

INSPECTOR'S NOTE OF PRE - INQUIRY MEETING

HELD ON 9 AUGUST 2017 AT CHELMSFORD CIVIC CENTRE

TRANSPORT AND WORKS ACT SECTION 1 AND 5 THE NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER 201X

REFERENCE: DPI/Z1585/17/12

Introduction

1. The Pre-Inquiry Meeting (PIM) was opened at 10:00 by the Inspector, Alan Beckett. He is appointed by the Secretary of State for Transport to conduct an inquiry and to make recommendations on the Order. The effect of the Order if made would be to grant to Network Rail Infrastructure Limited powers to close a number of level crossings as a matter ancillary to the operation of a transport system. The works proposed to be undertaken relate to the closure of certain level crossings, closure or re-designation of the status of certain footpaths, bridleways, byways open to all traffic and public roads, and the creation of new rights of way. The Order would permit Network Rail to acquire land and interests in land in connection with the construction of the works authorised by the Order. The purpose of the PIM was to discuss procedural and administrative matters relating to the inquiry due to be opened on **18 October 2017**.

Identification of participants

2. Network Rail Infrastructure Limited ('Network Rail') was represented by Miss Jaqueline Lean of Counsel. Network Rail proposes to call 6 witnesses at the inquiry.
3. The following parties indicated an intention to speak at the inquiry in objection to the proposed order:

Essex County Council ('ECC') (OBJ 195), represented by Miss Alison Lambert of Counsel. Essex CC proposes to call up to 9 witnesses at the inquiry.

Bures Hamlet Parish Council (OBJ 132), represented by Mr David Lee and Mr Michael Welch.

The Essex Local Access Forum (OBJ 142), represented by Miss Sue Dobson.

The National Farmers Union ('NFU') (OBJ 034), represented by Miss Louise Staples on behalf of the Audley End Estate (OBJ 066), Mr Roberts (OBJ 101), E Camp & Sons (OBJ 164) and Mr & Mrs Hutley (OBJ 085.)

The Cockayne's Wood Trust (OBJ 117), represented by Mr Chris Fox.

Wivenhoe Town Council (OBJ 059), represented by Mr Cyril Liddy.

Mr Alexander Creed of Strutt & Parker represented Mr Braekman (OBJ 123), Mr Reay (OBJ 146), Mr Gooch (OBJ 157), Mr Padfield (OBJ 155) and Mr Smith (OBJ 139).

Mr Albon (OBJ 019).

The Ramblers' Association ('RA') (OBJ 148), represented by Miss Merrow Golden of Counsel. The RA proposes to call up to 10 witnesses.

Janita Le Fevre (OBJ 002).

The University of Essex ('the University') (OBJ 177), represented by Mr John Fawcett of Birkett Long. The University proposes to call one or two witnesses.

Wrabness Parish Council (OBJ 127), represented by Mr Richard Colley.

E&A Strategic Land (OBJ 105), represented by Mr Bob Pinkett of Peter Brett Associates LLP. Mr Pinkett proposes to call one witness.

Mr Douglas Roberts (OBJ 101).

Mr Simon Fogle (OBJ 102) of You're Furnished Ltd.

Mrs Wendy Hedges (OBJ 138).

Great Bentley Parish Council (OBJ 070), represented by Mr Kevin Plummer.

Colchester Borough Council (OBJ 141), represented by Miss Jane Thompson. Colchester BC intends to call two witnesses.

Mr Peter Hope (OBJ 003).

Mr Peter Kay (OBJ 095).

Mr Peter Hill (OBJ 046).

The Wivenhoe Society (OBJ 046), represented by Mr Peter Hill.

Mr John Macrae (OBJ 011).

Mr Stuart Philpot (OBJ 053).

Miss Sasha Holmes on behalf of the Holmes family (OBJ 115).

Cromwell Manor Functions and Mr Ian Liddell (OBJ 129), represented by Mr John Gandey.

Mr & Mrs Hutley (OBJ 085).

Newport Parish Council (OBJ 144), represented by Mr Stephen Ayles.

4. No other parties indicated an intention to give evidence to the inquiry.

Application for the postponement of the commencement of the inquiry from 18 October 2017

5. On behalf of ECC an application was made to postpone the commencement of the inquiry from the scheduled date of 18 October 2017 on the grounds of the unavailability of ECC's employees during the period when the inquiry is scheduled to sit and the insufficiency of time in which to prepare ECC's case there being only 10 weeks between the PIM and the start of the public inquiry. Given the extent and scope of the inquiry and the necessary preparation which was required it was considered that the start date of 18 October was simply not achievable.
6. Of the witnesses likely to be called by ECC, one was not available between 16-20 October and two were not available between 23-27 October. Furthermore, Counsel was not available between 20 October and 6 November and the instructing Solicitor was not available from 28 October due to a forthcoming trial. For alternative Counsel and Solicitors to take over the matter would incur additional costs on the already stretched public purse. It was submitted that consideration should be given to moving the start date of the inquiry to a date after 7 November 2017.
7. The submissions made by ECC were echoed by the RA which also considered that the time between the PIM and the opening date of the inquiry was insufficient to allow for necessary preparation for the inquiry.
8. Network Rail resisted the application to postpone the start of the inquiry as a delay would run the risk of the inquiry clashing with the Cambridgeshire and Suffolk Level Crossing Reduction Order inquiries which were due to commence in November and provisionally February 2018 respectively. With the exception of Counsel, the legal team and witnesses being called on behalf of Network Rail were the same in all three inquiries; it was not possible to run two inquiries at the same time. To delay the inquiry would also jeopardise the funding for some elements of the scheme which had already been identified and allocated. Although it was acknowledged that ECC were the highway authority for some of the affected paths, the objection made by ECC related to only 9 of the level crossings at issue. Network Rail would continue to work with ECC to limit the number of active objections to the scheme prior to the opening of the inquiry. Whilst the concerns about availability were acknowledged, ECC may have to appoint alternative Counsel or arrange a watching brief for the inquiry as the scheduled start date was being worked to by a large number of objectors.
9. The Inspector notes that it is unfortunate that both ECC staff and Counsel have periods of leave booked which clash with the dates of the inquiry, however ECC is but one of 29 parties which wish to make representations to the inquiry. To postpone the start date of the inquiry may result in a clash of dates for other objectors who wish to give evidence at the inquiry. Furthermore, the postponement of the inquiry until after 7 November would mean the inquiry would clash with the Cambridgeshire inquiry which is scheduled to commence on 28 November; as Network Rail pointed out, their legal team and witnesses cannot be in two places at one time. ECC has provided the dates as to when three of their witnesses are unavailable and it may be possible to timetable the

consideration of those crossings which the witnesses wish to speak against on dates when they are available. Although the Inspector appreciates ECC's concerns about the cost to the public purse of having to instruct alternative Counsel, that is a course of action which ECC can pursue.

10. In the circumstances of this case, where 27 parties had indicated that they wish to appear at the inquiry and have so far complied with the timetable set out by the Secretary of State, the Inspector did not consider there to be an overwhelming or pressing need for the commencement of the inquiry to be postponed from the date already announced. Consequently the inquiry will open as scheduled on **18 October 2017**.

Scope of the inquiry and main issues

11. The inquiry is into the Order and the cases submitted both in favour and against it. A request has also been made for a Direction granting Deemed Planning Permission subject to conditions for the works which are the subject of the Order. The matters about which the Secretary of State particularly wishes to be informed for the purpose of his consideration of the applications made by Network Rail are set out in the Statement of Matters which was issued on 17 August 2017. Participants at the inquiry are reminded that evidence given to the inquiry should be relevant and that the inquiry is concerned with whether the Order should be made, should be modified then made or not made.

Inquiry procedure

12. The inquiry will be held in accordance with the Transport and Works (Inquiries Procedure) Rules 2004. The inquiry will commence with introductory remarks being made by the Inspector which will then be followed by an opening statement on behalf of Network Rail followed by the evidence in chief of each witness being called on behalf of Network Rail. Those witnesses will then be available for cross examination by each of the opposing parties in turn. The objectors will then present their cases and the evidence in chief of each witness being called. Those witnesses will then be available for cross examination by Network Rail.
13. On the completion of evidence the Inspector will hear closing submissions on behalf of the objectors followed by closing submissions on behalf of Network Rail. Evidence may be heard out of turn at the discretion of the Inspector. It will be helpful to the Inspector if written and electronic copies (in Word format) of opening and closing submissions could be provided; provision will be made within the programme for the preparation of closing statements which will be delivered orally.
14. The opening days of the inquiry are likely to be taken up with Network Rail's strategic case for the Order and the witnesses being called in support of that strategic case with evidence from both sides in relation to individual crossings being called in subsequent weeks.

Inquiry dates and times

15. The current estimate for the duration of the inquiry is around 20 days. The inquiry will open on Wednesday 18 October and is scheduled to sit over the following five weeks. The inquiry will not sit on Wednesday 1 November or on Thursday 16 and Friday 17 November as the Inspector has long-standing commitments on those days. The Inquiry will sit from 10:00 until around 17:00 each day with an hour long break being taken for lunch, usually around 13:00. In addition there will be short mid-morning and mid-afternoon breaks. When the inquiry sits on a Friday, it will commence at 09:30 with a half hour break for lunch around 12:30 and will adjourn around 14:30 to allow for travelling home for the weekend.
16. The RA had concerns that the estimated duration of 20 days was insufficient given the number of crossings that were at issue and that there was a likelihood that an adjournment would be needed at some point. Network Rail had a less pessimistic view of the timing and duration of the inquiry as not all the 60 crossings subject to the order would be subject to live evidence.
17. It is always a possibility that an inquiry may over run the time initially set aside; equally it may be that the inquiry under-runs. Once the inquiry is underway, if it appears that additional time is required to hear all the live evidence then provision will have to be made for that evidence to be heard.

Inquiry venues

18. There are 60 crossings at issue which are located in Hertfordshire, Havering, Thurrock and Essex which can be grouped into three broad geographic areas; (a) those in Hertfordshire and the west of Essex; (b) those in Havering, Thurrock and the south of Essex and; (c) those in the north-east of Essex. Although it may be possible to hold the inquiry in a single venue, given the geographic spread of the crossings the inquiry will be held in a number of venues which are central to the groups of crossings at issue.
19. The Programme Officer will advise the parties of the venues and the dates the inquiry will sit at those venues once the programme for the inquiry has been finalised.

Inquiry Programme

20. Mr Graham Groom and Mrs Joanna Vincent of Persona Associates (1st Floor, Bailey House, 4-10 Barttelot Road, Horsham, West Sussex RH12 1DQ tel: 01403 217799) are acting as the Programme Officers for the duration of the inquiry. The Programme Officer is the first point of contact for those parties attending and participating in the inquiry and will be responsible for communicating with the parties on the programming of the inquiry. All those wishing to give evidence at the inquiry should contact the Programme Officer and give their best estimate of the time they think will be required to put their evidence to the inquiry.

21. The inquiry will open on 18 October 2017 and the initial days may be taken up with Network Rail setting out its strategic case for the Order. The running order for subsequent weeks will be refined once the Programme Officer has a clearer indication of who wishes to give evidence and engage in cross-examination. Whilst the Programme Officer will do his or her best in terms of the organisation of the inquiry programme, all parties wishing to speak at the inquiry should keep in close contact with the Programme Officer in case of delays or other changes to the programme. If anyone wishes to withdraw their objection to or support for the Order or decides that they no longer wish to speak at the inquiry, please let the Programme Officer know so that appropriate adjustments can be made to the programme.
22. The Inspector had not carried out any pre-inquiry site visits prior to the PIM but will undertake a programme of such visits prior to the inquiry and will view the crossings and proposed alternative routes from public vantage points. If the Inspector is required to make accompanied inspections of any of the crossings or proposed alternative routes, such inspections will be made following the close of the inquiry.

Areas of agreement

23. Prior to the PIM Network Rail had not been able to secure the withdrawal of most objections but would continue dialogue with individual objectors to seek resolution of the objections and to reduce the number of live issues before the inquiry. If agreement on the matters outstanding could be reached with any of the parties, that would be communicated to the Programme Officer as quickly as possible.

Nature, format and dates for the submission of evidence

24. Proofs of evidence and a summary of that proof of evidence for all parties wishing to provide oral evidence to the inquiry should be submitted to the Programme Officer not later than four weeks before the opening of the inquiry; that is not later than **20 September 2017**. A summary is not required if the proof of evidence is less than 1500 words in length, but where the proof is greater than 1500 words, a summary of that proof shall be submitted and the summary shall be read at the inquiry. Following the submissions made on behalf of the RA, those objector witnesses wishing to provide evidence in objection to more than one crossing should submit a proof of evidence for each crossing subject to the above requirements.
25. In accordance with Rule 16 (4), by the same date, that is **20 September 2017**, (a) Network Rail will send a copy of its proof of evidence and summary proof to all statutory objectors and all those parties who have submitted a statement of case and (b) all other parties who submit a proof of evidence and summary proof shall send a copy of that proof and summary to Network Rail.
26. If, following the exchange of proofs of evidence, it is considered that a rebuttal proof is necessary these should be exchanged not later than two weeks before the opening date of the inquiry; that is, not later than **04 October 2017**.

27. Proofs of evidence and summary proofs should be submitted in both hard copy and electronic format. Copies of all proofs and summaries will be posted on the inquiry website.
28. Only summaries of the proof of evidence (unless under 1500 words) will be read at the inquiry. Those parties who have submitted a statement of case or letter of objection which is under 1500 words and who wish to use that as their evidence, need do nothing more other than to confirm with the Programme Officer that that is the case.

Document numbering

29. The Inspector has already received a significant number of documents all of which are readily identifiable as to their source as they are contained within each party's bundle. For any additional documents which are produced during the course of the inquiry each party should clearly identify those documents with a reference number which is unique to the document and its source.
30. Network Rail's core documents already submitted are identified as NR01 to NR26 and it is expected that NR will continue with that sequential numbering convention. The adoption of a number referencing system for each individual objector will assist with the location of documents during the inquiry.
31. The following document numbering system is suggested – OBJ reference numbers can be provided by the Programme Officer:

OBJ/001 – W1 – 1 – Proof of Evidence
OBJ/001 – W1 – 2 – Appendix to Proof
OBJ/001 – W1 – 3 – Summary Proof
OBJ/001 – W2 – 1 – Proof of Evidence
OBJ/001 – W2 – 2 – Appendix to Proof
OBJ/001 – W2 – 3 – Summary Proof

Then, proofs per crossing, if required:
OBJ/001 – E04
OBJ/001 – E27

32. It would also assist if documents are paginated and separated with dividers – again to assist with the location of particular papers during the course of the inquiry.

Other matters

33. Mr Kay had received a letter from Network Rail in response to his letter of objection which suggested that further communication would be made once the objection had been considered; however no further communication had been received. In response Network Rail stated that a response to objections would be sent. To assist the objectors in the preparation of their proofs of evidence, the Inspector suggested that any such response should be sent by 6 September 2017 at the latest.

34. Network Rail asked whether it would be acceptable to provide some evidence in video format for projection at the inquiry. This would be acceptable providing suitable equipment was available and that copies of such material were made available via a memory stick or other electronic media.

Alan Beckett
INSPECTOR

29 August 2017