



Department for Transport

Winckworth Sherwood
Solicitors and Parliamentary Agents
Minerva House
5 Montague Close
London
SE1 9BB

Natasha Kopala
HEAD OF THE TRANSPORT AND WORKS ACT ORDERS
UNIT
DEPARTMENT FOR TRANSPORT
GREAT MINSTER HOUSE
33 HORSEFERRY ROAD
LONDON
SW1P 4DR
DIRECT LINE: 07971 145887

Web Site: www.dft.gov.uk

26 November 2020

Dear Sirs,

TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION) ORDER

1. I am directed by the Secretary of State for Transport to say that consideration has been given to the report of the Inspector, Mr Ian Jenkins BSc CEng MICE MCIWEM (“the Inspector”) who held an inquiry between 13 February 2018 and 25 May 2018 into the application made by your clients, Network Rail Infrastructure Limited (“NR”) for:

(a) the Network Rail (Suffolk Level Crossing Reduction) Order (“the Order”), to be made under sections 1 and 5 of the Transport and Works Act 1992 (“TWA”); and

(b) a direction granting Deemed Planning Permission, subject to conditions, for the works that are the subject of the Order.

2. Enclosed with this letter is a copy of the Inspector’s report. All “IR” references in this letter are to the specified paragraph in the Inspector’s Report.

3. By this application NR originally sought powers to close or downgrade rights over 24 level crossings within Suffolk together with associated powers (IR 3.2.2). The works in connection with this Order are set out in IR 1.2.1. The Order would also permit compulsory acquisition of rights over third party land for the proposed works and ancillary purposes as set out in IR 1.2.2.

4. As set out in IR 3.2.4 following the withdrawal of one level crossing from the draft order, since the application was made and the proposed withdrawal of another at the end of the Inquiry, NR now seeks powers to:

- Close 16 level crossings, following provision of a new right of way on a diversionary route;
- Close 3 level crossings without provision of a new route;
- Extinguish private rights of way over 1 crossing;

- Downgrade the rights of way over one crossing from byway open to all traffic (BOAT) to a bridleway;
- Upgrade one footpath to a bridleway.
- Close one crossing not subject to public right of way or known private rights of way, use being permissive only;
- Carry out works necessary to facilitate the proposed closures and creations of new public rights of way;
- Temporarily use and/or take rights of access over land to facilitate the exercise of powers within the draft Order.

5. The Secretary of State notes the benefits sought to be achieved through the Order as summarised in IR 3.2.5.

Summary of Inspector's recommendations

6. The Inspector recommended that the Order should be made, subject to modifications, and that deemed planning permission be granted subject to conditions as set out in Appendix 8 in the Inspector's Report.

Summary of Secretary of State's decision

7. For the reasons given in this letter, **the Secretary of State has decided to make the Order with modifications and to give the Planning Direction, subject to conditions set out in Annex A to this letter.**

8. **The table at paragraph 132 of this letter sets out the level crossings that should be included in the Order and those that should be removed.**

Secretary of State's consideration

9. Careful consideration has been given to all the arguments put forward by or on behalf of all parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. Where not stated the Secretary of State can be taken to agree with the recommendations and conclusion put forward by the Inspector.

10. In response to the application, the Secretary of State received 62 objections, 3 representations and 3 letters of support. Following the pre-Inquiry meeting, from December 2017 to February 2018, 59 more objections were received. Additionally, 3 objections were received towards the end of the Inquiry. During the Inquiry, 5 parties withdrew their objection. Whilst Bacton United also submitted a letter withdrawing its objections, subsequent correspondence raised concerns, which have been taken into account (IR1.3.1 -1.3.3).

11. The Secretary of State issued a screening decision on 3 March 2017 which stated that an Environmental Impact Assessment was not required in relation to the project which is to be the subject of the Order.

Legal and Procedural Matters

12. In making this application, NR complied with the publicity requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the 2006 Rules”). This included serving copies of the application and the accompanying documents on the persons specified in the 2006 Rules and making the documents available for public inspection. As also required by the 2006 Rules, NR displayed and published notices giving information about the application and how to make representations and served notice on those whose rights over land would be extinguished under the Order.

Whether it is appropriate to use the TWA procedure

13. The Secretary of State notes that there was disagreement between NR and the Ramblers’ Association (“RA”) in relation as to whether it was appropriate for NR to be seeking closure of level crossings by means of a TWA Order (IR 3.1.1). NR’s case for the use of TWA procedures is set out in IR 3.1 where it is explained that the Order is being pursued under section 1 of the TWA, with the matters contained within the draft Order being matters ancillary to the operation of a transport network, specifically the efficient and safe operation of the railway network within the Anglia region (IR 3.1.2).

14. The Secretary of State notes, as set out in IR 8.2, the RA’s view that it is inappropriate to use a TWA Order to pursue the level crossing closures and diverted routes envisioned in the draft Order. RA’s position is that sections 118A and 119A of the Highways Act 1980, which are specifically designed to enable railway operators to stop-up and divert footpaths, bridleways and restricted byways that cross railways, are the correct statutory provisions to carry out the level crossing closures under the Order (IR 8.2.1). The Secretary of State further notes NR’s position in their closing submission, as set out in IR 3.3.28 to 3.3.33, is that the RA’s position is flawed and there is no basis for concluding that a TWA Order is not an appropriate and lawful means of seeking to affect the objects of this Order.

15. The Inspector’s position is that it is unlikely that the proposals could be more properly dealt with under the terms of the Highways Act 1980 (IR 12.1.10) and considered overall that it is appropriate to use the TWA procedure in this case (IR 12.1.12). The Secretary of State agrees with the Inspector’s conclusion.

Revised National Planning Policy Framework

16. The Secretary of State notes at the time of the Inquiry, the National Planning Policy Framework, March 2012 was extant. It was subsequently replaced with a new version in July 2018 and the change was drawn to the attention of interested parties. A further update was issued in February 2019. The Secretary of State agrees with the judgment of the Inspector that there are not differences between the July 2018 version and the February 2019 version of the document which are material to the findings of the case (IR 1.6.5).

Tests to be Applied

17. The Secretary of State notes NR’s position as set out in IR 3.1.16 - 3.1.23 that in considering the proposals for each crossing, the test that needed to be considered is that

set out in section 5(6) of the TWA, namely, whether the Secretary of State is satisfied (a) that an alternative right of way has been or will be provided; or (b) that no alternative right of way is required.

18. The Secretary of State notes the Inspector's position as set out in IR 12.2.1 to 12.2.7 that the outcome of the section 5(6) test is not a matter to be weighed in the public interest balance but sets out a condition precedent that would need to be satisfied if a level crossing closure, which includes the extinguishment of a public right of way ("PRoW"), is to be included in the Order. The Inspector noted that the condition precedent is a matter to be determined before consideration can be given to where the public interest lies. This is because not least the removal of a crossing from the Order as a result of a failure to comply with section 5(6) would mean that any adverse consequences associated with the closure would not be realised. Further the scale of the benefits to the railway under the Order through the level crossing closure would be reduced (IR 12.2.4). The Inspector recognises it is possible that an existing route might have particular value as regards enjoyment/amenity value and considers that may subsequently weigh in the public interest balance, undertaken separately from consideration of the section 5(6) requirement. This is reinforced by the National Planning Policy Statement for National Networks, which indicates that in considering revisions to an existing public right of way, consideration needs to be given to, amongst other things, the attractiveness of the right of way (IR 12.2.7d).

Aims of and need for the proposed scheme

19. The Secretary of State notes the aims and need of the proposed scheme set out in IR 3.2. The NR case for the Order turns on benefits to the railway which would result from reducing the number of at-grade level crossings across the Anglia route. These benefits would improve the reliability, and resilience of the network; reduce constraints on future enhancement schemes and; and enable NR to focus its resources on those at-grade crossings which cannot be closed by diversion (IR 3.2.7).

Alternative Options

NR's response to the position of objectors on 'Strategic' issues, including process concerns

20. The Secretary of State notes Suffolk County Council's ("SCC") position set out in its original objection letter (which it requested stands as its statement of case). SCC objected to 9 of the proposed closures; would be seeking commuted sums to offset future maintenance costs; would be providing a list of works it considered necessary to bring new routes into being and capable of being maintained at public expense; and requesting modifications of the Order to include Ordnance survey grid references. In a subsequent letter SCC requested that it be permitted to add to its statement of case to maintain holding objections to, amongst other things, the whole Order unless and until amendments were made to the Order to (a) address SCC's concerns regarding the certification process for rights of way set out in article 16; and (b) provide an appropriate mechanism for agreeing commuted sums; and, (c) to specify relevant information on widths and grid references to enable SCC to make a Legal Event Modification Order (IR 3.3.25).

21. The Secretary of State notes that SCC confirmed on Day 24 of the Inquiry that these subsequent concerns had been resolved through a side agreement with NR and that these holding objections were therefore withdrawn (IR 3.3.26). The Secretary of State notes that

concerns on the certification process and commuted sums were also echoed by RA. A joint statement by NR and SCC providing an outline of the matters agreed in the side agreement was submitted to the Inquiry. The Secretary of State shares the Inspector's judgment that this provides reasonable assurance that the concerns raised by SCC and echoed by RA have been satisfactory addressed (IR 12.3.1).

Comparative Safety Risks of level crossings

22. The Secretary of State notes NR's approach to Risk and Safety set out in IR 3.2.11-3.2.20. A number of objectors criticised the lack of a comparative assessment of the risks at a particular level crossing to the risks of pedestrians using the rural road network proposed as part of a diversionary route if that crossing is closed. However, there is no established methodology for comparing the risk at level crossings with risks on rural roads (IR 3.5.2.1- 3.5.2.2).

23. The Secretary of State notes that Road Safety Audits ("RSAs") were carried out by an independent RSA team within Mott Macdonald (commissioned by NR) and RSAs carried out by an independent team within Capital Traffic (commissioned by SCC). While different RSA auditors may reach different conclusions as to the nature or extent of an issue or recommendations in respect of that issue, both parties agreed that does not mean that one of the audits is somehow deficient or defective (IR 3.5.2.4)

24. The Secretary of State notes the Inspector's conclusion on this matter. The Inspector's view is that level crossing risk scores derived by NR for its All Level Crossing Risk Model is of little assistance in this case (IR 12.5.2.3). There is no established methodology for comparing safety risk at level crossings with safety risks on alternative routes and the Inspector noted that the House of Commons Transport Select Committee's generic findings to the effect that "if an average walking trip includes a level crossing, the fatality risk to a pedestrian is about double the risk of a walking trip without a level crossing" was of no assistance in judging the specific proposals before him (IR 12.5.2.5). In the light of these circumstances, the Inspector considered that a pragmatic approach would be for the proposed diversion routes to be assessed on their own individual merits, with reference to certain matters including associated standards and assessment tools such as RSAs and the provisions of the Order to judge whether associated safety standards, if there are any, would be satisfactorily resolved. If they would, the route may be regarded as suitable from a safety point of view. If they would not, the proposed diversion would not be fit for purpose and would not be as suitable alternative (IR 12.5.2.6). The Secretary of State shares the Inspector's view.

Equality

25. The Public-Sector Equality Duty ("PSED") contained in section 149 of the Equality Act 2010, sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The Secretary of State notes NR's approach to this issue as set out in IR 3.5.5.14 – 3.5.5.17 and the Inspector's view that he is satisfied that NR's reports address the PSED in substance, objectively with an open mind and, for the most part, with sufficient rigour (IR 12.5.2.11).

Level Crossings Considerations

26. The Secretary of State now considers the position of each level crossing referred to in paragraph 4 above (and as set out in IR 3.2.4). Where the Secretary of State concludes that the requirements of section 5(6) of the TWA have been satisfied, namely (a) that an alternative right of way has been or will be provided; or (b) that no alternative right of way is required, he will then go on to consider other crossing specific matters before deciding if the crossing should be included in the Order.

S01 – Sea Wall

27. The Secretary of State notes the Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing (IR 3.5.6.2). NR considers that it provides leisure and recreational access to the local footpath network for a moderate number of people on a regular basis (IR 3.5.6.1). The Secretary of State notes NR's proposal is to divert users of the crossing to an existing footbridge to the east using an existing public right of way network and that the Order proposals would extinguish a section of Footpath 13 Brantham to the north of the railway and a section to the south of the railway, running along the sea wall (IR 3.5.6.3).

28. The Secretary of State notes that the Order proposals are adjacent to, and at points marginally within, the Stour and Orwell Site of Specific Scientific Interest ("SSSI"). Natural England ("NE") did not raise any concerns about the impact of works being carried out within or adjacent to the SSSI and welcomed the proposal to extinguish the section of Footpath 13 Brantham running south from the level crossing, due to concerns that a proposed housing development to the north could result in increased footfall adjacent to the SSSI if the section of the footpath were to be retained. Removal of the section of Footpath 13 running south from the level crossing would also reduce the potential for disturbance of birds to the reed bed habitat area close to the footpath (IR 3.5.6.4-5).

29 The Secretary of State notes the RA and SCC both objected to the proposed extinguishment of the section of Footpath 13 running south from the level crossing to the sea wall (IR 3.5.6.7). Following discussion during the Inquiry as to whether the Order could (or should) be modified to retain this section of the footpath, NR sought the views of NE who responded that they would not object to the footpath remaining open (IR 3.5.6.13). Mott MacDonald confirmed that the change would not give rise to a different (i.e. significant) or in combination effect and therefore the outcome of the HRA/Ecological Constraints Assessment would not change. It was noted, however, the positive effect on the disturbance to birds would not be achieved (IR 3.5.6.14). In the light of these developments, NR confirmed that it is content for the Order to be modified as proposed by SCC and to retain this section of the footpath (IR 3.5.6.15).

30 The Secretary of State notes that SCC were also not satisfied that the proposed new footpath to the south of the railway would be suitable and convenient, by reference to concerns over ground conditions, including standing water (IR 3.5.6.7). NR set out that there would be an engineering solution to any water/drainage issues and that it would not be able to close the level crossing until the new PRoW was completed to the reasonable satisfaction of SCC as the Highways Authority (IR 3.5.6.8).

31. The Secretary of State also notes the Suffolk Local Access Forum (“SLAF”) objection (IR 9.1.8.1) and the case for the objectors who did not appear at the Inquiry (IR 10.1).

32. The Inspector’s conclusions in relation to S01 Sea Wall are set out in IR 12.5.3. The Inspector is content for the retention of the section of Footpath 13 as it would not harm local relevant designated sites or the interest features for which the sites were notified, or otherwise harm wildlife (IR 12.5.3.2). However, the Inspector considers parts of the new footpath proposed by NR would not be suitable given the limited width of the strip of land which is the subject of the Order and for parts of the footpath it would not be practicable to resolve the drainage flooding issue (IR 12.5.3.5-8). The Inspector considers it unlikely that people with protected characteristics would be disproportionately affected (IR 12.5.3.9). The Inspector concludes as there is no reasonable prospect for a suitable and convenient replacement footpath, the requirements of section 5(6) of the TWA would not be met and the provisions related to the closure of S01 Sea Wall should be removed from the Order (12.5.3.10-11).

33 The Secretary of State agrees with the Inspector that the closure of the S01 level crossing should be removed from the Order.

S02 - Brantham High Bridge

34 The Secretary of State notes the Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing (IR 3.5.7.3). Users would be diverted along a mix of new footpaths, existing footways, a private road and an unmade lane. The diversion would add up to around 675 metres to the route (IR 3.5.7.5). The Secretary of State notes the crossing at S02 is currently closed under a Temporary Traffic Regulation Order due to safety concerns on the very limited sighting on the western side (IR 3.5.7.2). NR considers when open, it provides leisure and recreational access to the local footpath network for a small number of people on an infrequent basis (IR 3.5.7.1).

35. The Secretary of State notes SSC’s objection to the closure of S02 due to concerns relating to the deliverability of the alternative route. More specifically SCC are concerned about evidence of ground instability and soil erosion for part of the new stretch of footpath that will run alongside the eastern side of the railway line and are not in favour of the additional stretch of footpath requiring walkers to navigate a cross-fall along the southern side of the field east of the railway line (IR 5.4.4.1). NR set out there would be a further stage for the approval of detailed designs, but SCC set out such details are necessary at this stage of the process in the context of this TWA Order (IR 5.4.4.5).

36. The Secretary of State notes the RA shares the concerns of SCC (IR 8.6.4.2). The RA also set out the replacement involves walking alongside the busy A137 in sharp contrast to the tranquillity offered by the existing route and it is a purely functional route and is unsuitable as a replacement for a route that is primary used for recreational purposes (IR 8.6.4.1).

37. The Secretary of State also notes SLAF’s objection as set out in IR 9.1.9.1 and the concerns of those who did not appear at the Inquiry (IR 10.2.).

38. The Inspector’s conclusions are set out in IR 12.5.4. He considers that for much of its length for a proposed new section of footpath, the land is sunken and uneven and

appears to have been subject to subsidence (IR 12.5.4.2), Further, in the absence of ground investigations to determine the cause and appropriate remedial actions, there can be no confidence that it would be practical, within the limited area of land subject to the Order, to undertake the works necessary to stabilise the ground or to establish a suitable footpath that would not become a safety hazard in the future due to continuing ground instability (IR 12.5.4.4.). The Inspector considers it unlikely that people with protected characteristics would be disproportionately affected (IR 12.5.4.6). On balance, the Inspector considered there is no reasonable prospect that the Order would make provision for the suitable and convenient replacement footpath which would be made necessary by the closure of S02 and extinguishment of the associated public right of way (IR 12.5.4.6). Therefore, the Inspector concludes that the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S02 Brantham High Bridge should be removed from the Order (IR 12.5.4.7).

39. The Secretary of State agrees with the Inspector that the closure of the S02 level crossing should be removed from the Order.

S03 – Buxton Wood

40. The Secretary of State notes the Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing (IR 3.5.8.3). NR considers that it provides leisure and recreational access to the local footpath network for a small number of people on a relatively frequent basis (IR 3.5.8.1). NR's proposals at this crossing are to extinguish a section of Footpath 022 Bentley and to create a new PRoW on the eastern side of the railway. The proposed diversion would add around 330 metres to the route (IR 3.5.8.4). The approaches to SO3 are over stiles which limit the accessibility of the crossing. Users would be diverted to Falstaff level crossing which is similarly restricted (IR 12.5.5.1).

41. The Secretary of State notes the proposed new footpath would be located within land owned by Mr Caldwell who objected to the Order for the reasons set out in IR 9.3. His daughter gave evidence at the Public Inquiry in support of her father's objection (IR 3.5.8.5). Ms Caldwell proposed 2 alternatives and set out their frustration at not being consulted by NR earlier in the process. However, even if consulted earlier in the process, there was no certainty that either of the alternatives would have been promoted and NR set out it had significant concerns in respect of both alternatives and could not support the modification sought by Mr Caldwell (IR 3.5.8.10-15).

42. The Secretary of State notes there was a discrepancy between the dimensions and orientation of the pylon as shown on the Order plans and that on the ground, but that NR remains confident that a suitable footpath can be provided on the alignment of the proposed route (IR 3.5.8.7). NR acknowledged the potential impacts on Mr Caldwell's landholding and explained how those impacts might be compensated through the compensation provisions in the Order. However, this had to be balanced against the need for certainty and deliverability of the alternative route. (IR 3.5.8.8). NR considers that the land and rights in land for which compulsory acquisition powers are sought are required to secure satisfactory implementation of the scheme and there is a compelling case in the public interest for powers which justifies interfering with the human rights of those with an interest in the land impacted. NR therefore maintains that the Order may properly be confirmed without modification (IR 3.5.8.9).

43. The Inspector's conclusions are set out in IR 12.5.5. He sets out even accounting for the inaccuracy of the Order plan, identified by Mr Kenning after the accompanied site visit, it is likely that the proposed footpath would extend the field edge and it is unlikely that a route could be established within the bounds of the Order land. Furthermore, even if it could, it is likely that parts of the route would be lost in the future due to erosion caused by the stream (IR 12.5.5.3). In addition, a note by NR issued after the accompanied site visit, indicates that a topographical survey would need to be undertaken to establish the position of the stream relative to the proposed route of the footpath, before it can be determined if the route could be made suitable and convenient (IR 12.5.5.4). The Inspector considers it unlikely that people with protected characteristics would be disproportionately affected (IR 12.5.5.5). The Inspector concluded on balance there is no reasonable prospect that the Order would make provision for the suitable and convenient replacement footpath, which would be made necessary by the closure of S03 and extinguishment of the associated PROW. Therefore, the requirements of section 5(6) of the TWA would not be met and the provisions related to the closure of S03-Buxton Wood should be removed from the Order (IR 12.5.5.6).

44. The Secretary of State agrees with the Inspector that the closure of the S03 level crossing should be removed from the Order.

S04- Island

45. The Secretary of State notes the Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing (IR 3.5.9.3). NR considers it provides leisure access to the local footpath network for a relatively small number of people on a relatively frequent basis, with some use as access to local facilities (IR 3.5.9.2). Users would be diverted onto new footpaths on either side of the railway leading to a crossing over Bentley Bridge. The proposed diversion would add around 600 metres to the route (IR 3.5.9.5).

46. OBJ/21 suggested that vehicle restraint barriers which are to be installed on the highway approaches to Bentley Bridge should be positioned instead alongside the railway boundary. NR stated the provision of these barriers is not included in the Order and forms part of an ongoing local authority scheme, prompted by a fatal crash in Selby in 2001. Design standard requirements dictate the position of the proposed barriers (IR 3.5.9.7). SLAF has concerns that the narrowness of the road bridge for pedestrians' use has still not been addressed (IR 9.1.10.1). The Secretary of State further notes objections from 2 parties who did not appear at the Inquiry. OBJ/6 set out there was no good reason to close the crossing on safety grounds, as there has never been an incident of concern there and the crossing had been upgraded to make it even safer. OBJ/21 objects, in particular to the extra part of the proposed diversion alongside the road to circumnavigate the separately proposed vehicle restraint barriers (IR 10.4.1).

47. The Inspector's conclusion in relation to this level crossing are set out in IR 12.5.6. The Inspector considers that the combination of reasonable forward visibility across the bridge and the kerbed footways on either side of the carriageway crossing the bridge, albeit narrow, provides adequate assurance that pedestrians would be unlikely to come into conflict with vehicular traffic. On circumnavigating the proposed vehicle constraint barriers, the existing route is used for leisure purposes as part of the wider footpath network and in

this context the distances involved would not be so great as to be inconvenient. The Inspector also understands that the requirements of the design standards dictate the position of the proposed barriers parallel to the flow of the traffic on the highway (IR 12.5.6.2). The Inspector considers that the inclusion of the crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010 (IR 12.5.6.3). The Inspector considers the Order would make adequate provision for the suitable and convenient replacement footpath which would be made necessary by the closure of S04 (IR 12.5.6.4). On other factors-crossing specific set out in IR 12.8.2 the Inspector considers the proposals would be unlikely to have a material adverse effect on the ability of Royal Mail to fulfil its duties regarding the collection and delivery of mail. The Inspector concludes there is a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing.

48. The Secretary of State agrees with the Inspector's conclusion to include the S04 level crossing within the Order.

S08 - Stacpool

49. The Secretary of State notes the Order would confer powers to close the crossing to all users and extinguish public rights over the crossing and also notes the proposed diversion (IR 3.5.11.2-3). NR considers that it provides leisure and recreational access to local amenities for a relatively small number of people on a regular basis (IR 3.5.11.1).

50. The Secretary of State notes the sole objector who appeared at Inquiry was OBJ/34 Mr Crosby. His reasons are set out in IR 9.4. His concern was that the Order did not provide a suitable and convenient alternative for people who parked on the layby to the south of the level crossing and use the level crossing to access the nature reserve being developed on the quarrying site(s) to the east of the railway. Mr Crosby was particularly concerned of the need to walk along the B1113 to access the bridge which would take users to the eastern side of the railway, and proposed that a new footpath be provided along the western side of the railway corridor to provide an off-road route for those parking in the layby (IR 3.5.11.4). Mr Crosby reiterated his concerns regarding the safety of walking along the longer stretch of the B1113, including as to widths of the pedestrian facilities alongside the carriageway (IR 3.5.11.7).

51. NR set out that Mr Crosby's proposed route would serve no purpose in linking to the PRoW network (IR 3.5.11.5). NR's commissioned RSA team indicated "we did not identify any safety issues with the proposed closure. This is because it utilises an existing footpath that pedestrians would already be walking along..." (IR12.5.7.4). SCC's position is that the B1113 footway is neither a known accident blackspot nor the subject of persistent public complaints, which might otherwise prompt improvement works (IR 12.5.7.5). NR did not support the modifications proposed by Mr Crosby and considered the Order may properly be confirmed without modifications (IR 3.5.11.10).

52. The Inspector's conclusions are set out in IR 12.5.7. In the absence of any compelling evidence to the contrary, it is conceivable that many, if not all those recorded by the census follow the same route as Mr Crosby (parking in the layby and using the level crossing to reach the developing nature reserve and the canal to the eastern side of the crossing) (IR 12.5.7.2). The Inspector considers the RSA's findings (summarised in paragraph 51 of this letter) is a poor argument as it suggests that no consideration was

given to the specific characteristics of that part of the route (IR 12.5.7.4). In addition, the Inspector gives little weight to SCC's position (also summarised in paragraph 51) because of the absence of any evidence to show the extent to which the footway has been used by pedestrians (IR 12.5.7.5). From what the Inspector saw, the section of the B1113 footway is barely 700mm wide in places and he had no doubt that a pedestrian would find it necessary to step into the road to pass another pedestrian on this footway. Doing so would be hazardous (IR 12.5.7.7). The Secretary of State notes the Inspector's judgement that the proposed route poses significant safety risks for pedestrian users in a number of respects and the characteristics of the route would be likely to deter pedestrians from using it (IR 12.5.7.9). The Inspector considers it unlikely that people with protected characteristics would be disproportionately affected (IR 12.5.7.10). The Inspector's overall conclusion is that there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative route, made necessary as a result of the closure of the S08. Therefore, the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S08-Stacpool should be removed from the Order (IR 12.5.7.11).

53. The Secretary of State agrees with the Inspector that the closure of the S08 level crossing should be removed from the Order.

S11 – Leggetts

54. The Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing (IR 3.5.12.3). The Secretary of State notes users would be diverted along existing PRoWs to Wassicks level crossing, which is an automatic barrier crossing and that the proposed diversion route would add around 930 metres to the route (IR 3.5.12.4). A 9-day camera census undertaken during June/July 2016 at the crossing did not record any users and NR considers that it is used very infrequently (IR 3.5.12.2). There were no outstanding objections to the closure of this crossing (IR 12.6.3.1).

55. The Inspector's conclusions are set out in IR 12.5.8. It appears to the Inspector that Wassicks level crossing offers a higher level of protection in the form of the automatic half barriers and on balance the diversion of users to Wassicks level crossing would be unlikely to harm their safety (IR 12.5.8.2). Having regard to the additional travel time likely to be associated with the diversion, this alternative would not be inconvenient (IR 12.5.8.3). The Inspector considers that the inclusion of the crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010 (IR 12.5.8.4). The Inspector concludes on balance that the Order would make adequate provision for a suitable and convenient alternative made necessary as a result of the closure of S11 (IR 12.5.8.5) The Inspector also concludes on balance there is a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing (12.8.3.2).

56. The Secretary of State agrees with the Inspector's conclusion that the Order would make adequate provision for a suitable and convenient alternative route and the closure of the S11 level crossing closure should be included within the Order.

S12 – Gooderhams, S13- Fords Green, S69- Bacton

57. The Secretary of State notes that the Order would confer powers to extinguish public rights of way over the crossings and to close S13 and S69. The proposal for S12 is to

extinguish the PRow passing over the crossing but to leave the private vehicular rights unaffected. The three crossings were considered together at the Inquiry (IR 3.5.13.2). NR considers that for S12 and S13, these crossings are potentially primarily used for farm access and may provide leisure/recreational access to the local PRow network for a small number of people on an infrequent basis. S69 is potentially used for access to the football club and may provide leisure/recreational access to the local PRow network for a small number of people on an infrequent basis during the week, with higher use at the weekend (IR 3.5.13.1). The Secretary of State notes the proposed diversions and the additional metres which would be added to journeys as a result. In relation to S12 users of the PRow network would be diverted to Cow Creek level crossing to the north via existing footpaths/highway, adding around 365 metres to the route. In respect of S13 users travelling east/west would be diverted south to Cow Creek level crossing via a new PRow created to the west of the railway, a diversion of around 1,450 metres. In respect of S69 users would be diverted to the existing underpass at Pound Hill, a diversion length of around 960 metres (IR 3.5.13.6-8).

58. The Secretary notes the objection from OBJ/26 “the Bakers” on proposals for crossings S13 and S69 and on the consultation and Inquiry Process (IR 9.5.1-11). The Bakers object to proposals for the provision of a new field edge footpath along the western side of the railway between S13 and Cow Creek level crossing. They consider the existing PRow network makes adequate provision for users and, as a result of the proposed new route, the associated field would be encircled by footpaths increasing the bio-security risk to its farming enterprise from neosporosis carried by dogs, allowed to roam by dog walkers (IR 9.5.12). For S69, the Bakers consider the proposed new footpath route from Pretyman Avenue to Footpath 014 Bacton is not necessary. Furthermore, the proposed footbridge shown on Order sheet 21 work 3 area would be likely to restrict the access needed for large farm vehicles along the track immediately to the east (IR 9.5.13). The Secretary of State further notes the Bakers put forward alternative proposals for S13 and S69 which is supported by multiple stakeholders (IR 9.5.14).

59. On the bio-security risk, NR stated the Order would not be introducing PRowS into a landholding which had not been previously subject to rights of public access and the Bakers stated they took steps in respect of existing PRowS to manage the risk of neosporosis. In addition, compensation is available under the Order for losses resulting from creation of a new PRow (IR.3.5.13.3). On the proposed footbridge, the Bakers were concerned that it would prevent them from accessing Pulham Lane with outsize agricultural vehicles. However, NR stated that the proposed footbridge would not obstruct Pulham Lane (save there would potentially be some restrictions during its construction). Also, the proposed new footpath would provide access to/from the housing development within Bacton to the PRow to the south (IR 3.5.13.5). On the alternative proposals, NR did not consider that these would provide the connectivity achieved through the Order proposals and the reorganisation of the PRow network not required as a consequence of level crossing closures is simply not within the remit of the Order (IR 3.5.13.17).

60. The Secretary of State notes the objection from SCC in relation to the S69 proposals, set out at IR 5.4.10. These are safety-focused, namely that the proposed stretch of road-side walking along B1113 Broad Road and use of Pound Hill underpass are not safe to divert walkers to (IR 5.4.10.1). SCC also has concerns on risk of flooding at Pound Hill Underpass as part of a permanent diversion, and that since the cause of the flooding originates on NR land it is up to NR to investigate any potential impediments to the

proposed route and such burden should not rest on the highway authority (IR 5.4.10.12). The Secretary of State notes that road safety audit issues were put forward by the RA in relation to the B1113 (IR 8.6.10.3) and that it was clear that 900mm of 'pedestrian facility' should be provided on the western side of the B1113, however it is far from clear that there is sufficient land available within the highway to deliver this (IR 8.6.10 5).

61. The Secretary of State notes NR's position at IR 3.5.13.11 that measures can be put in place to ensure that the underpass may safely be used by pedestrians diverted from S69. Regarding flooding of the underpass NR stated it would have to be resolved and is confident that the issue could be resolved at the detailed design stage and no one has suggested it could not be (IR 3.5.13.12). On the use of B113 Broad Road, NR stated that concerns were related to the facilities available for pedestrians along the carriageway and that NR considered there was sufficient width of verge available to provide appropriate pedestrian facilities (IR 3.5.13.13).

62. The Secretary notes the objections from those who did not appear at the inquiry at IR 10.6 for S12; at IR 10.7 for S13 and at 10.16 for S69.

Conclusions S12

63 The inspector concluded that having regard to the additional travel time likely to be associated with the diversion, this alternative would not be inconvenient. (IR 12.5.9.2). The Inspector considers that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010 (IR 12.5.9.3). The Inspector concludes on balance that the Order would make adequate provision for a suitable and convenient alternative route as a result of the extinguishment of public rights of way over S12 (IR 12.5.9.4). On other crossing-specific factors, set out at IR 12.8.4, the Inspector considers the proposal would not have an adverse impact on private interests (IR 12.8.4.1) and that the acquisition of rights to enable NR to access the existing crossings at S12 and at Cow Creek for maintenance purposes is reasonable (IR 12.8.4.2). The Inspector also concludes on balance there is a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing (12.8.4.4).

64 The Secretary of State agrees with the Inspector's conclusion to include the S12 level crossing within the Order.

Conclusion S13

65 For the reasons set out in IR 12.5.10.2, the Inspector considers that the new footpath is not necessary, as a suitable and convenient alternative has already been provided by the existing footpath network. The Inspector considers that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010 (IR 12.5.10.3). The Inspector considers the proposed new footpath would not be required to protect the PRow network, nor would it materially enhance it (IR 12.8.5.1). The proposed footpath would also increase the bio-security risk to agricultural produce within the field and would be likely to harm the associated farming enterprise (IR 12.8.5.2). However, removal of the proposed footpath between P064 and P060 from the Order would amount to a substantial modification to the proposals associated with the closure of S13. Furthermore, NR does not support such a removal and has indicated that such a change may prejudice other parties

who might have an interest. The Inspector shares that view and considers a fresh TWA application would be needed to pursue such an option (IR12.8.5.3). The Inspector considers, having had regard to NR's strategic case and other matters raised, that there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected or closure of the crossing. Therefore, provisions associated with the closure of S13 should be removed from the Order (IR 12.8.5.4).

66. The Secretary of State agrees with the Inspector that the closure of S13 level crossing should be removed from the Order.

Conclusion S69

67. The Inspector considers it likely that the primary purpose for which S69 is used is as a link between residential development to the west and the football ground to the east of the railway. Furthermore, NR's census survey was undertaken outside the football season, during which the frequency of use of the crossing may well be significantly higher than that recorded (IR 12.5.11.2). The Inspector considers the proposed diversion route would take pedestrians along Broad Road and since the Order does not make provision for a footway, in the Inspector's view, there is unlikely to be scope to do so within the bounds of the highway (IR 12.5.11.5). This impacts on the safety on those travelling to and from the football ground, especially those travelling in groups with children and at night (IR 12.5.11.7-8).

68. The Inspector concludes that the use of the underpass would be unlikely to harm the safety of pedestrians diverted from S69 (IR 12.5.11.9). However, whilst the flooding issue affecting the alternative route may be capable of resolution, there is no compelling evidence to show that it would be resolved if S69 is closed. Furthermore, the Inspector was not convinced that the problem would have to be resolved as part of the conditioned works at the underbridge associated with an extant planning permission for residential development in Bacton (IR12.5.11.10).

69. The Inspector concludes on balance there is no reasonable prospect that the Order would make provision for the suitable and convenient replacement footpath, which would be made necessary as a result of the closure of S69. Furthermore, with reference to the PSED, it seems likely that there are those with protected characteristics, in this case children, who would be disproportionately affected. The Inspector considers the requirements of section 5(6) of the TWA would not be met and the provisions related to the closure of S69 – Bacton should be removed from the Order (IR 12.5.11.12-13).

70. The Secretary of State agrees with the Inspector that the closure of the S69 level crossing should be removed from the Order.

S16 Gislingham, S17 Paynes

71. The Order would confer powers to close the level crossings to all users and extinguish public rights of way over them (IR 3.5.14.3). NR considers that the crossings are used on an infrequent basis by a small number of people to access the local PRow network (IR 3.5.14.2). Users of S16 would be diverted using a mix of new bridleway as well as an existing BOAT and highway, crossing the railway at an underpass, a diversion that would

add around 1,340 metres to the journey (IR 3.5.14.4). Users of S17 would be diverted using a mix of new and existing footpaths, crossing the railway at an overbridge. The proposed diversion would add around 970 metres to the route (IR 3.5.14.5).

72. With reference to S16, NR wishes to withdraw the proposed powers over plot 5, having determined that it is not necessary to facilitate maintenance once the crossing is closed. For S17, NR wishes to reduce the proposed powers over plot 2, such that it is only seeking a right of access over the extent of Coldham Lane, that is not publicly maintainable (IR 3.5.14.6).

73. The Secretary of State notes the objection to S16 from OBJ/11, who did not appear at the Inquiry, regarding plot 5. (IR 10.8.1).

Conclusion S16

74. The Inspector considers the additional travel time likely to be associated with the diversion, the alternative route would not be inconvenient. (IR 12.5.12.3). With reference to the PSED, the Inspector considers that the inclusion of the crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010 (IR 12.5.12.4). The Inspector concludes on balance that the Order makes adequate provision for a suitable and convenient alternative route made necessary as a result of the closure of S16 (IR 12.5.12.5). As drafted, the temporary use of plot 5 would be likely to block the main access to Eastland Farm (IR 12.8.6.1). Subject to the removal of plot 5 there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing (IR 12.8.6.2).

75. The Secretary of State agrees with the Inspector that, with the removal of plot 5, the S16 level crossing should be included within the Order.

Conclusion S17

76. The Inspector considers the additional travel time likely to be associated with the diversion, the alternative would not be inconvenient (IR 12.5.13.3). With reference to the PSED, the Inspector considers that the inclusion of the crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010 (IR 12.5.13.4). The Secretary of State notes that the Inspector concludes on balance the Order makes adequate provision for a suitable and convenient alternative made necessary as a result of the closure of S17 (IR 12.5.13.5). It is noted there are no outstanding objections and that there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing (IR 12.8.7.1-2).

77. The Secretary of State agrees with the Inspector that the S17 level crossing should be included within the Order.

S18 Cowpasture Lane

78. The Secretary of State notes that it is proposed to downgrade the rights enjoyed over this crossing from a BOAT, which in this case is subject to a Prohibition of Driving Order, to a bridleway (IR 3.5.15.3). NR carried out a 9-day camera census during June/July 2016 which recorded 67 pedestrian users (IR 3.5.15.2). The Secretary of State further notes

there is no need for a diversion in this case, as the current usage would not change (IR 3.5.15.4). NR acknowledges that access across Mellis Common is not possible. However, NR has a right of access to maintain the crossing from Chapel Farm Lane, to the east of the railway, which would be used to undertake the proposed works (IR 3.5.15.5).

79. The Secretary of State notes objections set out in IR 10.10.1 concerning access rights across Mellis Common and the downgrading of S18 from a byway to a bridleway.

80. The Inspector gives little weight to the objection that S18 should not be downgraded from a BOAT to a bridleway (IR 12.8.8.1). In the Inspector's view the right of access from Chapel Farm Lane is likely to be sufficient to undertake the limited works proposed (IR 12.8.8.2). The Inspector considers that the inclusion of the crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010 (IR 12.8.8.3). The Inspector concludes on balance that there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and downgrading of the crossing (IR 12.8.8.4).

81. The Secretary of State agrees with the Inspector that the downgrading of the S18 level crossing should be included within the Order.

S21 Abbots (Mellis)

82. The Secretary of State notes the Order would confer powers to close the level crossing to all users and extinguish all private rights over it (IR 3.5.16.3). NR considers that the crossing is used on a regular basis by relatively small numbers of people to access the properties and services in around the village of Mellis (IR 3.5.16.2). The Secretary of State notes that users would be diverted along existing footpaths/highways to Mellis automatic half barrier. The proposed diversion would add up to around 930 metres to the route from one side of the crossing to the other (IR 3.5.16.4). The Order makes provision for compensation for any loss of private rights as well as any loss or damage resulting from the exercise of powers of temporary occupation (IR 3.5.16.5). The Secretary of State further notes NR wishes to withdraw plot 7 from the Order for the reasons set out in IR 3.5.16.6.

83. The Secretary of State notes the objections from those who did not appear at the Inquiry set out in IR 10.11. He notes these objections amount to a loss of amenity and would reduce safety of pedestrians as well as the compulsory purchase of rights over plot 07.

84. The Inspector's conclusions are set out in IR 12.8.9. Users would be diverted along a mix of existing highways and a footpath to cross the railway at the existing 'Mellis' road crossing within the village. For the reasons sets out in IR 12.8.9.2 the Inspector considers with particular reference to amenity and safety, this alternative would be acceptable. The Inspector considers that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010 (IR 12.8.9.3). With NR confirming that it is not necessary to acquire rights over plot 7 and with provisions for compensation, the Inspector concludes on balance that subject to the removal of plot 7, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing (IR 12.8.9.4-5).

**85. The Secretary of State agrees with the Inspector, that subject to the removal of plot 7, that the S21 level crossing should be included within the Order.
S22 Weatherby**

86 The Secretary of State notes the crossing would be closed under the terms of the Order. NR considers that there are no public or private rights of way at this crossing (IR 3.5.17.7). NR considers that the crossing is used regularly by a very high number of people to access property and amenities on both sides of the railway. A 9-day camera census undertaken during June/July 2016 recorded 3595 users (IR 3.5.17.1). The Secretary of State notes that users would be diverted along public highways on both sides of the railway and crossing at the underpass on New Cheveley Road and that it would add around 870 metres additional travel distance in NR's estimation (IR 3,5,17.11).

87. The Secretary of State notes that the case for and against closure of S22 was canvassed over a number of days at the Inquiry (IR 3.5.17.2). There were a large number of objections to the proposal. Those who appeared at the Inquiry were:

- SCC (IR 5.4.5);
- Forest Heath District Council, the local planning authority for the area in which the crossing is situated (IR 6.1.1–6.4.1);
- RA (IR 8.6.5.1-8.6.5.11);
- SLAF (IR 9.1.13.1);
- Newmarket Town Council (IR 9.6);
- Newmarket Ladies Open Door Forum (IR 9.7);
- P Collins (IR 9.8);
- M Smy (IR 9.9);
- R Wood (IR 9.10);
- P Hodson (IR 9.11)

88. Furthermore, the Secretary of State notes objections from those who did not appear at the Public inquiry at IR 10.12 including the Right Honourable Matt Hancock MP and Cambridgeshire County Council.

89. The main points put forward by the objectors were that the closure would cause considerable upset to the community of Newmarket (IR 5.4.5.2). This would impact on people travelling to and from work; school age children; cyclists; residents going shopping and travelling to the football ground and the allotments on Cricket Field Road (IR 9.6.6). The alternative route would cause considerable increases in journey times, due to the additional length of the diversion and its gradient (IR 5.4.5.5). Rather than use the alternative route, users would consider using their car to make journeys or not make the journey at all (IR 5.4.5.14). The alternative route would particularly impact on users with disabilities and more elderly users (IR 5.4.5.23). The diversion route was not acceptable or safe. The crossing has a heritage and historic value, with the route being used for centuries. There were also doubts expressed on NR's position that there is no right of way across the crossing and the Secretary of State notes the Applicant was unable to explain why it permitted the public to use a high risk crossing at its liability, if there was no right to cross it (PR 8.6.5.4). The Secretary of State further notes that NR accepts that there is no doubt that it is a well-used crossing which is highly valued by those who use it, and the community more widely (IR 3.5.17.2).

90. The Secretary of State also notes a number of objectors have suggested that the crossing is “safe enough” or “considered safe” (IR 3.5.17.6). NR set out that it is the 6th highest risk passive footpath crossing on the Anglia route and there were 4 near misses in less than 6 months during 2017; 1 involving a child. The safety risks are real and tangible and cannot be ignored (IR 3.5.17.3-4).

91. NR’s position on the status of the crossing remains unaltered, that there are no public rights of way over the crossing. However, for the purposes of the Inquiry, it has been agreed that the proposals should be considered in the same way as crossings which are subject to public rights of way in the Order (IR 3.5.17.7). For the reasons sets out in IR 3.5.17.11-13, NR’s view is that the proposed diversionary route via the existing highway network is suitable and convenient.

92. The Inspector’s conclusion is set out in IR 12.5.21. On travel time, the Inspector concludes that the proposal would be likely to add greatly to the travel time of some users. In the absence of any origin/destination surveys, he cannot rule out that a large proportion of existing users would be significantly affected (IR 12.5.21.6). On accessibility, having regard to the distance and gradient associated with the proposed diversion route, the Inspector considers that some users would be likely to be deterred from using it, particularly the elderly and those with mobility impairments. Whilst a number may be able to travel instead by car, the Inspector considers it likely that some would be unable to travel. The proposal would be likely to result in a degree of community severance (IR 12.5.21.11). On pedestrian safety concerns, in the Inspector’s judgement, the physical characteristics of the route through the New Cheveley Road underpass, which includes a blind bend, narrow widths and constraints on both sides, would be likely to deter users on the basis of safety concerns (IR 12.5.21.13).

93. On balance the Inspector considers there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative to S22 nor would such a route be otherwise provided for (IR 12.5.21.14). With regard to PSED contained in section 149 of the Equality Act 2010, the equality implications of the diversion route identified by NR, with particular reference to accessibility, add weight to the Inspector’s conclusion that the route would not be suitable and convenient (IR 12.5.21.15). Therefore, provisions related to the closure of S22 Wetherby should be removed from the Order (IR.12.5.21.16).

94. The Secretary of State agrees with the Inspector that the closure of the S22 level crossing should be removed from the Order.

S23 Higham and S24 Higham Ground Frame

95. The Secretary of State notes the Order would confer powers to close the level crossings to all users and extinguish public rights of way over the crossings (IR 3.5.18.4). These crossings are considered together as they share a common locality and the proposed replacement routes developed together (IR 3.5.18.1). As S23 is currently temporarily closed due to safety concerns it is not possible to gauge demand for its usage accurately. For S24 a 9-day camera census undertaken during June/July 2016 recorded 50 pedestrian users (IR 3.5.18.2). With regard to the diversions, the Secretary of State notes that NR considers that the issues arising in respect of these crossings can be divided into three broadly geographical areas: (1) Higham Road east from S23 to the A14 slip road;

(2) the interface of the diversionary routes with Coalpit Lane; and (3) the proposed easterly diversion routes for S24 (IR 3.5.18.6).

96. The Secretary of State notes SCC's objection to the closure of S23 on grounds of pedestrian safety, set out in IR 5.4.6.

97 The RA objects to the closure of both crossings and has treated these crossings as linked. Like SCC it has concerns about the proposed roadside walking along Higham Road (IR 8.6.6.1). With regard to S24, whilst the RA accepts that it is not part of NR's proposals that walkers should use Coalpit Lane, it considers that insufficient consideration has been given to the practicalities of the diversion and in particular to the likelihood, if both S23 and S24 are closed, that walkers will in practice use Coalpit Lane (IR 8.6.6.2). The RA considers concerns could have been addressed by additional commitments to specific works and it is disappointed that NR is unable to commit to all or any of RA's proposed improvements; leaving it no alternative but to sustain an objection (IR 8.6.6.3).

98. The Secretary of State notes the objection from OBJ/42 to two proposed new PRow's being provided on their landholding (IR 3.5.18.16). The Secretary of State further notes the objection from SLAF on S23 because the suggested diversion uses existing roads with inadequate verges and to reduce safety concerns it has suggested the possibility of putting a field edge path behind the group of houses by the war memorial. (IR 9.1.14).

Conclusion S23

99. The Secretary of State notes the Inspector conclusions set out in IR 12.5.14. The Inspector considers that where pedestrians would be diverted along Higham Road, some sections of verge are unsuitable for pedestrians, being steep, high or narrow (IR 12.5.14.2). Close to the War Memorial the horizontal bend in Higham Road would be likely to greatly restrict visibility for pedestrians and drivers and in this location the verge on the northbound side of the highway is narrow. The Inspector considers it unlikely that the verge could be made suitable for pedestrian use and pedestrians would find it necessary to walk on the carriageway or cross over to the other side of the highway (IR 12.5.14.5). Due to the limited visibility as well as the likely speed and frequency of passing traffic, walking in the carriageway and/or crossing the road close to the War Memorial would be hazardous. The Inspector concludes that the proposed closure of S23 would be likely to result in pedestrians using a route along Higham Road which would pose a significant risk to their safety (IR 12.5.14.7). The Inspector considers it unlikely that people with protected characteristics would be disproportionately affected (IR 12.5.14.9). The Inspector concludes on balance that there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative made necessary as a result of the closure of S23, and the Inspector refers in particular to the proposed use of Higham Road. The Inspector concludes that the requirements of section 5(6) of the TWA would not be met and the provisions related to the closure of S23 – Higham should be removed from the Order (IR 12.5.14.10).

100. The Secretary of State agrees with the Inspector that the closure of the S23 level crossing should be removed from the Order.

Conclusion S24

101. The Secretary of State notes the Inspector's conclusions set out in IR 12.5.15. The Order includes 2 diversion routes, which are intended to mitigate the impact of the loss of S24, one to the west and the other to the east. The western road would provide a comparable north/south connectivity linking the local PRow (IR 12.5.15.2). The diversion to the east would extend on the south side of the railway along a new public right of way around 2.5km long to an entirely different section of the wider footpath network on the northern side of the railway. The Inspector considers that, firstly, the diversion would serve as a wholly different purpose to that of the existing route and so would not amount to an alternative and secondly, it would not amount to a suitable and convenient replacement made necessary as a result of the closure of S24 (IR 12.5.15.3). The Inspector considers it unlikely that people with protected characteristics would be disproportionately affected (IR 12.5.15.7). The Inspector concludes on balance that there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative made necessary as a result of the closure of S24. Therefore, the requirements of section 5(6) of the TWA would not be met and the provisions related to the closure of S24 should be removed from the Order (IR 12.5.15.8).

102. The Secretary of State agrees with the Inspector that the closure of the S24 level crossing should be removed from the Order.

S25 – Cattishall

103. The Secretary of State notes the Order would confer powers to close the level crossing to all users and extinguish public rights of way over the crossing (IR 3.5.19.2). NR considers that usage is primarily for leisure and recreational access to the local area by a moderately high number of people on a regular basis. However, there is some limited evidence of use for access to property and commuting (IR 3.5.19.1). Users would be diverted to an existing underpass to the west using a mixture of new and existing routes. The maximum diversion distance would be around 1,000 metres (IR 3.5.19.18).

104. The Secretary notes objections from those who appeared at the Inquiry. These were:

- SCC (IR 5.4.7);
- St Edmundsbury Borough Council, the local planning authority for the area in which S25 is situated (IR 7.1.1–7.3.1);
- RA (IR 8.6.7)
- SLAF (IR 9.1.15)

105. Two further objections were received from objectors who did not appear at the Inquiry, including Great Barton Borough Council (IR 10.13)

106. The concerns raised by the objectors were, essentially, three-fold; firstly, that closure of the level crossing prior to the provision of a proposed bridge was premature; secondly, that closure of the level crossing was contrary to local and national planning policies; and thirdly, that the proposed alternative route was not suitable and convenient for existing users (IR 3.5.19.4). As to prematurity, NR argue for the reasons set out in IR 3.5.19.5-9

that there is no basis for requiring it to forego or defer, the strategic benefits which would be achieved through the Order until such time as a bridge is provided as part of the proposed development to the north, whose consent and funding rests in the hands of third parties. For the reasons set out in IR 3.5.19.10-17, NR considers that the arguments that the proposals conflict with local and national policy as put forward by Mr White for St Edmundsbury Borough Council, after properly scrutiny, cannot be substantiated. For the reasons set out in IR 3.5.19.18-22, NR considers that the proposed route is suitable and convenient.

107. In relation to the proposed route, the Inspector's conclusions are set out in IR 12.5.16. Whilst S25 is likely to be primarily used for leisure and recreational access to the local area, there is some limited evidence of use of other purposes such as commuting (IR 12.5.16.2). The proposed diversion would direct users on the southern side of S25 westwards along highways through an existing residential area to cross the railway as a currently disused underpass (IR 12.5.16.3). For users travelling to and or from locations further to the west on the southern side of the railway, the proposed diversion would be unlikely to make a significant difference to the distance travelled. Furthermore, for residents of the Taylor Wimpey site, who are currently able to access the start of Green Lane and the countryside beyond directly across the S25, the diversion would add up to around 1 km to the route. The Inspector shares the same concern of SCC that this additional distance would be likely to deter some of those users from making the journey (IR 12.5.16.4). The Inspector states that the *Manual for Streets* indicates that, in order to encourage and facilitate walking, pedestrians need to feel safe. The proposed alternative involves a narrow underpass, with stepped abutment walls where people may conceal themselves. The Inspector concludes these characteristics would be likely to deter people from using it due to safety concerns (IR 12.5.16.5).

108. The Inspector considers it unlikely that people with protected characteristics would be disproportionately affected (IR 12.5.16.6). The Inspector concludes on balance that there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative made necessary as a result of the closure of S25. Therefore, the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S25 Cattishall should be removed from the Order (IR 12.5.16.7).

109. The Secretary of State agrees with the Inspector that the closure of the S25 level crossing should be removed from the Order.

S27 Barrell's and S28 Grove Farm

110. The Secretary of State notes the Order would confer powers to close the level crossings to all users and extinguish public rights of way over the crossings (IR 3.5.20.2). NR considers that the crossings are used on a regular basis by a relatively small number of people to access the footpath network and S27 is also used to access properties (IR 3.5.20.1). The proposals for these crossings have been developed together, as the two-level crossings are in relative close proximity (IR 3.5.20.3). Users would be diverted to existing road bridges to the east and west using a mixture of new and existing routes. NR estimates that the length of diversion for a user would range, depending on direction of travel, from around 230 metres to 950 metres. (IR 3.5.20.10).

111 The Secretary of State notes SCC's objections on safety grounds in respect of S27 at IR 5.4.8 and RA's objections to S27 and S28 at IR 8.6.8. Of those who did not appear at the Inquiry, OBJ/8 objected to S27 owing to the impact of proposed works on their property as set out in IR 10.14.1. OBJ/122 objected to S28 which would result in the proposed new footpath cutting across the corner of their field. OBJ/48 objected to the proposal to create a new PRow running within their neighbour's landholding to the west of their property, in particular as to the implications for security of their property and the risk of their horses being startled (IR 3.5.20.4-5).

112. The Inspector's conclusion on the proposed diversions is set out in IR 12.5.17. The Inspector considers they have the potential to result in a material increase in pedestrian use of road bridges and he attributes little weight to the absence of any recorded accidents in the vicinity of the bridges in the recent past (IR 12.5.17.3). Due to visibility issues, a driver approaching one side of Barrel Road bridge may well have insufficient time to stop to avoid a collision with a pedestrian once seen on the other side of the bridge. This is consistent with the concerns expressed by the SCC (IR 12.15.17.5). It would also be impracticable to provide a kerbed footway for pedestrians, as vehicles approaching from opposite directions would be using the same road space with limited forward visibility, giving rise to a much greater risk of collisions between vehicles or with the parapet wall opposite the footway. (IR 12.5.17.7). The Inspector considers that his findings concerning road safety at Barrell's Road bridge are also applicable to Grove Farm Bridge (IR 12.5.17.8).

113. The Inspector considers it unlikely that people with protected characteristics would be disproportionately affected (IR 12.5.17.9). The Inspector concludes on balance that there is no reasonable prospect that the Order would make provision for the suitable and convenient alternative(s) made necessary as a result of the closures of the S27 and S28. Therefore, the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S27 Barrell's and S28 Grove Farm should be removed from the Order (IR 12.5.17.10).

114. **The Secretary of State agrees with the Inspector and that the closure of the S27 and S28 level crossings should be removed from the Order.**

S29 Hawk End Lane

115. The Secretary of State notes the Order would confer powers to close the level crossing to all users and extinguish public rights of way over the crossing (IR 3.5.21.2). Users would be diverted to an existing underpass to the west and Elmswell level crossing to the east using a mixture of new and existing routes. The maximum diversion for a user from the north side of the railway to the south would be around 860 metres (IR 3.5.21.4). NR considers that the crossing provides access to areas of Elmswell north and south of the railway, including for the purposes of leisure access to the footpath network and commuting (IR 3.5.21.1).

116. The Secretary of State notes Taylor Wimpey's objection to this Order has been withdrawn, the parties having reached agreement as to how NR will access the level crossing site (IR 3.5.21.3). No other objections were received.

117. The Inspector's conclusions on the diversion are set out in IR 12.5.18. It appears to the Inspector that the crossing points associated with the diversions offer pedestrians a

greater level of protection than S29. The convenience of users would be assured through the availability of 2 alternatives; one leading through the built-up areas of Elmswell, which would be more likely to be of use to commuters; and the other connecting to the wider footpath network, which would be more likely to be required for leisure (IR 12.5.18.2). The Inspector considers that the inclusion of the crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010 (IR 12.5.18.3). The Inspector concludes on balance that the Order would make adequate provision for the suitable and convenient alternatives made necessary as a result of the closure of S29.

118. With Taylor Wimpey's objection withdrawn and with the withdrawal of plots 11,12 and 13 from the Order, as the other plots would provide sufficient access, the Inspector concludes there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing. (IR 12.8.10.1-2).

119. The Secretary of State agrees with the Inspector, that subject to the removal of plots 11,12 and 13 that the S29 level crossing should be included within the Order.

S30 Lords No. 29

120. The Secretary of State notes that the Order would confer powers to close the level crossing to all users and extinguish public rights of way over the crossing (IR 3.5.22.3). NR considers that the crossing is used regularly by a moderately small number of people to access the wider footpath network (IR 3.5.22.2). Users would be diverted along two new 2 metres wide unsurfaced public footpaths running parallel with and adjacent to the railway; one on the north side and one on the south side (IR 3.5.22.4). NR wishes to remove the proposed powers over plot 26, as sufficient working space would be provided by other plots (IR 3.5.22.5).

121. The Inspector considers that the inclusion of the crossing in the Order would be unlikely to conflict with the aims of the Equality Act (IR 12.5.19.3). The Inspector concludes on balance that in the context of the purpose served by S30 the proposed diversion would provide a suitable and convenient alternative (IR 12.5.19.4). There are no outstanding objections to the closure of this crossing and the Inspector considers on balance that there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing (IR 12.8.11.1-2).

122. The Secretary of State agrees with the Inspector that subject to the removal of plot 26 that the S30 level crossing should be included within the Order.

31 S31 – Mutton Hall

123. The Secretary of State notes that the Order would confer powers to close the level crossing to all users and extinguish public rights of way over the crossing (IR 3.5.23.2). NR considers that the crossing is used relatively regularly by a small number of people to access the wider footpath network (IR 3.5.23.1). Users would be diverted along a new footpath on the southern side of the railway and use an existing road bridge to cross the railway. The length of diversion from one side of the crossing to the other would be around 510 metres (IR 3.5.23.3).

124. The Secretary of State notes objections from SSC (IR 5.4.9) and the RA (IR 8.6.9) on safety concerns, with SCC objecting to diverting users onto the road bridge on U4622 (IR 5.4.9.1). NR state that neither their commissioned RSA nor the SCC commissioned RSA identified any issue with the proposed diversion route. NR consider that the proposed diversion route is suitable and convenient (IR 3.5.23.5 and 3.5.23.7). OBJ/23 proposed an alternative route regarding the proposed use of an overbridge with the possibility of diverting users to the underpass at Captain's Lane (IR 3.5.23.9). NR stated that the proposed diversion would result in a longer route, which NR considers would be less convenient than that proposed (IR 3.5.23.9).

125. The Inspector's conclusions are set out in IR 12.5.20. The Inspector concludes that the proposed diversion has the potential to result in a material increase in pedestrian use of the road bridge and, given this change of circumstances, he attributes little weight to the absence of any recorded accidents in the vicinity of the bridge in the recent past (IR 12.5.20.4). With reference to the proposed bridge crossings the Inspector considers the safety concerns on the risks to pedestrians, raised by RA and SCC, to be well founded. For the reasons set out in IR 12.5.20.6-8, the Inspector considers that the proposed closure of S31 would be likely to result in pedestrians using a route which would pose a significant risk to their safety and this is not a matter which is likely to be resolved at the detailed design stage (IR 12.5.20.8).

126. The Inspector considers it unlikely that people with protected characteristics would be disproportionately affected (IR 12.5.20.9). The Inspector concludes on balance there is no reasonable prospect that the Order would make provision for the suitable and convenient alternative made necessary as a result of the closure of S31. Therefore, the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S31 Mutton Hall should be removed from the Order (IR 12.5.20.10).

127. The Secretary of State agrees with the Inspector and that the closure of the S31 level crossing should be removed from the Order.

General Objections

128. The Secretary of State notes the objection from the Environment Agency ("EA") regarding Schedule 11 of the Order on Protective Provisions, as to whether if time elapses under paragraph 2(3) of the protective provisions without a decision by the EA, the application for consent is deemed to be refused or granted. NR wants deemed consent, whereas the EA wants deemed refusal. (IR 10.17.1). The Inspector considers that a period of 2 months before deemed consent is considered to be given would provide adequate protection for the interests overseen by drainage authorities, including the EA. Modification of the Order to provide for deemed refusal would not be justified in this case. (IR 12.9.1.4) The Secretary of State agrees with the Inspector and will change the Order accordingly.

Proposed Amendments to Order and Conditions

129. Where not already stated in this letter, the Secretary of State agrees to the proposed amendments to the Order and Conditions as set out in IR 12.10 and IR 12.11.

130. In the light of the recommendation of the Inspector in relation to the removal of level crossings, with which the Secretary of State agrees, this has resulted in the need to remove

these from the Schedules. As a result, there were no remaining scheduled works and so the Schedule itself has been removed. This has resulted in the further removal of the definition of “scheduled works” with consequential amendments in articles containing a reference to scheduled works (including the removal of articles in their entirety).

131. The Secretary of State is making a number of other minor textual amendments to the Order in the interests of clarity, consistency and precision together with other modifications. He considers that none of these changes materially alter the effect of the Order. These modifications are:

- article 2(1) (interpretation), the definition of “electronic transmission” has been amended to provide a definition of “electronic communications networks”.
- article 18 (power to survey and investigate land), provisions relating to the requirements for notice to the landowners have been included.
- In Schedule 8 (modification of compensation and compulsory purchasing enactments for creation of new rights) the reference to the Suffolk Level Crossing Order has been removed from the substituted Schedule 2A. Such an inclusion moved away from the usual drafting practice and it was unclear how it would be expected to operate. Paragraphs 6 and 7 in this Schedule relating to amendments of the 1981 Act and compensation enactments have been removed. It is not the Secretary of State’s position to accept such amendments and indeed not without the appropriate explanation and justification for the need of such provisions.

Secretary of State’s overall conclusion and decision

132. The Secretary of State agrees with the Inspector’s view that for all the reasons give above, that the case for making the Order has been made. He also agrees with the Inspector’s view that in relation to some of the crossings under consideration the balance has not been found to indicate inclusion within the final made Order. The table below summaries the recommendation for each crossing that should be included in the Order.

Crossing Number	Crossing name	Recommendation	
		Include	Remove
S01	Sea Wall		X
S02	Brantham High Bridge		X
S03	Buxton Wood		X
S04	Island	X	
S08	Stacpool		X
S11	Leggetts	X	
S12	Gooderhams	X	
S13	Fords Green		X
S16	Gislingham	X	
S17	Paynes	X	
S18	Cowpasture Lane	X	
S21	Abbotts (Mellis)	X	
S22	Weatherby		X
S23	Higham		X
S24	Higham Ground Frame		X
S25	Catishall		X
S27	Barrell’s		X
S28	Grove Farm		X
S29	Hawk End Lane	X	

S30	Lords No. 29	X	
S31	Mutton Hall		X
S69	Bacton		X

Notice under section 14 of the TWA

133. This letter constitutes the Secretary of State's notice of his determination to make the Order with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish notices of the determination in accordance with section 14(4) of the TWA.

Challenges to the Decision

134. The circumstances in which the Secretary of State's decision may be challenged is set out in the note attached to Annex B to this letter.

Distribution

135. Copies of this letter are being sent to those who appeared at the inquiry and to all statutory objectors whose objections were referred to the inquiry under section 11(3) of the TWA but who did not appear.

Yours faithfully,



Natasha Kopala

Interpretation

In the following conditions:

'the development' means the development authorised by the Order;

'the local planning authority' means Babergh District Council, West Suffolk Council, Ipswich Borough Council and Mid Suffolk District Council as respects development in their respective areas;

'Network Rail' means Network Rail Infrastructure Limited;

'the Order' means the Network Rail (Suffolk Level Crossing Reduction) Order 2020;

Time limit for commencement of development

- 1) The development must commence before the expiration of five years from the date that the Order comes into force.

Reason: to set a reasonable time limit for the commencement of development and to avoid blight.

Detailed design approval

- 2) No development for a footbridge shall commence until written details of its design and external appearance, including finishing materials have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details approved by the local planning authority.

Reason: in the interest of visual amenity and the amenity of users.

Landscaping scheme

- 3) No development shall commence until the details of all proposed soft landscaping works ("the landscaping scheme") including:
 - a) The location, number, species, size and planting density of the proposed planting;
 - b) The cultivation, importing of materials and other operations to ensure plant establishment;
 - c) The details of any existing trees to be retained, with measures for their protection during the construction period; and,
 - d) An implementation programme

have been submitted to and approved in writing by the local planning authority.

Reason: in the interests of visual amenity.

Landscaping implementation and maintenance

- 4) The landscaping works shall be carried out in accordance with the landscaping scheme approved by the local planning authority under condition no. 3.
- 5) Any tree or shrub planted as part of the approved landscaping scheme that, within a period of 5 years after planting is removed, dies or becomes seriously damaged or diseased, shall be replaced in the first available planting season with a specimen of the same size and species as that originally planted.

Reason: to ensure that planting is carried out in a timely manner and maintained thereafter.

Ecology

- 6) No development shall take place at any location except in accordance with the details for that location set out in the *Precautionary Method of Works: Legally Protected Species, 25 May 2018*, or any subsequent revisions that have been submitted to and approved in writing by the local planning authority.

Reason: to protect the ecological value of the area.

Working hours

- 7) Except for work undertaken on Network Rail's land, construction of the development: shall only be carried out between the hours of 08:00 hrs and 18:00 hrs Mondays to Saturdays; and, shall not be carried out on Sundays or Bank Holidays.

Reason: in the interests of the living conditions of local residents.

ANNEX B

RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, because—

- it is not within the powers of the TWA; or
- any requirement imposed by or under the TWA has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days beginning with the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within 3 working days of the date of this decision letter.

A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking