

**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”) CLOSING STATEMENT OF ANDREW CHARLES PEAKE DEPARTMENT
FOR TRANSPORT REFERENCE: TWA/23/APP/05**

Introduction

1. By an application made to the Secretary of State on 9 November 2023, Network Rail Infrastructure Limited (“**the applicant**”) has applied pursuant to section 6 of the Transport and Works Act 1992 (“**the 1992 Act**”) for an order under sections 1 and 5 of the 1992 Act (“**the application**”).
2. This Closing Statement is made on behalf of **Andrew Charles Peake** of Court Farm, Tackley, Kidlington, Oxfordshire OX5 3AQ.
3. 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.
4. The revised draft Order **[APP01-2]** would now allow the applicant to acquire rights over the following plots to permanently form a highway for purposes of creating a Bridleway: 006, 008 and 010 rather than the previous intention of acquiring the freehold of these plots and to use the following plots temporarily: 001, 003, 003A, 003B, 007, 009 and 012. The extent of acquisition of rights and use is shown on the Deposited Plans **[INQ004-1]**.
5. By way of background -
 - a) On 26 January 2024, Mr Peake submitted an objection to the Order (“**the Objection**”) **[Peake-1]** As a freehold owner of land which was the subject of proposed compulsory acquisition pursuant to the draft Order, Mr

Peake is an objector within the scope of section 11(4) of the 1992 Act.

- b) On 1 March 2024, Mr Peake was provided with the applicant's response to the objection ("**the Response**") [**Peake-2**].
- c) On the 18 June 2024 the applicant published in its Opening Statement [**INQ-01**] which included its revised intentions to no longer acquire plots 006, 008 and 010 shown on the Deposited Plans [**INQ004-1**] but rather to acquire rights over these plots
- d) On learning of point d) above we have raised concerns and objections of this change in direction by the applicant for details we will set out below.

6. In accordance with Rule 7 of the Rules, this document constitutes Mr Peake's Closing Statement, being the full particulars of case that Mr Peake proposes to put forward at the Public Inquiry. This Closing Statement builds on the contents of the Objection and is structured as follows –

- a) Introduction: paragraphs 1 to 6
- b) The first ground of objection: the location of the proposed new bridleway – paragraphs 9 to 17;
- c) The second ground of objection: the application's effects on the Old Whitehill underpass – paragraphs 18 to 23;
- d) The third ground of objection: the future of the remaining cul de sac – paragraphs 24 to 25;
- e) The fourth ground of objection: the proposed Heads of Terms – paragraphs 26;
- f) The fifth ground of objection: the drafting of the Order – paragraph 27 to 29 .

7. In addition, this Closing Statement includes references noted in [**square**

brackets] of the documents that Mr Peake refers to which are all available on the Network Rail (Tackley Level Crossing) Order website <https://gateleyhamer-pi.com/en-gb/tackley-level-crossing/inquiry-documents/> .

8. Mr Peake's grounds of objection are focused on (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 proposed Heads of Terms and (v) the drafting of the Order.

(i) The first ground of objection: the location of the proposed new bridleway

9. 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.
10. 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.
11. As stated in Mr Peake's objection, these safety concerns are shared widely locally, are reasonable, and are a material consideration when it comes to determining the application. Mr Peake understands that other objectors have provided further, expert evidence on this point.
12. Mr Peake currently grants licenses for a small number of 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).

13. Owing to the safety concerns with the proposed new bridleway, Mr Peake considers there is a risk that an accident on the Bridleway may place a greater responsibility under Occupiers Liability compared with the original proposal to acquire the freehold of the land needed to construct the new Bridleway and the field side fence set out in the draft order [NR02] underlining for emphasis only “Creation and maintenance of new highway

9. —(1) The new highway specified in column (4) of Schedule 3 (closure and replacement of level crossing) is to be completed to the reasonable satisfaction of the highway authority and the new highway, including any boundary structures, drainage or other structures laid under it, is to be maintained by and at the expense of Network Rail for a period of 12 months from its completion and after the expiry of that period by and at the expense of the highway authority, save that any boundary structures will be maintained by and at the expense of the relevant adjoining landowner.” (note suggested correction to “landowner”)

14. It is felt inappropriate to create a new highway using the powers of the TWAO to the operational benefit of the applicant while placing a further burden of responsibility and liability on the only landowner to date who has assisted the users of the public rights of way to have a safe alternative route. We ask that should the proposed route be granted, the applicant is required to acquire the freehold of the land needed to construct the Bridleway, erect the field side boundary fence to as satisfactory stock proof specification and maintain this

fence as they currently undertake with their lineside fence. This we feel is more appropriate given the concerns raised over the risk of this route and the diversion coming about by need of the applicant. Given negotiations to date it is felt the applicants decision to alter their plans to acquire the land is one driven by liability and future maintenance, not one of costs of the acquisition of the land in question.

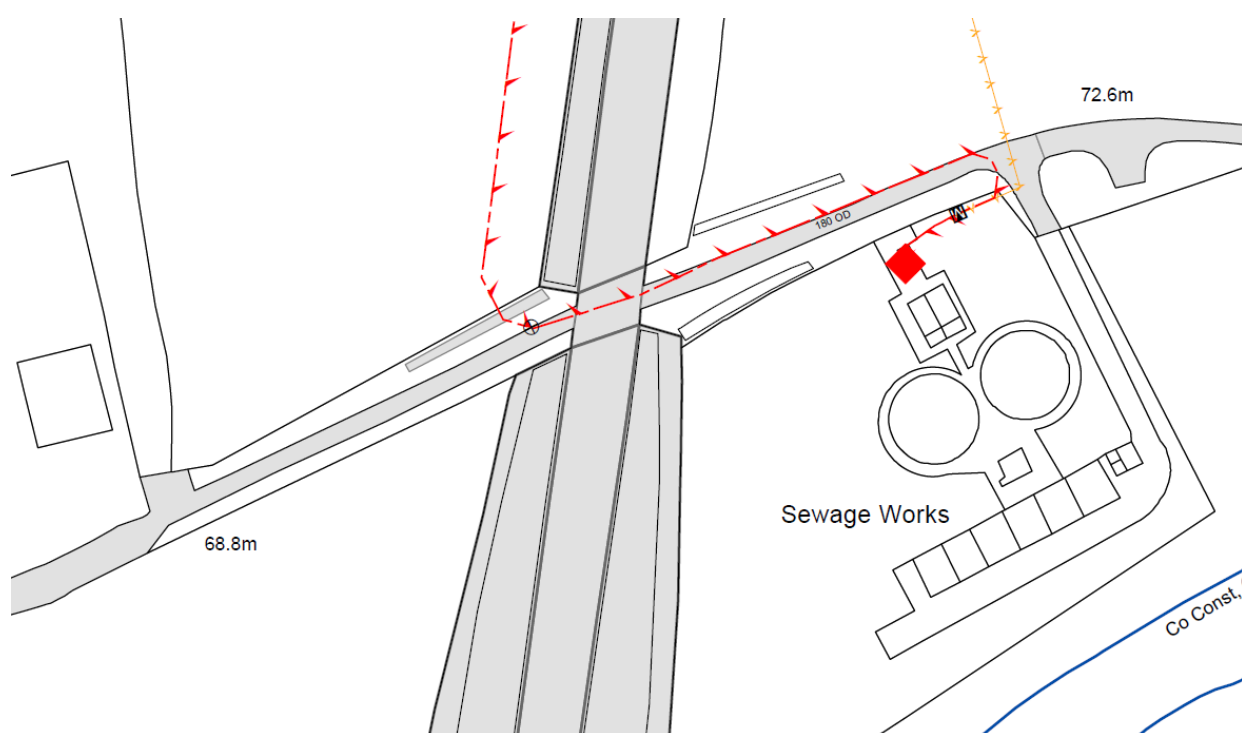
15. Further to the note **[INQ-18]** the applicant has sought to clarify concerns raised on Mr Peake's behalf during the site visit on 20 June. We seek to clarify some of the points addressed.

16. Point 7 a – the decision of the applicant not seek to acquire the land for the proposed new bridleway is not seen as a benefit to Mr Peake as suggested, rather an imposition of an ongoing liability of a bridleway which has safety concerns and a maintenance liability for approximately 900m of fencing, this could be overcome by the applicant quiring the land as proposed, which is a more cost effective solution for the public purse based on the terms currently on offer by the applicant.

17. Point 7 d – while the gesture of improved access to the bridleway to assist with future maintenance of the hedge is noted, this conflicts with OCCs point which seeks to clarify that damage to the bridleway surface caused by unpermitted users will not be repaired by them acting as the Highway Authority. Therefore, solutions which allow access to the bridleway for any vehicles conflict with the terms on which OCC accept the new proposed Bridleway. This is of concern given the permitted season for the cutting of agricultural hedges is 1 September to 28th February, a wet time of year where the ground is easily damaged by vehicles.

18. The Old Whitehill railway bridge reference 011 on plan **[INQ-04-01]** spans the underpass which runs under the bridge, which will be used as the only road access for the applicant's works relating to the station footbridge construction plot 001 on plan **[INQ-04-02]** (not the Bridleway compound).
19. The underpass bridge is low for modern vehicles (agricultural and delivery lorries) plated at 3.6m and Mr Peake understands the applicant has not investigated the feasibility of increasing the clearance of this delivery pinch point, or what (if any) cost benefits increasing the clearance may have in the cost of delivering the necessary equipment for the construction of the new station footbridge when compared with the proposal to deliver goods by rail.
20. Mr Peake is content for the underpass track to be used by the applicant for these purposes; however, in doing so, the opportunity must 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 and bridleway users. The applicant states in its Response that it "would like to thank your client for your agreement to share use of the route during the construction period and for access to the proposed northern compound". For the avoidance of doubt, Mr Peake's agreement is subject to satisfactory terms being agreed.
21. 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.
22. New drainage should be installed to ensure that the area does not hold water, making it unpassable for walkers and Bridleway users. The outfall of such drainage can be provided by Mr Peake within his ownership to the south of the underpass.

23. The applicant states in its Response that it is “engaging with the Statutory Undertaker who own the apparatus under the bridge to determine what may be able to be done at this location”. We learn from the enquiry that no such contact has been made with Thames Water, despite suggestions it has been. As a result, Mr Peake commissioned his own asset search via Thames Water, the results of which has been shared with the applicant, confirming the sewer is 180mm outside diameter pipe which we understands runs from Tackley in the north, along side the railway evidenced by two above ground manholes viewed on the site visit, before turning 90 degrees when it meets the bridleway, under the underpass and into the sewage works as illustrated below



Asset Location Search ALS/ALS Standard/2024_4987587 9 May 2024

(iii) The third ground of objection: the future of the remaining cul de sac

24. There has been considerable time spent debating the merits of the permissive path through the station, not least those of the Inspector who raised concerns that the reliance of the permissive path has not been translated into the draft order and there seems little tangible means of reassurance that the permissive

path will be documented and formalised, it appears to only be at the applicants discretion.

25.If 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 when a new replacement will have been provided for. The Objection sought 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 on similar terms of that which the applicant proposes through the station, with the addition of its use by bridleway users. In addition to this, it sought an undertaking from the applicant that closure of its permitted path would trigger closure of the cul de sac as a permitted path also. In its Response, the applicant states: "The Order will not be amended to close [bridleway 379/2/10] in its entirety and make access permissive". While scant justification is provided for the applicant's approach, the response is disappointing because it would be preferable to put in place a mechanism now to address Mr Peake's concerns.

(iv) The fourth ground of objection: the Heads of Terms

26.Progress of the Heads of Terms has been unreasonably slow with a period of 2 weeks (06/06/24 – 21/06/24) during the run up the inquiry where we failed to receive a response from the applicants agent. In addition, it is now evident that the change in the order detailed in the fifth ground of objection had been noted before the inquiry, in the Heads of Terms issued by the applicants agent. However, these changes were not highlighted as a change, or noted in conversations or correspondence.

(v) The fifth ground of objection: the drafting of the Order

27. In Part 1 Clause 9-1 of the draft Order **[NR-02]**, the applicant now seeks to create the Bridleway by means of acquisition of rights, rather than the acquisition of the freehold of the land needed for the new Bridleway, in addition to passing the future maintenance of the bridleway fence the landowner Mr Peake. This late change in the order we are told is a result of interaction between the applicant and the Highway Authority Oxfordshire County Council (OCC). We have not seen details of this correspondence, nor the questions asked of OCC by the applicant. Our understanding from discussions with OCC is that they have no intention of owning any interest in land, only the creation of the public right of way on the surface. Therefore, the applicants suggestion that OCC do not require the ownership is not relevant as this has never been the case. The change by the applicant seems to point towards their desire to distance themselves from the liability of a Bridleway which has outstanding safety concerns and to negate the future maintenance responsibility which they seek to pass to the Mr Peake.

28. We have received a noted **[INQ 26]** at 19:02 Monday 1 July 2024. We understand this has not yet received its relevant reference code, nor has this been shared on the inquiry website. The applicant has sought to clarify by means of illustration the access details proposed for the bridleway into Mr Peakes land. The north gateway still does not provide sufficient detail to confirm whether the proposed bridleway will effectively narrow the agricultural access enjoyed by Mr Peake. Therefore, a measured survey and accompanying swept path analysis is requested to confirm the practicalities of the proposal. We also await details of who will be responsible for the

maintenance of the bridleway gates?

29. The south gateway proposed appears to be acceptable subject to measured survey and confirmation the applicant can position the proposed bridleway adjoining the southern field fence in this field.

Conclusion

30. For the reasons set out above, particularly the proposal to acquire rights to create the new Bridleway rather than the acquisition of the freehold interest in the land, the draft Order should not be made or should not be made in its draft form without modifications to address Mr Peake's concerns. Since the material provided by the applicant to justify its position on some of Mr Peake's concerns is limited, Mr Peake reserves the right to supplement or modify his grounds of objection when the applicant seeks to further supplement its case.

Costs

31. Further to the Transport and Works Act 1992 Public Inquiries and Hearings Costs Awards A Guide For Applicants And Objectors December 2007 Mr Peake wishes to register his intention to seek costs in relation to this matter. Further details will be set out separately.

Hywel Morse MRICS

FAAV Laws &

Fiennes

On behalf of Andrew Charles

Peake 02 July 2024