

TRANSPORT & WORKS ACT 1992

PROPOSED NETWORK RAIL (TACKLEY LEVEL CROSSING) ORDER

CLOSING SUBMISSIONS ON BELF OF THE BRITISH HORSE SOCIETY

Introduction

1. The British Horse Society (BHS) is a registered charity and seeks to protect and promote the interests of all horses and those who care about them, including the 3.5 million people in the UK who ride or drive a horse-drawn carriage. In a more localised context there are in the region of 1,350 horses registered in the immediate area of this scheme, which equates to over £9.25 million per annum being spent into the local economy.
2. England's extensive network of public rights of way is a unique, valuable and historic resource. It is both a significant part of our heritage and a major recreational and transport resource enabling people to get away from roads and enjoy the beauty and tranquillity of large parts of the countryside to which they would not otherwise have access. It is essential that it is protected for both existing and future users.

Scope of Objection

3. BHS is not, in principle, against closure of the crossing however it can only reasonably be expected to support the proposal if a suitable and convenient alternative route is to be provided for riders and other users. BHS does not consider that this requirement has been met.

4. The BHS objection therefore focuses on Point C of scheme elements set out at paragraph 1.17 of NRs Statement of Case, namely”

- a. *“The creation of a new bridleway (and associated fencing) to the west of the existing bridleway (marked with a pink dashed line on the plan on the Land and Rights of Way Plans (New bridleway which would run adjacent to the railway before joining the existing byway (379/25/10) (Existing Byway) to the south. This would re-provide the existing Bridleway connectivity east to west towards Tackley Village.”*

and Point 3 within the Statement of Matters, namely:

- b. *“The Suitability of the proposed bridleway for all users, including any safety implications of use with horses.”*

5. Notwithstanding the above, and for the avoidance of any doubt, BHS is not opposed to the principle of the creation of a new bridleway to the west of the railway, it does however believe that the route that has been referred to as “Route D” is the suitable and convenient alternative route, that being:

- a route supported by BHS and local riders,
- a route supported by the owners of the land crossed by it (albeit conditionally, with conditions that are acceptable to the Society),
- a route which would be more cost effective,
- a route which by the admission of Networks Rails own expert Mr Lane, *“would be a preferable route to the New Bridleway as it will be more pleasant to ride at this greater distance from the rail line”.*
- A route which was previously the preferred option of NR

- A route Mr Wilson of Network Rail also accepted was the preferred route and confirmed that a fully costed scheme for this route had already been drawn up.

Statutory Framework

6. The statutory framework for this scheme has already been substantially set out within the scheme documents and no doubt will be further referred to in NR closing submissions, therefore I do not propose to repeat matters here. However, it is important that there is a focus on the requirements of Section 5(6) of the TWA which provides:

5. Subject-matter of orders under sections 1 and 3

a. ...

b. (6) An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied –

(a) that an alternative right of way has been or will be provided ..

7. Annex 2 of the *Guide to TWA Procedures* goes on to advise that “alternative right of way” in s5(6) TWA means “*a convenient and suitable replacement for existing users*”.
8. It is also of note that nowhere in the legislation or the guidance is there an “adequacy” test, or the requirement suggested in NR’s opening comments that the alternative route must be merely “adequate”.

Suitable & Convenient (includes “Enjoyment”)

9. The terms suitable and convenient are not defined within the TWA, nor are they given any special meaning, and therefore should be attributed their normal meaning for the purposes of any assessment in the current process.
10. The Concise Oxford English Dictionary defines:

“Suitable” as: “right or appropriate for a particular person, purpose, or situation”

“Convenient” as: “fitting in well with a person’s needs, activities and plans involving little trouble or effort”
11. It is perhaps also of assistance to define:

“Enjoyment” as “The state or process of taking pleasure in something” and

“Recreation” as “enjoyable leisure activity”
12. It has been accepted, or certainly went unchallenged by NR, that use of the bridleway network in the area is for recreational purposes. There was no suggestion that it was being used for utilitarian purposes. Therefore, by definition use of the bridleway network is in the exercise of an “enjoyable leisure activity”.
13. It must therefore follow that if the proposed new bridleway is to be a “suitable and convenient” alternative route, and be fit for purpose, it must be fit for use

for recreational purposes and therefore the enjoyment of the route becomes, in this specific case, a material consideration as part of the tests.

14. It is therefore submitted that the “enjoyment” of the proposed alternative route is a material consideration in terms of both suitability and convenience. In real terms, an alternative route is only a genuine alternative if users of the existing way are likely to use it. If they are deterred from doing so, e.g. as a result of risks (perceived or otherwise) or the environment through which they are expected to walk or ride, they are unlikely to use the route and it is therefore no real alternative. And as such, it cannot be said to be “suitable”.

Existing Users - BHS Witnesses

15. It is clear from the *Guide to TWA Procedures* that the views of those “existing users” cannot be lightly disregarded. No matter how many “experts” are brought forward to express opinions on matters within their own areas of expertise, no matter how well thought out and assessed in writing, they are unable to provide truly representative views and opinions based upon decades of local knowledge and riding in this specific area. That this the theatre of expertise of the local riders.
16. A substantial number of those riders submitted written objections, and a number appeared at the Inquiry and gave evidence. Their low level of numbers at the Inquiry should not, and must not be taken out of context. In preparing its case BHS both nationally and locally was minded to comply with the request of the Inspector to avoid wasting time with duplicitous evidence. The BHS local

witnesses have given not inconsiderable time, and in some cases considerable loss of income to attend this Inquiry, and this is indicative of the strength of feeling in this matter. BHS could have called 10, 20 or 30 local witnesses to express their view, but it would not have moved the matter on further. On the contrary it is however notable that no local people have come forward or been called in support of NRs case to express any contrary view. Their silence is deafening!

17. A point that is however clear, from the evidence of local people, the existing and actual users of the bridleways in this area, is that they would not wish to use the proposed new lineside route. They gave details and, in some instances graphic evidence as to why they consider the route to be unsuitable and inherently unsafe.

18. It is therefore submitted that the only reasonable and sustainable conclusion that can be reached is that the proposed new bridleway is not fit for purpose because it is not a suitable or convenient alternative route.

Mr Lane's Evidence

19. I do not propose to comment on the majority of NRs witnesses or their evidence, other than to comment that it is clear, especially from that of Mr Wilson, that Route D was a preferred option, and that a fully costed scheme had been prepared. He also accepted that the barrier to the use of that scheme (the requirements of Tackley Estate) appear to have fallen away.

20. With regard to Mr Lane's evidence, this was undoubtedly balanced and reasonable based upon his extensive experience. Mr Lane also considered that Route B *"would be a preferable route to the New Bridleway as it will be more pleasant to ride at this greater distance from the rail line"*.
21. Perhaps of greater importance he was also very careful to clarify that the proposed new bridleways would only be safe and suitable of appropriately familiarised horses and or experienced riders (as opposed to all bridleway users). Despite this, we heard from local existing riders with decades of experience of riding in the area that they would not use the route. The experience of those riders was also considerable and at the end of the day both they and Mr Lane are expressing informed opinion based upon their not insubstantial experience.
22. Finally, with regard to Mr Lane's report and evidence, and this is no criticism of Mr Lane, his work and opinion was commissioned by NR after (on a date that Network Rail have been unable to specify, despite there presumably being a formal decision record to embark on a scheme costing over £360k of public money), after they had already made the decision to use the lineside route. NR were therefore essentially seeking an opinion to defend a decision already made, rather than an impartial decision on what might have been the most suitable and convenient route. Mr Lane was therefore placed at a disadvantage from the outset. This is clear by his evidence that Route B *"would be a preferable route to the New Bridleway as it will be more pleasant to ride at this greater distance from the rail line"*.

23. It is respectfully suggested that this must have some bearing on the weighting and value of Mr Lane's evidence, albeit a situation not of his own making.

Case for Route D

24. The case in favour of opting for Route D over the lineside route is compelling not least because it has, to all intent and purpose, unilateral support and/or agreement. That cannot be said for the lineside route. Route D is:

- a route supported by the Society and local riders,
- a route supported by the owners of the land crossed by it (albeit conditionally, and a condition that is acceptable to the Society),
- a route which would be more cost effective and
- by the admission of Networks Rails own expert Mr Lane, a route which *"would be a preferable route to the New Bridleway as it will be more pleasant to ride at this greater distance from the rail line"*.
- Mr Wilson from Network Rail also accepted was the preferred route and confirmed that a fully costed scheme for this route had already been drawn up.

25. Indeed, Network Rail are faced with defending the indefensible lineside route despite that fact that even their own experts agree that Route D is more suitable and convenient. So much so that it was actually their preferred choice until relatively recently.

Tackley Estate Conditions

26. Route D does, of course, come with some conditions (albeit I understand that such conditions may also apply to the lineside route).
27. BHS is however aware that Tackley Estate has gone to considerable lengths to agree a solution, and should be commended for such a forward thinking and positive attitude. BHS recognises this and agrees that the extinguishment of the existing bridleway is not unreasonable if Route D is to be provided as the alternative. This is especially the case given the Estate has, we understand, confirmed that the existing bridleway would still be made available on a permissive basis for as long as Network rail maintain a permissive route over their footbridge. There will therefore be no loss of amenity for those wish to continue to use the existing route,

Other Matters

Riding Cul-de-Sac Routes

28. With regard to riding cul-de-sac routes, whilst it may be a theoretic option the reality of the matter will be that the existing bridleway will receive little or no equestrian use once it severed by closure of the railway crossing. Riders prefer circular routes that avoid retracing one's steps wherever possible.

Other Circular Routes

29. Further on the subject of circular routes the existing bridleway forms part of the only circular route in the locality which avoids national speed limit (60 mph) roads. This circuit will to all intents and purpose be lost if the lineside route is

adopted. You have heard clear and unchallenged evidence to the point. It may technically be available still, but the actual and existing users have stated unequivocally that they will not use it due to very genuine safety concerns. They know their area, they know their horses and they know their local riders. Nothing that NR or Mr Lane says can change those very facts.

Surfacing

30. With regard to surfacing BHS maintains that a stone surfacing over the full width of the new bridleway, wherever it runs is completely unnecessary. The existing bridleway consisted of a stoned surface and grass verge. Any new route should be partially surfaced but with a grass margin retained to provide a preferred surface option for equestrians. BHS understands that this is a matter that is still open to discussion and would welcome such a dialogue.

Fencing

31. BHS accept that there may be a need for fencing if it is a requirement of the adjoining land owners, but maintain that it is not necessary for the purposes of the bridleway itself. Boundary markers would suffice.

The Analogous Bridleways Report

32. The Analogous Bridleways Report is at best amateurish – from the report itself we don't know, who produced it, their qualifications to do so, who instructed the author, and what the authors instructions actually were. It is not signed or dated, and it is neither paginated nor paragraph numbered. It is streets apart from the report produced by Mr Lane (also for NR). Furthermore, the author wasn't

available to answer any questions or to be cross examined. It is lacking in so many ways:

- It does not compare like for like from the very outset
- It considers existing and possibly historic bridleways, not newly created or proposed bridleway
- We don't know levels of use of these routes
- We don't know the surface materials
- We don't know their legally defined widths
- We don't know the frequency and type of trains using the adjoining lines
- We don't know their proximity to population centres or whether they form part of the only circular route that avoids national speed limit (60mph) roads in the area
- We even heard in evidence, which was not countered or prove to be incorrect, that one route cited doesn't actually exist.

33. It is submitted, with all due respect, that it would be sheer folly to give this document any credibility and it should be disregarded from any informed decision making process. It does nothing to inform or assist.

Compelling case in the public interest to justify conferring powers on NR to acquire and use land etc

34. BHS submits that there must be a compelling case to grant powers to NR to create and establish Route D and NR must ultimately agree with this, not least because it was the evidence of their own witnesses that NR already have a fully

costed scheme prepared to implement route D. Mr Wilson confirmed this in his evidence

No mechanism to compel permissive path

35. Statement of Matters Point 5 – refers to the impact of the potential withdrawal of the permissive footpath access over the proposed footbridge. BHS therefore submits that there should be some formal mechanism to compel NR to provide the permissive path in the first-place otherwise there is a question over its relevance in considering the scheme. BHS do, of course welcome the permissive access, they just wish to ensure that NR are actually compelled to provide it, given their (NR) concerns over statutory compatibility, and for that matter the commercial compatibility of such a permissive route.

No saving or defence for private rights over 60 metre stretch

36. BHS submit that it would be wholly irresponsible to ignore the issue of the potential road Traffic Offence, when it can so easily be avoided. The reasoning behind this is set out in BHS response to INQ-08.

Mechanisms – Modify or Refuse

37. With regard to the mechanisms whereby the proposed scheme can be modified to incorporate Route D instead of the lineside route, Section 13 (4) of the TWA provides:

(4)Where the Secretary of State proposes to make an order which gives effect to the proposals concerned with modifications which will in his opinion make a substantial change in the proposals—

(a)he shall notify any person who appears to him to be likely to be affected by the modifications,

(b)he shall give that person an opportunity of making representations to him about the modifications within such period as he may specify in the notice, and

(c)he shall before making the order consider any representations duly made to him.

38. There is therefore a mechanism available, but if this is thought insufficient, then the entire Order should be refused, to allow NR to produce a new Order based upon their own stated preferences of Route D. They have, after all already drawn up the scheme once so it should be no more than a revision exercise, rather than starting afresh.

39. To assist:

- a) Hereditament 004 is described in book of reference as: 22 square metres of grass verge, public footpath (379/16/20 to the rear of 78 Nethercote Road, west of Oxford to Coventry railway line. Tackley County of Oxfordshire
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Road, west of Oxford to Coventry railway line. Tackley County of Oxfordshire

- c) There may also be differing adjoining property owners who should be consulted but the only other parties are Ede and Tackley who were both party to the current process.

40. EDE HOLDINGS LIMITED (Page 17 of the Consultation Report APP05-0)

Company number 00795675

Park House, Station Lane, Witney, England, OX28 4LH

Incorporated on 12 March 1964

41. EDE DEVELOPMENTS (OXFORD) LIMITED

Company number 00642318

Park House, Station Lane, Witney, England, OX28 4LH

Incorporated on 18 November 1959

42. Furthermore, if there is doubt over any unregistered land Section 66 (4) of the TWA Service of notices: provides:

(4)Where for the purposes of this Act a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable inquiry, the notice may be served by—

(a)addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on the land

Conclusions

43. In conclusion, there is a very real opportunity for a “win-win” outcome to these proceedings, namely the closure of the crossing and the provisions of a high-quality alternative bridleway route (not the route suggested by Network Rail, but Route D). The Society commends such an outcome to the inspector in terms of her report and the Secretary of State in making his or her decision.

44. I think it is not unreasonable to suggest, that if, during the first few months of 2022 when the decision was made to proceed with the current scheme, we knew then what we all know now, this process would have been significantly different, and we would be considering a proposal that involved the creation of a bridleway along route D.

- a route supported by the Society and local riders,
- a route supported by the owners of the land crossed by it (albeit conditionally, and a condition that is acceptable to the Society),
- a route which would be more cost effective and
- by the admission of Networks Rails own expert Mr Lane, a route which *“would be a preferable route to the New Bridleway as it will be more pleasant to ride at this greater distance from the rail line”*.

- Mr Wilson from Network Rail also accepted was the preferred route and confirmed that a fully costed scheme for this route had already been drawn up.

45. BHS submit that this in itself gives a clear and direct indication of what the outcome to these proceedings should be.

46. It is therefore submitted that either the scheme should be amended to incorporate Route D or the Order refused in totality to allow a new Order to be made again incorporating Route D

Robin Carr FIPROW MAE

On behalf of the British Horse Society

3rd July 2024