

THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006 (“the Rules”)

THE PROPOSED NETWORK RAIL (TACKLEY LEVEL CROSSING) ORDER (“the Order”)

OBJECTION OF ANDREW CHARLES PEAKE

Introduction

1. This objection is made on behalf of **Andrew Charles Peake** of [REDACTED], [REDACTED] under Rule 21 of the Rules.
2. Mr Peake is identified in the Book of Reference [NR08] as the registered freeholder of the following plots of land, which form part of the Tackley Estate (“the Estate”): 001, 003, 003A, 003B, 006, 007, 008, 009, 010 and 012.
3. The draft Order [NR02] would allow the Applicant to acquire the following plots permanently: 005, 006, 008 and 010 and to use the following plots temporarily: 001, 003, 003A, 003B, 007, 009 and 012. The extent of acquisition and use is shown on the Deposited Plans and Sections and Rights of Way [NR10]¹.

Mr Peake’s concerns

4. Mr Peake is concerned about the following five issues arising from the application: (i) the location of the proposed new bridleway; (ii) the application’s effects on the Tackley underpass; (iii) the future of the remaining cul de sac bridleway; (iv) the temporary use of Estate land and (v) the proposed Heads of Terms. In paragraphs 5 to 31 below, Mr Peake’s concerns are summarised and solutions to address them proposed. At the end of the document, Mr Peake raises some drafting points on the draft Order.

(i) The location of the proposed new bridleway – Mr Peake’s concern

5. The application provides for the closure of the current bridleway (379/2/10) at the level crossing and makes provision for a new bridleway which would run south along the western side of the railway for approximately 900 metres before joining up with restricted byway 379/25/10.
6. Mr Peake is concerned about the safety implications of the new bridleway running close to the railway, not least the prospect of horses being frightened by fast-moving trains running at head height and consequently injuring themselves, their riders, and others using the bridleway. Mr Peake notes from the Statement of Aims [NR04] that the first aim of the closure is to improve safety (paragraph 4.1); however, the Consultation Report [NR07] merely describes the proposed bridleway as “not ... inherently unsafe” (paragraph 8.6.7), which is a surprising form of words given the first aim of the closure.
7. In respect of the proposed bridleway, paragraph 8.6.6 of the applicant’s Consultation Report [NR07] says –

“In studying the issue of the bridleway, Network Rail has identified over 69 bridleways in England which ran adjacent to railways. Of these, Network Rail found 41 which were similar to the proposed bridleway for Tackley. That is, where the bridleway ran adjacent to the rail line for several hundred metres, where the railway ran above the

¹ The reference on the cover of the document is [NR10]; the reference on the website (<https://www.networkrail.co.uk/running-the-railway/our-routes/western/oxfordshire/oxfordshire-level-crossings/#tackley-twa0>) is [NR9].

bridlepath, and trains speeds were elevated with minimum of 60mph and often speed limits of 80 to 100+mph. Network Rail believes that since bridleways are acceptable options in these places, that the proposed new bridleway should also be acceptable. Important to note that this was research carried out internally by Network Rail on desktop, mostly relying on Public Rights of Way (PRoW) maps and Google Maps satellite imagery”.

8. Mr Peake has not had the opportunity to consider the applicant’s study, making it is difficult to say much about it or give weight to it; however, the Consultation Report seems to acknowledge the study’s limitations by describing the exercise as something “carried out ... on desktop, mostly relying on Public Rights of Way (PRoW) maps and Google Maps satellite imagery”. Based on the limited exercise undertaken, it is difficult to see how the applicant can conclude that, owing to the identification of the bridleways elsewhere in the study, it follows that the location of the proposed bridleway is acceptable.
9. Notwithstanding this, Mr Peake’s safety concerns, which are shared widely locally, are reasonable and are a material consideration when it comes to determining the application.
10. Mr Peake currently grants licenses for a small number of equine users (who are friends and colleagues) to cross the Estate at an alternative location (“**the licensed path**”), which has been shared with the applicant. (The licenses were granted because of the applicant’s temporary closure of the level crossing in April 2020).
11. Owing to the safety concerns with the proposed bridleway, Mr Peake considers there is a risk that it will not be used (or that it will be under used) and that, instead, users will cross Mr Peake’s land at a safer location, which would most likely be the licensed path. It follows that Mr Peake is concerned by the prospect of the acquisition of Estate land for a bridleway which will be underused and which would result instead in the creation of an unofficial bridleway elsewhere over Estate land.

The location of the proposed new bridleway – Mr Peake’s solution

12. Mr Peake has previously supported two alternative routes for the proposed bridleway, both of which would cross Estate land, (namely (i) a proposal for new bridge north of the station, also known as Barwood Bridge and (ii) a diversion to the west of the railway) which have both been dismissed by the applicant. Mr Peake considers either would be preferable to the applicant’s proposal.
13. Recently, Mr Peake has suggested a third alternative, again across his land and which would run along the licensed path. Mr Peake would be willing to allow the applicant to create a bridleway over this land as an alternative to the use of the proposed bridleway. This solution would provide a safer alternative to the applicant’s proposed bridleway and would not result in the concerns summarised in paragraph 11 above arising.
14. The applicant has confirmed that it will shortly send an engineer to the Estate to consider Mr Peake’s solution. Mr Peake would welcome discussions with the applicant on this issue once that exercise has been undertaken.
15. In any event, Mr Peake would also welcome discussions in respect of the maintenance arrangements for any route across Estate land.

(ii) The application’s effects on the Old Whitehill underpass – Mr Peake’s concern

16. The Old Whitehill railway bridge is located to the south of the proposed stepped footbridge which would span across the railway. The underpass which runs under the bridge will

eventually be used as an access for the applicant's works, including transporting the materials necessary to construct the footbridge.

17. The bridge is too low for modern agricultural purposes and Mr Peake understands the applicant will need to lower the underpass track under the bridge so that its vehicles can transport materials to the work site.
18. Mr Peake is content for the underpass track to be used by the applicant for these purposes; however, in doing so, the opportunity should be taken to ensure the underpass can be used in future by farm machinery and that improvements are made to prevent the ponding of rainwater under the underpass, making it unpassable for walkers.

The application's effects on the Old Whitehill underpass – Mr Peake's solution

19. To ensure the bridge is left with enough height clearance for farm machinery to travel underneath, Mr Peake requests the underpass track is lowered to an appropriate depth and standard, to be agreed with Mr Peake.
20. In addition, the applicant is aware that certain pipework is buried shallowly in the vicinity of the bridge. The pipework will need to be buried lower for the applicant's purposes and Mr Peake requests it is lowered to suitable depth and standard, again to be agreed with Mr Peake, to allow the subsequent use of the track by farm machinery.
21. New drainage should be installed to ensure that the area does not hold water, making it unpassable for walkers.

(iii) The future of the remaining cul de sac – Mr Peake's concern

22. Tackley level crossing has been closed under a Temporary Traffic Regulation Order since April 2020 and a temporary footbridge currently allows the railway to be crossed. While the level crossing was, and temporary footbridge is, a public right of way, the new footbridge would instead be a permissive path.
23. The application would result in, amongst other things, the permanent closure of the existing level crossing at Tackley, and the stopping up of existing bridleway 379/2/10 at the point where it crosses the railway. The existing bridleway will then be maintained as a cul de sac which, as the Statement of Aims states "will be accessible by using the new bridleway and existing Public Right of Way (PRoW) network" (paragraph 3.1(b)). The cul de sac will be located on Estate land.
24. The Consultation Report states: "It is important to note that [the proposed] permissive path is not a formal Public Right of Way administered by Oxfordshire County Council. Network Rail will maintain the right to suspend this path, if required to in the future" (paragraph 8.6.20). The Statement of Aims states: "Permissive access can be provided to non-railway users, including pedestrians and cyclists on foot, along the platforms and over the footbridge unless and until ticket barriers are installed at the station, or Network Rail otherwise determines access to non-railway users should cease" (paragraph 3.1(d)).
25. If ticket barriers are installed at the station or the applicant decides that access to non-railway users should cease, Mr Peake is concerned by the prospect of the presence on the Estate land of a redundant cul de sac. In these circumstances, Mr Peake does not consider it would be reasonable for the cul de sac to remain open to the public. He therefore seeks an amendment to the application which, in the event of the Order being made, would result in the cul de sac's status being changed to that of a permissive path. In addition to this, Mr Peake seeks an undertaking from the applicant that closure of its permitted path would trigger closure of the cul de sac as a permitted path also.

26. In any event, Mr Peake would welcome an explanation from the applicant regarding the procedure the applicant would follow in advance of determining access to non-railway users should cease; for instance, what consultation would be undertaken, and the opportunity of those affected to make representations in respect of the proposal.
27. Mr Peake would also welcome an explanation of how the replacement of a right of way with a permitted path satisfies the test under section 5(6)(a) of the Transport and Works Act 1992.

(iv) Temporary use of land – Mr Peake’s concern

28. As mentioned, the application provides for the temporary use of Estate land. Presently, there is limited information as to the duration of the “temporary” use and Mr Peake would welcome further information on this point.

Temporary use of land – Mr Peake’s solution

29. Mr Peake would welcome further information on the proposed temporary use of Estate land to allow him to understand fully the impact of the proposals on Estate land.

(v) Heads of Terms – Mr Peake’s concern

30. Paragraph 6.2.11 of the Consultation Report states the applicant is “hopeful that a mutually beneficial agreement can be reached”. Notwithstanding the points raised above in this objection, Mr Peake does not consider the Heads of Terms are currently satisfactory and considers significant revisions are necessary.

Heads of Terms – Mr Peake’s solution

31. Mr Peake requests that discussions on the draft Heads of Terms continue.

Miscellaneous drafting points

32. In the first row of column (2) of Schedule 2 (street to be temporarily stopped up) of the draft Order, the highway/street to be temporarily stopped up includes “public footpath 379/2/10 ...”. Mr Peake would be grateful if the applicant could confirm whether “bridleway” should be used instead of “public footpath” in this row.
33. In the second row of column (2) of Schedule 2, public footpath 379/16/20 is to be temporarily stopped up, “save for access to Nos. 72, 74, 76 and 78 Nethercote Road”. Mr Peake considers the agricultural access to the Estate should be included in the exclusion and would be grateful if the applicant could confirm that the draft Order will be amended to provide for this.
34. Finally, Mr Peake is considering other drafting points in respect of the draft Order. Mr Peake will raise these separately with the applicant, if necessary.

Hywel Morse MRICS FAAV
Laws & Fiennes
On behalf of Andrew Charles Peake
26 January 2024