

**TRANSPORT AND WORKS ACT 1992****TRANSPORT AND WORKS (INQUIRIES PROCEDURES)
RULES 2004****THE NETWORK RAIL (LEEDS TO MICKLEFIELD
ENHANCEMENTS) ORDER 20XX**

PROPERTY & OPEN SPACE CERTIFICATES**REBUTTAL EVIDENCE****Benjamin Thomas**

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The Network Rail (Leeds to Micklefield Enhancements) Order

CD 7.16 Property & Open Space Certificates - Summary Proof of Evidence

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1 INTRODUCTION

- 1.1.1 This rebuttal evidence has been prepared on behalf of Network Rail in response to proofs of evidence and additional submissions on behalf of OBJ 09, OBJ 07 and Peter Freeman.
- 1.1.2 It is not intended that this rebuttal proof should address further points that witnesses for Network Rail have previously covered in their evidence.
- 1.1.3 In the sections below, I have summarised in bold text the points raised by each objector which is being addressed by the paragraphs in plain text that follow.

2 OBJ 09 – MAKINS ENTERPRISES LIMITED / CHRIS MAKIN

- 2.1.1 This rebuttal responds to land and property issues raised by the additional Letter of Objection dated 5th February 2024, together with the matters raised in the Addendum to Statement of Case of the same date. I would note that similar points are raised in both documents, as such I have addressed these documents together.
- 2.1.2 **Point 1: Under Article 34 (4) of the Draft Order, Network Rail are proposing in relation to Works No. 6 (diversion of gas main at Ridge Road) that the powers under the Order are to be transferred to Northern Gas Networks (NGN) without the need for Secretary of State Consent. It is considered by the Objector that this not a fair and reasonable approach.**
- 2.1.3 **Point 2: NGN have been in separate discussions with Obj 09 regarding the diversion of the gas main for 10 years, as such this work should not form part of the Order.**
- 2.1.4 Responding to both Points 1 and 2, the diversion of the gas main is required for TRU in order to enable the electrification of this section of the railway to take place. The current gas main runs over the current railway via a pipe bridge next to the road bridge, which needs to be removed and in order for the overhead lines being installed because there is not sufficient clearance under the existing structure. Refer to the Proof of Evidence of Paul Harrison for more details **(CD 7.05)** As a result the works are in the Order not to facilitate a long-standing NGN aspiration, but rather to facilitate a key part of the TRU project.
- 2.1.5 The works nevertheless are to be undertaken by NGN, being the statutory body responsible for the gas network in this location.

- 2.1.6 It is unclear from Point 1 what concern OBJ 09 has in relation to the transfer of the powers to NGN. NGN will be responsible for carrying out the gas diversion works, as permitted by the Order (if made). Given these works are to be undertaken by a third party rather than Network Rail, it is common practice for a TWAO to specifically identify a third party that will have the ability to rely on the powers under the Order for the purposes of carrying out the identified works. NGN would still be obliged to comply with the requirements of the Order in the same way that Network Rail would have to. This amendment therefore makes no changes to the manner in which the works will be undertaken, it simply allows for them to be undertaken by a third party to be identified now in the Order and without the need for a further consent by the Secretary of State in order for the powers to be exercised by NGN rather than Network Rail.
- 2.1.7 **Point 6: A request is made for a soil management plan to be agreed with OBJ 09 prior to the Order being given consent.**
- 2.1.8 **Point 7: A detailed record of condition and soil testing is requested before any access is taken.**
- 2.1.9 **Point 8: It is claimed there has been a lack of consideration for the drainage on this land. A request is made for a specialist drainage contractor to be appointed to undertake surveys before and after construction.**
- 2.1.10 Network Rail will ensure a pre-condition survey is undertaken over OBJ 09's land within the Order limits, to document the condition of the land prior to any works being undertaken.
- 2.1.11 Article 28 (4) of the Order provides that before giving up possession of land of which temporary possession has been taken, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land. Furthermore in the event any damage is not rectified, Article 28 (5) the Order provides Network Rail must pay compensation to the owners and occupiers of land taken temporarily for any loss or damage arising from the exercise of the power.
- 2.1.12 With regards to the specialist drainage contractor, Network Rail does not see the need for a specialist drainage contractor to be appointed to undertake surveys before and after construction, which would not ordinarily be undertaken for Network Rail temporary compounds. As stated above however Network Rail will undertake a general pre-condition survey before and after construction, Article 28 (5) covering compensation provisions arising from the temporary use of the land.

- 2.1.13 **Point 10: Article 28 (1) E allows Network Rail to construct any permanent works or permanent mitigation works. OBJ 09 has requested clarification what permanent works are on land in their ownership.**
- 2.1.14 In the case of plot 11-005, this forms part of the limits of deviation for Work No. 6 (diversion of gas main). The permanent works will involve the diversion of the existing gas main, tunnelling the gas main underneath the railway.
- 2.1.15 The only other permanent works on land within Obj 09 relates to plot 11-014 and 11-015 where the existing private water pipe will be capped off in these plots to enable the demolition of Brady Farm Bridge.
- 2.1.16 **Point 11: Article 28 (2) of the Order provides Network Rail with the ability to enter upon land with at least 14 days' notice. It is stated this is not sufficient and should be 28 days' notice.**
- 2.1.17 The minimum notice period of 14 days for entering onto land using temporary possession powers is a standard notice period for TWAOs. That said, Network Rail will seek to engage with OBJ 09 as early as possible to ensure that they are aware of the intended programme of works in advance.
- 2.1.18 **It is claimed separately in OBJ 09's Statement of Case that Network Rail have failed to consult properly with OBJ 09 regarding the proposed works.**
- 2.1.19 In response I would note that I attended an initial face to face meeting with Mr Makin and his site manager, on 23rd May 2022. At this meeting the works to Brady Farm bridge were explained and discussed with him. There has been ongoing correspondence with Mr Makin since this meeting.
- 2.1.20 Following this initial meeting NGN have been liaising and negotiating with Mr Makin and his agent directly with regards to the gas main diversion.
- 2.1.21 Most recently Network Rail and NGN have arranged to meet with Mr Makin prior to the inquiry, to discuss the issues he has raised.

3 OBJ 07 LEEDS CITY COUNCIL

- 3.1.1 Within the submission titled '2024.02.06 Response to amended Draft TWAO' the following question was raised by OBJ 07 relating to Schedule 10 (Acquisition of new rights only):
- 3.1.2 **"The plan is unclear as to the extent of 12-014A, this should only include the estate road and therefore still clarification."**

- 3.1.3 In response I would clarify that an amended version of Sheets 11 and 12 of the Works and Land Plans (**CD 1.09**) have been submitted, which are available on the Inquiry website – **CD 1.09.11.01** and **CD 1.09.12.01**.
- 3.1.4 On the revised Works and Land Plans, Plot 12-014A has been reduced in comparison to the original versions of these plans. The plot is now limited primarily to the private estate road with a small section of grass verge included on the north side of the road included in the plot. For the avoidance of doubt Network Rail will only require a right of way over the existing estate road within this plot.
- 3.1.5 Separately OBJ09 submitted a Proof of Evidence by Robert Buckenham dated 6th February 2024. In paragraph 4.2.6 of this proof the following is stated:
- 3.1.6 **“It is also not clear who would maintain the footpath through the recreation ground as that is not Council owned land and it is understood that the owners (the Parish Council) do not support the proposal. Current use by the public occurs by virtue of the open nature of the site but an application for a Definitive Map Modification Order in connection with the proposed alternative route has not been made to LCC and the owners views on this are unknown. In addition, Network Rail’s proposals do not show the footpath being built to an acceptable standard that could enable LCC’s to assume responsibility for its maintenance as a recorded public path (and Network Rail has yet to provide information as to the standard the route will be built).**
- 3.1.7 In response I would refer to Article 17 of the Order, which sets out a process for the creation of the new footpath and the extinguishment of rights over the existing level crossing. I would note the provisions in Article 17 of the Order (if made) would be sufficient for the necessary stopping up of Peckfield Level Crossing, extinguishment of rights and creation of a new replacement public right of way, without any further Order or statutory instrument being necessary.
- 3.1.8 In summary:
- Article 17 (1) and (2) provide for the stopping of the stated level crossings together with the extinguishment of any rights across them.
 - Article 17 (3) provides that the stopping up of the level crossings, together with rights of way, will not take effect until the replacement of right of way specified in Schedule 8 has been provided to the reasonable satisfaction of the street authority and open to use.

- Article 17 (4) sets out a process for the street authority to provide confirmation the replacement right of way has been provided to their reasonable satisfaction.
- Article 17 (5) and (7) clarify the process should the street authority not respond within 28 days or that the street authority notify Network Rail that the replacement right of way has not been provided to their reasonable satisfaction. In the case of the latter, it stated the matter would be determined via arbitration.
- Article 17 (10) confirms that any replacement footpath, including the replacement right of way at Peckfield Level Crossing, is to be a public footpath or bridleway with compensation being payable in accordance with section 28 (a) of the Highways Act 1980 as if the replacement right of way had been created by a public path creation order.

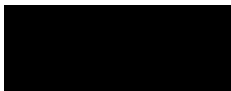
3.1.9 Subject to the process set out above, the replacement right of way would therefore being maintainable by Leeds City Council as a public right of way (PROW), with the ownership of the land remaining with Micklefield Parish Council subject to that PROW.

3.1.10 I would also refer to section 9.2 of my Proof of Evidence (**CD 7.17**) in response to Micklefield Parish Council's representation concerning the maintenance of the proposed replacement public right of way (Rep 03).

4 PETER FREEMAN – OBJECTION TO OPEN SPACE APPLICATION

4.1.1 I am aware of an objection being submitted by Peter Freeman and would note this is dealt with by the rebuttal evidence of Jim Pearson and Paul Harrison.

Signature & Date



Benjamin Thomas

Date: 20th February 2024