and Rights of Way Act 2000; or (iii) a byway open to all traffic within the meaning of Part III of the Wildlife and Countryside Act 1981, which are the relevant highways for the purpose of para 8 of Schedule 1 to the Regulations.

454. The surveys carried out on behalf of NR did not consider that the hedgerows qualified as “important hedgerows”. That was the conclusion reached in the EIA Screening Request Report, and in the further surveys carried out during 2017, as set out in the Mott MacDonald Technical Note on E51 Thornfield Wood and E52 Golden Square.<sup>486</sup>

455. There is clearly a difference of professional opinion between Mott MacDonald’s ecologists and CBC’s landscape officer (who Mrs Forkin confirmed was responsible for hedgerows for CBC). NR, unsurprisingly, submits that the conclusions reached by Mott MacDonald can confidently be accepted – not least, as the recent survey conclusions reflect those reported in the EIA Screening Request

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<sup>485</sup> At Appendix B to the PoEs in respect of E51 and of E52

<sup>486</sup> NR161

Report, which was subject to statutory consultation before the Secretary of State issued his screening direction.

456. The issue is not, in any event, determinative of the key matter to be determined in respect of E51 and E52 through this inquiry: namely, whether NR's proposed diversion route would provide a suitable and convenient replacement for existing users. NR does not dispute that is a matter to which the Secretary of State will no doubt have regard. However, the status of the hedgerow as an "important hedgerow" would not legally preclude NR from being able to implement the Order powers if confirmed. As highlighted during the conditions session, reg 6 of the Hedgerow Regulations 1997 provides that the removal of any hedgerow to which the Regulations apply "is permitted if it is required ... (e) for carrying out development for which planning permission has been granted or is deemed to be granted [except under the Town and Country Planning General Permitted Development Order 1995]".<sup>487</sup> Nor, in NR's submission, would the loss of these two, short, sections of hedgerow provide a basis for concluding that the crossing should be removed from the Order, if the Secretary of State was satisfied that the strategic case for the Order was established, and that the proposed diversion routes would provide a suitable and convenient replacement for existing users.

457. For the reason summarised above, and set out more particularly in NR's evidence, NR maintains that the Order may properly be confirmed in respect of these two crossings.

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<sup>487</sup> If the request for deemed permission is granted, permission would be deemed granted for "development which, in respect of any works or matters, is carried out within any of the limits or at any of the places authorised by the Order" (NR10). For the avoidance of doubt, it is NR's position that the exemption in reg 6 would therefore be engaged.

## **E54 Bures**<sup>488</sup>

458. E54 Bures is located in Bures Hamlet Parish on the Marks Tey- Sudbury line. It is acknowledged that it is a ‘low risk’ crossing – with an ALCRM score of D8. Similarly, that there are no immediate proposed enhancements in respect of this line. However, as discussed in respect of E51 and E52, that this is a lower risk crossing, on a branch line, with no immediate improvement scheme in prospect does not mean that there is no ‘case’ for their closure under this Order. The strategic objectives sought to be achieved through this Order apply equally to the branch lines as they do to the mainlines.<sup>489</sup>

459. NR’s proposal is to extinguish footpath EX/70/30 from The Paddocks (to the east of the railway) to Colne Road (to the west). Users of the level crossing would instead cross the railway via the existing underbridge on Station Hill. A new section of footway would be provided to the north of the underbridge, on the western side, to provide continuity of the existing footway across the verge at Water Lane junction and towards The Paddocks.<sup>490</sup> A new point was raised, by Mr Russell in his oral evidence around the deliverability of a new footway in that location. That point not having been raised with Ms Tilbrook, it was put to Mr Russell in XXC that Ms Tilbrook did not have any concerns around deliverability. The exact details, including as to demarcation of the appropriate crossing point, will be a matter for discussion with ECC during detailed design. The new footway will, in any event, have to be provided to the satisfaction of the highway authority before the crossing can be closed.<sup>491</sup>

460. The main issues raised at inquiry (save for the question of why the crossing was to be closed) centred on the loss of the link provided by footpath 30 and road

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<sup>488</sup> Order replacement sheet 38

<sup>489</sup> The inquiry will also recall, in this regard, the complications – and costs – likely to be involved in making this crossing active given the proximity to the station and the absence of any signalling currently on this section of the line – as explained by AK in XXC in response to questions from MG (Day 29)

<sup>490</sup> This is another location where the Ramblers Association have raised a concern as to whether the ‘verge’ in this location is, in fact, highway. This issue is addressed generally above, but NR would highlight that is not dependent on this land being highway verge for the works to be undertaken. The relevant land is included within Order limits.

<sup>491</sup> By reason of the proposed amendment to Article 14, discussed in the Modifications sessions on Days 42 and 44 of the inquiry.

safety concerns around the use of the Station Hill underbridge: specifically, visibility for users to the west of the underbridge.

461. The RSA carried out in respect of this proposal did not identify any road safety concerns.<sup>492</sup> Nor have highway officers from ECC raised any objections to the proposals.<sup>493</sup> Ms Tilbrook explained in oral evidence,<sup>494</sup> and has set out in a Technical Note,<sup>495</sup> the basis on which she was satisfied that there is sufficient visibility here to be confident that pedestrians will be able to cross Station Hill safely, to access the footway on the western side to pass through the underbridge. She has also set out in that Note why she considers Mr Russell's evidence to the contrary proceeds on an erroneous basis.<sup>496</sup> The Secretary of State is asked to prefer Ms Tilbrook's evidence in this regard.

462. Ms Tilbrook also explained how footpath 30 sits within the wider network today – and the links it provide to facilities such as the playing field and village hall (situated in the neighbouring parish of Bures St Mary). She also explained how the proposed diversion route links back into that network, and maintains access to those facilities. The proposed diversion route undoubtedly provides the same connections as that provided for by the level crossing. Further, when considering the (maximum) additional time the diversion route would entail – approx. 4-5 mins – Ms Tilbrook did not feel it would affect whether people would continue to walk the route.<sup>497</sup>

463. Again, others clearly disagree. NR maintains, however, that the Secretary of State may properly be satisfied that a suitable and convenient replacement route will be provided along the existing highway, with the works proposed, for existing users of the level crossing. The Order may therefore be confirmed without modification.

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<sup>492</sup> See Appendix D to ST's rebuttal PoE to the Ramblers Association (NR32-4-2)

<sup>493</sup> ST PoE para 2.40.15

<sup>494</sup> Day 29

<sup>495</sup> NR-174

<sup>496</sup> See, in particular, paras 3.2.8 – 3.2.10

<sup>497</sup> XXC in response to questions from MG, Day 29.

**E56 Abbotts (Ardleigh)**<sup>498</sup>

464. E56 is located on the GEML. It has been closed under TTRO since 2006.
465. The prolonged closure, and the fact it was not re-opened in 2012 when there had been a ‘commitment’ from NR that it would be, was a key part of Mr Coe’s evidence in respect of this crossing.
466. As Mr Kenning explained in XIC, in 2005 the level crossing was assessed and found to have insufficient sighting. Whistle boards were installed. There were then discussions with Tendring DC regarding the potential service of a noise abatement notice, as the whistle boards were deemed to be having an undesirable impact. NR therefore decided to close the crossing, and remove the whistle boards. Mr Kenning explained how, from 2011, NR was exploring the potential to use overlay technology to provide warning at level crossings, known as ‘Wavetrain’. It was trialled but found to have a number of fundamental flaws. Nationally, NR was also pursuing overlay MSL technology. E56 was chosen as a test site, but overlay MSL does not solve the problems at this site. Integrated MSL might be an option but that would involve moving a protecting signal already on the line, so that any train held at the signal would not stand back over the crossing. *“It would involve significant signalling alterations”*.
467. It is not the case, therefore, that NR has simply closed E56 and failed to consider how it can be reopened. Rather, this crossing illustrates the very real difficulties that can arise in finding the right solution to manage risks at a particular crossing – particularly in a complex area on the network.
468. Ms Tilbrook set out in evidence how NR’s proposal provide a diversion to both the north and south of the level crossing, providing flexibility for users depending on their origin and destination.<sup>499</sup> She explained that, whilst the diversion routes are longer than the route over the level crossing, this is not considered to be an undue inconvenience – due to the long distance nature of ongoing routes in the area.

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<sup>498</sup> Order sheet 39

<sup>499</sup> ST PoE para 2.41.11 – 2.41.12

Illustrative additional distances are set out at paras 2.41.13 – 2.41.16 of her PoE.<sup>500</sup> She further confirmed that she did not consider that there were any road safety concerns arising from the proposals.<sup>501</sup> ST highlighted, in particular, that where the new footpath emerged onto Little Bromley Road<sup>502</sup> was some way from the junction with the main road, and that the NR commissioned RSA had not highlighted any issues with use of the verge in this location. ECC has withdrawn its objection to this crossing.

469. NR maintains, therefore, that the Order may properly be confirmed without modification.

### **H01 Trinity Lane**<sup>503</sup>

470. At H01, NR proposes to downgrade the rights over the crossing from public road to public bridleway. Vehicular access would be maintained for authorised users. NR has explained how this would operate, in practice, by way of Note submitted to the inquiry: NR 153. This crossing was dealt with by way of written representations at the inquiry.

### **H02 Cadmore Lane**<sup>504</sup>

471. At H02, NR seeks to regularise the existing arrangement. The footpath crossing point has been closed, informally, by agreement with the highway authority (Herts CC). Through this Order, NR seeks to extinguish the PROW over the railway and to formally dedicate PROW over the footbridge over the railway which is already in use today. This crossing was dealt with by way of written representations at the inquiry.

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<sup>500</sup> ST also set out, in XXC, that in terms of someone using footpath 42 to access the village centre, “*there is very little difference in terms of distance to take the alternative route*”.

<sup>501</sup> In XXC. .

<sup>502</sup> Which can more clearly be seen from the Order plan than from the Design Freeze Plan

<sup>503</sup> Order sheet 1

<sup>504</sup> Order sheet 2

#### **H04 Tednambury**<sup>505</sup>

472. H04 is located on the WAML. It has an ALCRM score of B4.<sup>506</sup> It does not have sufficient sighting to meet industry standards in all directions, due to a bridge parapet blocking sighting on the down side looking down, and is fitted with whistle boards and COVTEC by way of mitigation.<sup>507</sup> It is one of the series of crossings fitted with whistle boards on this section of the WAML (running from E02 in the south to E13 to the north).

473. NR's proposal at this crossing is to extinguish the section of footpath Sawbridge 3 from the point where it meets the River Stour to a point just to the east of the level crossing. Users would instead cross the railway via an existing bridge, on a private track, with new sections of PROW created (i) along the eastern boundary of the railway running south to the private track (ii) along the private track itself; and (iii) running broadly south west in field edges to connect to the existing bridge over the River Stour.

474. Mr Edmonston, the landowner affected by the proposed new PROWs, does not object to the closure of the level crossing *per se*. He does, however, object to the proposed diversion route. He has proposed an alternative route, which he puts forward as a modification to the Order.

475. Ms Tilbrook explained in evidence why she considers that the new PROWs proposed by NR would provide a suitable and convenient replacement for existing users of the level crossing. In respect of potential flooding concerns, she confirmed in XIC that this had been considered through the assessment work undertaken to prepare the EIA Screening Request Report, and specific details issued by the design team to the EA and Herts CC, who had not raised any concerns. Ms Tilbrook also confirmed that the new footpath would sit within a mixture of flood zone 2 and 3 – and that the existing footpaths were impacted by the same flood zones. Mr Kenning and Ms

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<sup>505</sup> Order sheet 8

<sup>506</sup> As set out at para 42 of DF's supplementary PoE, following the revised routine risk assessment on 23/4/18, the ALCRM score increased from B5 to B4 with a corresponding increase in FWI.

<sup>507</sup> DF PoE para 53.13

Tilbrook both explained why the route proposed in the Order was taken forward in preference to the alternative now proposed by Mr Edmonston.<sup>508</sup>

476. Whilst NR maintains that the Order proposals would provide a suitable and convenient replacement for existing users for the purposes of s.5(6) TWA, it has also confirmed, in its response to the consultation on Mr Edmonston's proposal, that it would not object to the Order being modified in accordance with that proposal, if the Secretary of State were to so direct.

477. NR maintains, therefore, that the Order may properly be confirmed, either without modification or with the modification promoted by Mr Edmonston, if the Secretary of State is so minded to direct.

#### **H05 Pattens, H06 Gilston & H09 Fowlers**<sup>509</sup>

478. H05, H06 and H09 were addressed together at the inquiry, as they share a common alternative crossing point of the railway. They are located on the WAML. The objections to H09 proceeded by way of written representations (neither Mr Carpenter (Obj 162) nor the Herts & Middlesex Wildlife Trust (Obj 137) wishing to appear). Similarly, Mr Carpenter's objection to H06 was dealt with by way of written response, summarised in Mr Billingsley's PoE.<sup>510</sup>

479. NR's proposals involve diverting the users of H05 and H06 to an existing underpass under the railway, with the creation of new sections of footpath to the west and east of the railway, and granting a private right of way through the underpass<sup>511</sup> to Mr Carpenter for the benefit of that part of his landholding which currently enjoys the benefit of a private right of way over H09 Fowlers.

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<sup>508</sup> In oral evidence, Day 31

<sup>509</sup> Order sheet 9

<sup>510</sup> NB PoE Section 8.24 (pages 70-72).

<sup>511</sup> In his objection, Mr Carpenter expressed concerns about headroom through the underpass. Mr Kenning confirmed that there is some restriction on headroom at H09 today, due to overhead power lines that need to be protected. Mr Kenning also confirmed in XIC that whilst concerns had been raised regarding restricted height in the underpass, nothing had been put forward to NR to suggest that a specific height was required in order to continue with the enjoyment and maintenance of that parcel of land.



480. The Ramblers have raised concerns about the height of the underpass, and conditions underfoot, both through the underpass and on the proposed new PROW to the east of the railway.

481. In respect of the underpass, Ms Tilbrook highlighted the further details set out in the Design Guide<sup>512</sup>, including the proposal to install a 3mm mesh to avoid anything interfacing with a train passing over head. Even allowing for the inclusion of the mesh, and the need to carry out some raising of ground levels through the underpass (to ensure appropriate water shed), she was confident that NR could achieve 1.9m of headroom through the underpass.<sup>513</sup>

482. Ms Tilbrook also confirmed that, whilst concerns had been expressed about the new PROW passing through the flood zone, the existing footpaths passed through the same terrain:<sup>514</sup> i.e. this is not a new issue that is being introduced with the proposed diversion route. In Mr Glass's oral evidence, it appeared that the concerns regarding flooding really centred on 'perception' and whether people would be prepared to walk through to the new PROWs if it was "quite boggy and wet". Whilst NR acknowledges that perception, and personal choice, are of course aspects of whether an individual may choose to use a particular route, it is submitted that the concerns raised in that respect here do not provide a proper basis for concluding that the proposed diversion routes would not provide suitable and convenient replacements, for the purposes of s.5(6) TWA 1992.

483. Ms Tilbrook also confirmed that she did not see any cause for concern in the underpass being used both by pedestrians and also by agricultural vehicles, noting that such usage was anticipated to be low by reference, inter alia, to Mr Fisks' evidence as to the usage of H09 today.<sup>515</sup>

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<sup>512</sup> NR12 pages 44 & 45

<sup>513</sup> XIC Day 17. Ms Tilbrook also responded to the specific matters raised in Mr Glass's calculations set out in RA-09, and confirmed, in her Rebuttal proof to the Ramblers (NR32-4-2) at para 4.7 (pg 6) that Herts CC had agreed in principle to reduced headroom at this location.

<sup>514</sup> XIC Day 17. She confirmed in XIC that whilst the underpass was at a lower level, there was no concern about 'flash flooding events' at this location.

<sup>515</sup> XIC Day 17

484. There is a clear disagreement between the Ramblers Association and NR as to the convenience and directness of the route, having regard (inter alia) to the longer length of the diversion.<sup>516</sup> For the reasons set out by Ms Tilbrook in her evidence,<sup>517</sup> NR maintains that the proposed diversion routes are suitable and convenient, when considered in the context of the purpose and characteristics of the existing use.

485. Herts & Middlesex Wildlife Trust have raised a number of concerns in correspondence. These relate both to the creation of the new PROW on the Trust's land, comprising part of Thorley Wash SSSI,<sup>518</sup> and as to the potential implications of the extinguishment of private rights over H09 for the purpose of accessing the SSSI.

486. NR has responded to those concerns in a series of correspondence, which has been provided to the inquiry.<sup>519</sup> In short:

- (i) The Wildlife Trust does not enjoy the benefit of any legal rights over H09 to access its landholding.<sup>520</sup> The closure of H09 does not, therefore, affect any legal rights held by the Trust;
- (ii) Although Mr Carpenter enjoys a legal right of way over H09 for the benefit of his own land, he does not have the power to extend that right to other parties for the benefit of their own land;<sup>521</sup>
- (iii) NR is aware of a 'pinch point' within the Trust's landholding which can be problematic in terms of accessing the northern part of the Trust's site during times of flood. That is capable of remedy within the

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<sup>516</sup> Mr Glass did agree in XXC, however, that the current route was a 'leisure' route (as opposed to a 'utility' route), that there were a number of options for where people might go or how long their route was, and that the proposed routes would retain the ability for people to undertake circular walks.

<sup>517</sup> PoE section 2.47 and in XXC

<sup>518</sup> Mr Carpenter owns a separate parcel of land contained within the SSSI, being that parcel immediately to the south of the underpass and bounded by the railway to the west and the small watercourse to the south and east.

<sup>519</sup> NR's letter of 13 December 2018 (responding to the letter submitted to the inquiry shortly before H09 was heard) is NR156.

<sup>520</sup> NR 156. Confirmed by AK in XIC Day 17

<sup>521</sup> AK confirmed this was his understanding in XIC on Day 17

Trust's own landholding. Nothing that NR is proposing through this Order affects the Trust's ability to address that existing problem within their estate<sup>522</sup>;

- (iv) The benefit of the right of way over H09 does not extend to that part of Mr Carpenter's landholding which is within the SSSI (ie that part to the south of the underpass);<sup>523</sup>
- (v) NR would, however, be prepared to include that parcel of Mr Carpenter's land within the wider landholding which would be benefited by the grant of a replacement right of access through the underpass;<sup>524</sup>
- (vi) NR has (conditionally) offered to make a payment of £5000 to the Trust by way of compensation towards the cost of future ditch works, which may be required as a result of the Order proposals.<sup>525</sup> NR highlights that this reflects the fact that the Trust, as landowner, would be entitled to seek compensation for creation of the new PROW and any losses resulting from temporary use of the land under the provisions of the Order;
- (vii) NR has assessed the potential impacts of the Order proposals on the SSSI and concluded that the Order proposals would not give rise to any likely significant effects.<sup>526</sup> Following consultation with statutory bodies – including Natural England – the Secretary of State issued a screening direction confirming that a full EIA was not required.<sup>527</sup> There need be no cause for concern, therefore, that the Order proposals could potentially impact, adversely, on the SSSI.

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<sup>522</sup> AK in XIC Day 17

<sup>523</sup> NR 126

<sup>524</sup> AK XIC and confirmed in further correspondence to the Wildlife Trust in January 2019

<sup>525</sup> See NR 126

<sup>526</sup> EIA Screening Request Report – NR 155

<sup>527</sup> NR 11

487. Network Rail maintains, therefore, that the Order may properly be confirmed without modification.

**H08 Johnsons**<sup>528</sup>

488. No objections were received to the closure of this crossing. It was dealt with by way of written representations at the inquiry.

**HA01 Butts Lane**<sup>529</sup>

489. HA01 is located in the London Borough of Havering on the Romford-Upminster branch line. Contrary to what is suggested by Mr Atkin (Obj/176), whilst this line forms part of the London Overground, it is NR and not TfL which owns, and is responsible for, the railway infrastructure on this line.<sup>530</sup>

490. NR's proposals at this crossing are to extinguish the public rights of way over footpath 170 from Burnway (to the south) to Maybush Road (to the north). Users of the crossing will instead cross the railway using the existing green overbridge – formerly a road bridge, but now only carrying a footpath – to the east of the crossing. Ms Tilbrook's evidence sets out why NR considers the existing highway provides a suitable and convenient replacement route for existing users.<sup>531</sup>

491. This crossing was dealt with by way of written representations at the inquiry.

492. NR maintains that the proposed diversion route, via existing highway, provides a suitable and convenient alternative for existing users. The Order properly be confirmed without modification

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<sup>528</sup> Order sheet 10

<sup>529</sup> Deposited Order Plans Sheet 55.

<sup>530</sup> As Mr Kenning confirmed on Day 38 of the inquiry

<sup>531</sup> ST PoE Section 2.49 (pg 103-105)

### **HA02 Woodhall Crescent**<sup>532</sup>

493. HA02 is located in the London Borough of Havering on the Romford-Upminster branch line. As with HA01 whilst this line forms part of the London Overground, it is NR and not TfL which owns, and is responsible for, the railway infrastructure on this line.<sup>533</sup>

494. As Ms Tilbrook identified when this crossing was discussed at inquiry,<sup>534</sup> users of the existing level crossing have the option to cross the railway either via the segregated footbridge to the east (as shown on the design freeze plan) or via the footbridge to the west (the proposed crossing point for users of HA01). There is access to St Andrews Park to the south of the railway from both east and west. The diversion route to the east was shown on the design freeze plan as this was the shorter route. This crossing is also within Part 2 of Schedule 2 of the Order.

495. NR maintains that the proposed diversion route, via existing highway, provides a suitable and convenient alternative for existing users. The Order properly be confirmed without modification.

### **HA03 Manor Farm and HA04 Eves**<sup>535</sup>

496. HA03 and HA04 are located in the London Borough of Havering on the Upminster to Grays line. HA03 has not existed on the ground for some years – it is thought since the M25 was constructed in the early 1980s.<sup>536</sup> It is therefore classified as a ‘sleeping dog’ by NR.<sup>537</sup> HA04 is located to the south of HA03 to the south west of the M25. Sighting is currently compliant, although there have been issues with insufficient sighting in the past, due to vegetation.<sup>538</sup>

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<sup>532</sup> Order sheet 55

<sup>533</sup> As Mr Kenning confirmed on Day 38 of the inquiry

<sup>534</sup> Day 39. It was dealt with by way of written representations, no objectors choosing to appear

<sup>535</sup> Order sheets 53 and 54

<sup>536</sup> AK PoE para 57.2

<sup>537</sup> Mr Fisk confirmed in XIC that it does not have an ALCRM score other than M13 as it was closed before ALCRM was introduced.

<sup>538</sup> DF in XIC

497. NR's proposals are to extinguish footpath Havering 251 from Pea Lane to the west of HA03 to the M25 to the east, and to extinguish footpath Havering 252 from the point where it meets Dennis Road to the south west of HA04 to the point where it meets footpath Havering 251 to the east.
498. Users of the crossings will instead cross the railway at Ockendon Road overbridge to the north or Dennis Road to the south, via new sections of PROW to the west of the railway and use of existing highway.
499. The main issues raised by objectors at the inquiry focused on the use of Ockendon Road bridge, and, for Mr Mee (Obj 13) the creation of new PROW on his land.
500. Mr Kenning confirmed, in XXC,<sup>539</sup> that although extinguishment of the PROW over the level crossings had been considered without provision of new PROW (given the levels of usage of the crossing), having regard to potential issues arising from on-road walking on Pea Lane and Ockendon Road, it was concluded, on balance, that the new field-edge PROW should be provided. Mr Kenning also confirmed that NR would continue to engage with Mr Mee during detailed design (if the Order is confirmed) regarding the concerns he had expressed around (eg) trespass by motorbikes and fly-tipping.
501. In respect of Ockendon Road overbridge, Ms Tilbrook explained that the new field-edge footpaths had been introduced to the east and west of the bridge in response to the issues raised in the NR commissioned RSA, and to mitigate those concerns by reducing the length of road walking along Ockendon Road. She explained that, by bringing pedestrians out onto the bridge closer to the parapet, this assisted in addressing the concerns with visibility over the bridge and that, although there would be a short section of around 7m on either side where visibility was more limited,<sup>540</sup> this would improve as users approached the crest. She confirmed that whilst the

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<sup>539</sup> In response to questions from Mr Creed on behalf of Mr Mee, Day 27

<sup>540</sup> Ms Tilbrook confirmed, in Re-IX, that there would be no point when a car could not see a pedestrian because he/she was on the other side of the crest – and that the car would not have to be on the bridge to see a person walking over it

available visibility did not meet the design standards in DMRB within that short section of more limited visibility, the stopping sight distances set out in the Highway Code could be achieved. She acknowledged that careful consideration would need to be given in detailed design to the ‘landing’ where pedestrians were brought out onto the bridge, but highlighted that any such proposals would need to be certified by the highway authority, and subject to a Stage 2 RSA. If appropriate, warning signs could be introduced, to alert drivers to the potential presence of pedestrians on the bridge.

502. Mr Russell disagreed – although he confirmed in XXC<sup>541</sup> that his appraisal of the bridge had not been based on his having walked over to, or stood at the parapet location. He acknowledged (also in XXC) that the crest of a hill can have a greater impact on visibility, the further away you stand from it.

503. NR has set out in its evidence why it considers that a suitable and convenient replacement can be provided at this location, having regard to its context and the purpose for which the crossings are (or would be) used today. It acknowledges, however, that the Inspector’s recommendations on this crossing will no doubt be informed by observations from site. NR would merely highlight, in this regard, that the situation on the ground today is not as proposed under the Order and ask that this is borne in mind.

504. NR maintains that the Order may properly be confirmed without modification.

**T01 No 131**<sup>542</sup>

505. Crossing T01 is situated within Thurrock on the Tilbury Loop of the Fenchurch Street to Shoeburyness line. It does not have sufficient sighting to meet industry standards, and is fitted with whistle boards -and, briefly, COVTEC - by way of mitigation.<sup>543</sup>

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<sup>541</sup> XXC Day 27

<sup>542</sup> Order replacement sheet 52

<sup>543</sup> DF PoE 62.14. DF explains that the COVTEC system was stolen within weeks of being installed.

506. NR's proposal is to extinguish footpath 145 from Tank Hill Road to the west to a point where it meets an existing track to the east. Users will instead be diverted the existing overbridge on New Tank Hill Road, via a new section of footpath connecting footpath 145 to the existing highway network. No safety concerns were raised in the RSA.<sup>544</sup> The proposals have been amended, since the application was made, to slightly amend the route of the new PROW in accordance with a request made by the landowner.<sup>545</sup>

507. Ms Tilbrook set out in evidence how the current route passing over the level crossing sits within the wider network;<sup>546</sup> that the proposed diversion route would maintain east/west connectivity; that the diversion of footpath 145 onto the flood bund would in fact improve the PROW network in times of wet weather; and that it was not considered that the additional distance (and time) that the maximum diversion route would involve would deter people from using it. She accepted, in XXC, that there would be a change in the nature of the walk, but noted it was important to put that in context. The current route interfaces with both HS1 and the railway. The arterial road must be crossed unaided - without formal pedestrian crossing provision. Even on the western side of the railway users would be running alongside the industrial estate – walkers are “channelised”. As regards HS1, NR strongly objects to the suggestion, raised first in XXC of AK (Day 35) and maintained – in spite of the objection made on that occasion – in the Ramblers' Closings (§291), that “*It is apparent that HS1 .... has specifically catered for the pedestrian access point at TO1 by providing an underpass.*” No evidence was adduced by the Ramblers to support this contention during the inquiry. It is, at best, speculation.

508. Mr Bird disagrees with Ms Tilbrook's appraisal. However, NR maintains that on an objective assessment of the proposed diversion route, the Secretary of State may properly be satisfied that it would provide a suitable and convenient replacement for existing users. The Order may therefore be confirmed with the proposed modification.

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<sup>544</sup> ST PoE 2.52.12

<sup>545</sup> This is referred to in AK's PoE at para 59.7, and confirmed in XIC (Day 35)

<sup>546</sup> See the wider mapping at pg 510 of ST's Appendices (Tab 9) [NR32-2]



#### **T04 Jefferies**<sup>547</sup>

509. T04 is located in Thurrock on the Tilbury Loop of the Fenchurch Street to Shoeburyness line. It does not have sufficient sighting to meet industry standards in all directions, and was therefore fitted with an MSL overlay system – with the implications for maintenance discussed in Mr Fisk’s proof.<sup>548</sup>

510. As with E05 and E15, NR maintains that removal of this crossing – despite the fact it is protected by MSL and not merely reliant on users to ‘stop look and listen’ – is entirely consistent with the strategic objectives which underpin this Order.

511. NR’s proposals at this location are to extinguish footpath 32 from the eastern side of the level crossing to where it meets the A13. A new footpath will be dedicated along the eastern boundary of the railway, with new sections of PROW created along the southern and western boundaries of the land bounded by the railway, A13 and overbridge, and running south to connect into footpath 36. Steps will be provided up to Manor Way,<sup>549</sup> and an end panel of the noise barrier removed to enable that connection to be created.<sup>550</sup> A new footbridge will be provided to enable crossing of a water course beneath the bridge: a 3m wide bridge is proposed (capable of carrying a bridleway or cycle path) although the new PROW will only carry footpath rights, so as not to preclude any future proposals on behalf of the highway authority to create a cycleway in this location.

512. Ms Tilbrook confirmed, in evidence, that NR considered a diversion route was required in this location, despite the concerns raised by Mr Benton regarding low usage of the crossing, and the issues presented by the A13 in terms of onward routes to the west. She explained, further, why the southern link was proposed in addition to the route utilising Manor Way both to provide a step-free route for users, and,

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<sup>547</sup> Order sheets 59 & 60

<sup>548</sup> DF PoE para 63.13 & 14

<sup>549</sup> Further details were provided in the letter sent to Mr Benton’s agent ahead of the hearing of the crossing – NR154

<sup>550</sup> Further details are provided in NR’s response to Thurrock Council’s objection letter, dated 6<sup>th</sup> September 2017 (a copy is in the correspondence file: NR112) Ms Tilbrook confirmed in XIC (Day 34) that the modelling carried out had shown that there would be no impact on noise levels at the residential properties as a result of removal of this end panel.

acknowledging that people might be using the crossing from the south of Manor Way (the points available to access the wider network are limited in this location), this southern link would obviate the need to travel north to Manor Way to head south again.

513. The Ramblers take issue with the accessibility, length and quality of the route. Ms Tilbrook explained in evidence why she considered the proposed routes were suitable and convenient, having regard to the alternatives provided by Manor Way and the slightly longer step-free access; how the existing route fitted into the wider network; and the wider journeys that would be being undertaken. She also confirmed that, as regards those undertaking shorter walks, the diversion should not be seen as the distance people had to travel in order to undertake the walk they were doing at present: the diversion route was, itself, the same nature of walk.

514. Mr Benton objects to the creation of the new PROW on his land. He has suggested an alternative which would avoid the need for creation of those new PROW,<sup>551</sup> with users instead being diverted via footpaths 36, 83, 34 and having to negotiate the roundabout to the west of Manor Way. Ms Tilbrook explained why she did not consider that would provide a suitable and convenient alternative. This is a large, grade separated junction, with really no pedestrian facilities (there are, for example, no traffic lights regulating pedestrian movements: those walking the route today are dependent upon the vehicular traffic lights). She highlighted that concerns had been raised by the highway authority when this was suggested as an alternative put forward during consultation.<sup>552</sup>

515. NR maintains, therefore, that its proposed diversion route would be a suitable and convenient replacement for existing users. That proposed by Mr Benton would not. The Order may properly be confirmed without modification.

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<sup>551</sup> Albeit there would still be the need to dedicate the new PROW to the east of the railway.

<sup>552</sup> See the meeting minutes at Tab 5, pg 404 of ST's Appendices [NR 32-2] ST confirmed in XIC that the 'alternative route' referred to in the meeting minutes is that proposed by Mr Benton.

## **T05- Howell's Farm**

516. T05 is situated in Thurrock on the Grays to Pitsea line. NR's proposal is to extinguish a short section of footpath 23 as it runs over the level crossing to the B1420. Existing users will be diverted to cross the railway either at Fobbing level crossing (an AHB crossing) to the east, or via Southend Road to the west. A new section of PROW running alongside the southern boundary of the railway will be created to connect footpath 23 to Southend Road, where steps will bring users up to road level.
517. The main objections raised at inquiry related to road safety, the length (and nature) of the proposed diversion routes, and impact on affected landowners.
518. As to road safety concerns, these primarily related to the use of road walking in the vicinity of Fobbing level crossing, and along the B1027.
519. As Mr Fisk confirmed in XIC, Fobbing level crossing is used by pedestrians, as well as vehicles, today. The physical set-up of the level crossing is similar to that discussed on Pork Lane (E48 Wheatsheaf), with footways either side demarcated by white lines. There are footway approaches to the crossing on all sides – save for a section to the south where there is a short section with narrow verge and no footway. This was identified in the NR commissioned RSA, and the provision of a footway recommended. However, as Ms Tilbrook explained in her evidence,<sup>553</sup> given the existence of the footway on the other side of the road, the traffic speeds, levels and opportunities to cross, the wider journeys being undertaken, and how that section of the highway was being used today, it was considered that the proposal could be put forward without provision of a new footway. Ms Tilbrook also explained, that provision of a new footway would be difficult to achieve in this location, without affecting the width of the carriageway – or without the need for compulsory acquisition of private land.

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<sup>553</sup> XIC and XXC – Day 35

520. NR maintains that its proposals for this part of the diversionary route have struck the balance correctly between the need to provide a suitable and convenient replacement for existing users of the railway, and the interests of other affected parties.

521. In respect of the B1027, it appeared that Mr Russell's particular concern, in this regard, was a short section of the B1027 immediately to the west of where footpath 23 meets the B1027. That is not part of the diversion route shown in the design freeze plan. As Ms Tilbrook explained in her evidence, the point where footpath 23 currently meets the B1027 is not a destination. It is not the start, or end, point of a journey – as is clear from the design freeze plan itself.<sup>554</sup> There is simply no reason why a person diverted from the level crossing would need to walk from the western end of the B1027 to the point where footpath 23 is extinguished (or beyond) – or vice versa – given that proposed diversion routes are provided to both the east and the west. The diversion route shown on the design freeze plan represents, realistically, the 'replacement' which is required for closure of the level crossing. There is simply no justification for provision of a new footway in this location. As regards Mr Russell's proposal that commuted sums should be paid to the highway authority for maintenance in this location, as he agreed in XXC, if the highway authority considers that additional maintenance is required as a result of the Order proposals (with an additional cost) no doubt it will ask NR for commuted sums in respect of the same.

522. Contrary to what was suggested by Mr Bird in his PoE,<sup>555</sup> Ms Tilbrook explained that she considered the purpose for which people would be using footpath 13 today would be to access the wider footpath network – specifically noting the PROW network to the west and One Tree Hill Country Park to the north of the junction with the A13, rather than for the pleasure walking the footpath itself.<sup>556</sup>

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<sup>554</sup> This section of route is also potentially a section that existing users are having to walk today – depending on their origin/destination. As at E28, it is questionable on what basis a section of the route being used by existing users of the level crossing today would suddenly become a deterrent to existing users once the crossing was close.

<sup>555</sup> At para 12

<sup>556</sup> See the wider mapping at pg 512 of Tab 9 to ST's Appendices [NR 32-2]

523. That assessment reflected feedback received during consultation. The proposed diversion route to the west was included in the Order proposals in response to that feedback.<sup>557</sup> NR maintains that the proposed diversion routes provide the same (or indeed, arguably better) connectivity as provided by the level crossing today, and serves the same purpose. In the context of the purpose for which the level crossing is considered to be used, and how it sits within the wider network, NR maintains that any additional distances involved in the diversion route are acceptable, and there is no basis for concluding that the additional distances, or environment through which users are routed, mean that the proposed diversions would not provide suitable and convenient replacements for existing users.

524. Mr Bird also raised concerns about use of the overbridge on Southend Road. No issues were raised with the use of this bridge by the NR commissioned RSA, or indeed raised by Mr Russell. Ms Tilbrook confirmed that there were no safety concerns regarding use of this bridge; that there was adequate width for pedestrians to walk along the footway of the bridge; and there were no concerns about those additional users being able to be accommodated on the footway. She also did not share Mr Bird's concerns about perception of safety in this location.

525. In respect of affected landowners, there are two landowners affected by the proposed new PROW. NR's response to Mr Keeling (Obj 194) is summarised in Mr Billingsley's PoE.<sup>558</sup> Mr Kenning confirmed in XIC that there were further measures that could be explored in detailed design to address concerns around trespass, but that NR would be "*more than happy*" to work with the landowner as well as the highway authority to mitigate the concerns identified.

526. Mr Kent is the landowner affected by the section of the new PROW immediately to the south west of the level crossing. He did not submit an objection to the TWAO Unit, despite having been served with the relevant statutory notice in April 2017<sup>559</sup>, and despite his clear objections to NR's proposals. He articulated those concerns on Day 40 of inquiry, having been given an opportunity to attend as an affected landowner, even though he was not a statutory objector. NR confirmed,

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<sup>557</sup> ST PoE para 2.54.19

<sup>558</sup> Section 8.28, pgs 75-77

<sup>559</sup> As confirmed by NR on Day 40

through counsel, that the concerns raised by Mr Kent as to the risk of trespass on his land was something that could properly be considered during detailed design – as it had indicated in respect of Mr Keeling’s concerns.

527. Mr Kent also raised concerns about publicity for the proposed closure. NR outlined, by reference to the Statement of Consultation, the steps which had been taken to publicise both the consultation events, and the application itself, within Thurrock generally and in the vicinity of the crossing. There is no basis for concluding that there has been any failure to comply with relevant procedures in this regard.

528. NR maintains that the Order may properly be approved without modification

## **C The Order, planning conditions, and other consequential matters**

529. Planning conditions were discussed on Days 41 and 43 of the Inquiry. Revised conditions were tendered to the inquiry prior to the conditions session which reflected the position as at that date, which included the amendments that had been made as a result of consultation with the local planning authorities (and the highway authorities) during 2017 and 2018.

530. There was broad agreement as to the proposed revised conditions at the inquiry save in respect of (1) the need for an archaeology condition pertaining to specific plots for E51 and E52, and (2) the proposed working hours condition. Wording (or, for the working hours condition, revised wording) was circulated following the discussion on Day 41, and is now understood to be agreed between all of the parties who attended that session. NR has also circulated the proposed revised conditions to the other local planning authorities and highway authorities for their information.

531. In respect of the Order itself, it was agreed that a modification was required to Article 14 to ensure that crossings E43 and E54 (which are contained in Part 2 of Schedule 2 to the Order) could not be closed until the proposed works to existing highway had been provided to the reasonable satisfaction of the highway authority. Agreed wording has been provided to the Inspector in this respect (and is included in the filled order submitted by NR today).

532. It was also suggested by the Ramblers Association that a similar amendment needed to be made to Article 13 to ensure that crossings in Part 1 of Schedule 2 could not be closed until both the new PROW to be created and any works to existing highway had been certified as being to the reasonable satisfaction of the highway authority. NR does not consider such an amendment to be necessary - and draws attention to NR118 which sets out that the side agreement between ECC and NR provides that that is what must happen.

533. It has also explained, in its response to the Ramblers' Note on outstanding issues relating to the filled up order (NR185) why it does not consider this issue arises, in practice, in respect of the crossings outside Essex identified in that Note.

534. Without prejudice to that position, however, a form of wording has been provided to the inquiry which could be inserted into Article 13 to address this concern, if the Secretary of State considered such amendment to be necessary.<sup>560</sup> It was common ground between the parties attending the Modifications session that that wording would address the concern expressed by the Ramblers Association.

535. A number of other concerns are raised by the Ramblers Association in their Notes on the filled order. NR's response is set out in NR185, as amplified during the Modifications session. In practice, what appears to sit behind a number of the concerns raised is a surprising lack of confidence that matters such as approval of the detailed design of the proposed new PROW, or securing (and proper expenditure) of commuted sums can properly be left to the relevant highways authority. There is simply no basis for suggesting that the body to whom Parliament has entrusted responsibility for the highway and PROW network cannot be relied upon to properly fulfil its functions and duties in respect of the matters arising from this Order (if made). There is no need, nor is there any proper basis, for the Order to make any provision to the contrary.

536. There is also an outstanding objection from the EA in respect of the protective provisions in Schedule 13 of the draft Order.<sup>561</sup> NR's position is set out in two notes previously submitted to the inquiry: NR113 and NR184. In short, it remains NR's position that there is no justification for replacing the provision for deemed consent with a provision for deemed refusal where a response is not received within 28 days.

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<sup>560</sup> See NR 185

<sup>561</sup> As regards provisions in the Order relating to statutory undertakers more generally, NR would highlight the provisions in Article 13(5) and 14(4)



537. NR has provided a copy of the Order revised to reflect the modifications which it asks the Secretary of State to make, together with revised plans. NR confirms that where it seeks modification to the order proposals (as opposed to provisions within the Order per se), it has consulted on those proposed changes in accordance with the procedure set out in NR104. An explanation for the modifications proposed since the application was made has been provided in two notes, NR127 and NR169, as supplemented orally during the Modifications session. The two main changes contained in the filled up Order submitted today are the insertion of a new Article 14(5) (as discussed above) and the removal of crossing E12.

538. To assist the Secretary of State, NR has also provided information as to the changes that would likely need to be made to Schedules 2 and 5 of the Order if modifications pursued by other objectors to the Order were to be recommended to the Secretary of State. To be clear: NR is not asking that those modifications be made. It will clearly be for the Secretary of State to decide in any particular case whether a modification could be made, consistent with guidance in para 3.48 of the TWA Guidance, and on its merits. NR has provided its responses to the modifications on which it has been consulted to the inquiry, and its position is confirmed earlier in these closings in respect of the relevant crossings.

## **D Conclusions**

539. There is a compelling case for this Order. It will deliver material safety benefits. It will deliver material operational efficiencies on the railway. It will allow for future enhancements of the railway network.

540. In order to operate a 21<sup>st</sup> century railway, capable of delivering the growth sought both nationally and within Anglia, NR needs to address the issues presented by level crossings. This is particularly the case within Anglia, which, when the application was made, had 771 level crossings, with a total FWI of 2.95 - which is 25% of the overall national level crossing risk.<sup>562</sup>

541. The detail of the Order scheme has been carefully developed. The Order proposals have been carefully appraised, and subject to extensive consultation.

542. Clearly, there will be impacts arising from the Order, for users of the crossings and for those whose land is subject to new PROW or other exercise of Order powers. However, when considered against the very real strategic benefits which would be achieved by this Order, it is NR's position that any such impacts are very clearly outweighed.

543. All procedural requirements have now been met.

544. The Inspector is invited to recommend to the Secretary of State that the Order be made in the form sought, and the Secretary of State is respectfully requested to agree.

JACQUELINE LEAN

12 February 2019

Landmark Chambers  
180 Fleet Street  
London, EC4A 2HG

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<sup>562</sup> Dr Algaard PoE paras 2.2.1 and 2.3.2