

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”)

STATEMENT OF CASE 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 Statement of Case 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 draft Order [**NR02**] would allow the applicant to acquire the following plots permanently: 005, 006, 008 and 010 and to use the following plots temporarily: 001, 003, 003A, 003B, 007, 009 and 012. The extent of acquisition and use is shown on the Deposited Plans and Sections and Rights of Way [**NR10**]¹.
5. By way of background -
 - a) On 26 January 2024, Mr Peake submitted an objection to the Order (“**the Objection**”). The Objection is attached [**Peake-1**]. As a freehold owner of land which is 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 5 February 2024, the Secretary of State announced the intention to hold a Public Inquiry to consider the application. The date(s) of the Public Inquiry have not yet been announced.
 - c) On 1 March 2024, Mr Peake was provided with the applicant’s response to the objection (“**the Response**”). The Response is attached [**Peake-2**].
6. In accordance with Rule 7 of the Rules, this document constitutes Mr Peake’s Statement of Case, being the full particulars of case that Mr Peake proposes to put forward at the Public Inquiry. This Statement of Case, which builds on the contents of the Objection, is structured as follows –
 - a) Introduction: paragraphs 1 to 8
 - b) The first ground of objection: the location of the proposed new bridleway – paragraphs 9 to 20;
 - c) The second ground of objection: the application’s effects on the Old Whitehill underpass – paragraphs 21 to 27;
 - d) The third ground of objection: the future of the remaining cul de sac – paragraphs 28 to 33;

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

- e) The fourth ground of objection: the proposed Heads of Terms – paragraphs 34 to 36;
 - f) The fifth ground of objection: the drafting of the Order – paragraph 37.
7. In addition, the Schedule to this Statement of Case includes a list of the documents that Mr Peake intends to refer to or put in evidence at the Public Inquiry. Copies of the documents, which are prefixed **[Peake-]**, are enclosed with this Statement of Case.
 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. In respect of the proposed bridleway, paragraph 8.6.6 of the applicant's Consultation Report **[NR07]** says –

"In studying the issue of the bridleway, Network Rail has identified over 69 bridleways in England which ran adjacent to railways. Of these, Network Rail found 41 which were similar to the proposed bridleway for Tackley. That is, where the bridleway ran adjacent to the rail line for several hundred metres, where the railway ran above the bridlepath, and trains speeds were elevated with minimum of 60mph and often speed limits of 80 to 100+mph. Network Rail believes that since bridleways are acceptable options in these places, that the proposed new bridleway should also be acceptable. Important to note that this was research carried out internally by Network Rail on desktop, mostly relying on Public Rights of Way (PRoW) maps and Google Maps satellite imagery".
12. Mr Peake has not had the opportunity to consider the applicant's study and so it is difficult to say much about it or give weight to it; however, the Consultation Report acknowledges the study's limitations by describing the exercise as something "carried out ... on desktop, mostly relying on Public Rights of Way (PRoW) maps and Google Maps satellite imagery". Based on the limited exercise undertaken, it is difficult to see how the applicant can conclude that, owing to the identification of the bridleways elsewhere in the study, it follows that the location of the proposed bridleway is acceptable.
13. The applicant's Response included, at Appendix 1, an Equestrian Safety Statement which adds little to that set out in the Consultation Report, but which refers to a report called "Report on the presence of bridleways adjacent to railways". Mr Peake considers it unfortunate that the applicant has not shared a copy of that report, especially since the conclusions reached in respect of the appropriateness of the location of the proposed new bridleway are reliant on

- it. Mr Peake considers it would be procedurally unfair for any weight to be given to a report which no one, apart from the person relying on it, has seen.
14. 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 will be providing further, expert evidence on this point. Owing to this, and to avoid unnecessary duplication and cost, Mr Peake does not intend to commission or provide his own expert evidence on this point.
 15. 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).
 16. Owing to the safety concerns with the proposed bridleway, Mr Peake considers there is a risk that it will not be used (or that it will be under used) and that, instead, users will cross Mr Peake's land at a safer location, which would most likely be the licensed path. It follows that Mr Peake is concerned by the prospect of the acquisition of Estate land for a bridleway which will be underused, and which would result instead in the creation of an unofficial bridleway elsewhere over Estate land. Notwithstanding Mr Peake's concerns about the location of the proposed new bridleway, Mr Peake welcomes the applicant's commitment to fence the bridleway.
 17. Mr Peake has previously supported two alternative routes for the proposed bridleway, both of which would cross Estate land, (namely (i) a proposal for new bridge north of the station, also known as Barwood Bridge and (ii) a diversion to the east of the railway) which have both been dismissed by the applicant.
 18. Recently, Mr Peake has suggested a third alternative, again across his land and which would run along the licensed path. Provided the existing bridleway (379/2/10) was stopped up at its junction with bridleways 379/2/20 and 379/25/10, Mr Peake would be willing to allow the applicant to create a bridleway over this land as an alternative to the use of the proposed bridleway. This solution would provide a safer alternative to the applicant's proposed bridleway and avoid the concerns summarised in paragraph 16 above arising.
 19. On 1 February 2024, the applicant sent an engineer to the Estate to consider Mr Peake's solution and the Response states the applicant is unwilling to amend the scheme because "it would cause significant delay to our programme and increase costs". No further information is provided as to the extent of any delay or what the increased cost would be. Since the applicant has reached conclusions based on delay and cost Mr Peake assumes the relevant information is available and would welcome sight of it. Again, without this (basic) information, it is difficult to comment further. Based on the information currently available, Mr Peake considers a diversion to the east of the railway would be preferable to the instant proposal.
 20. The Objection states Mr Peake would also welcome discussions in respect of the maintenance arrangements for any route across Estate land. While the Response does not touch on this, it is assumed this will be covered in any agreement reached between Mr Peake and the applicant.

(ii) The second ground: the application's effects on the Old Whitehill underpass

21. The Old Whitehill railway bridge is located to the south of the proposed stepped footbridge which would span across the railway. The underpass which runs under the bridge will eventually be used as an access for the applicant's works, including transporting the materials necessary to construct the footbridge.

22. The bridge is low for modern agricultural purposes and Mr Peake understands the applicant may need to lower the underpass track under the bridge so that its vehicles can transport materials to the work site.
23. 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. 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.
24. 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.
25. In addition, the applicant is aware that certain pipework (believed to be the property of Thames Water) is buried shallowly in the vicinity of the bridge. The pipework will need to be buried lower for the applicant’s purposes and Mr Peake requests it is lowered to suitable depth and standard, again to be agreed with Mr Peake, to allow the subsequent use of the track by farm machinery.
26. New drainage should be installed to ensure that the area does not hold water, making it unpassable for walkers.
27. 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”. The Response goes on to commit to keeping Mr Peake up to date with progress of the discussions. Mr Peake would encourage the applicant to progress with this engagement as a matter of urgency and would want to be certain of the applicant’s position regarding any improvement works it proposes to carry out at the Old Whitehill underpass well in advance of the Public Inquiry. Since only one Statutory Undertaker is involved, Mr Peake would hope that an update can be provided quickly. The importance of this issue being progressed expeditiously has been raised on behalf of Mr Peake on several occasions, including on the most recent site visit to the Old Whitehill underpass on 27 July 2023.

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

28. Tackley level crossing has been closed under a Temporary Traffic Regulation Order since April 2020 and a temporary footbridge currently allows the railway to be crossed. While the level crossing was, and temporary footbridge is, a public right of way, the new footbridge would instead be a permissive path.
29. The application would result in, amongst other things, the permanent closure of the existing level crossing at Tackley, and the stopping up of existing bridleway 379/2/10 at the point where it crosses the railway. The existing bridleway will then be maintained as a cul de sac which, as the Statement of Aims states “will be accessible by using the new bridleway and existing Public Right of Way (PRoW) network” (paragraph 3.1(b)). The cul de sac will be located on Estate land.
30. The Consultation Report states: “It is important to note that [the proposed] permissive path is not a formal Public Right of Way administered by Oxfordshire County Council. Network Rail will maintain the right to suspend this path, if required to in the future” (paragraph 8.6.20). The Statement of Aims states: “Permissive access can be provided to non-railway users, including pedestrians and cyclists on foot, along the platforms and over the footbridge unless

and until ticket barriers are installed at the station, or Network Rail otherwise determines access to non-railway users should cease” (paragraph 3.1(d)).

31. If ticket barriers are installed at the station or the applicant decides that access to non-railway users should cease, Mr Peake is concerned by the prospect of the presence on the Estate land of a redundant cul de sac. In these circumstances, Mr Peake does not consider it would be reasonable for the cul de sac to remain open to the public. 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. 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.
32. In the Objection, Mr Peake stated he would welcome an explanation from the applicant regarding the procedure the applicant would follow in advance of determining access to non-railway users should cease; for instance, what consultation would be undertaken, and the opportunity of those affected to make representations in respect of the proposal. Mr Peake is surprised that no such consultation will be undertaken and considers the applicant’s commitment to “make every effort to erect signage at each end of the permitted route, providing notice of such closure” to be insufficient.
33. In the Objection, Mr Peake stated he would also welcome an explanation of how the replacement of a right of way with a permitted path satisfies the test under section 5(6)(a) of the 1992 Act. That provision prevents the Secretary of State from extinguishing any public right of way over land unless satisfied that an alternative right of way has been or will be provided. Mr Peake considers the Response unclear on this point since it states: “Here the proposed line side route is the alternative that we are providing to the extinguished right of way ... It is not being provided as an alternative to the extinguished right of way”. To allow Mr Peake to fully understand the position regarding this statutory test, it would, be helpful if the applicant clarified its position.

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

34. Paragraph 6.2.11 of the Consultation Report states the applicant is “hopeful that a mutually beneficial agreement can be reached”. As stated in the Objection, Mr Peake does not consider the Heads of Terms are currently satisfactory and considers significant revisions are necessary.
35. In the Objection, Mr Peake requested that discussions on the draft Heads of Terms continue. While Mr Peake shares the applicant’s hope (as further expressed in the Response) that an agreement can be reached, the current draft is a cause for significant concern. While comments on these will be returned to Bruton Knowles shortly, Mr Peake was surprised that the person responsible for leading these negotiations has changed again (for the third time). It would seem sensible if a regular schedule of meetings was arranged to close out the draft Heads of Terms as a matter of urgency.
36. As mentioned, the application provides for the temporary use of Estate land. The Objection explained there was limited information on the duration of the “temporary” use and stated Mr Peake would welcome further information on this point. The Response confirms that “the compounds will be required for a period of up to 12 months. Bruton Knowles will discuss the duration and proposed terms within the draft Heads of Terms”. Mr Peake agrees that these

points need to be addressed in the Heads of Terms. Mr Peake's understanding, however, is that the Northern compound will be needed for longer than 12 months.

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

37. In the second row of column (2) of Schedule 2 to the draft Order, public footpath 379/16/20 is to be temporarily stopped up save for certain accesses. Mr Peake has requested that the agricultural access to the Estate should be included in the exclusion and the Response states the applicant "will respond further on this point in due course". Again, Mr Peake would welcome a response on this point as soon as possible, and certainly well in advance of the Public Inquiry.

Conclusion

38. For the reasons set out above 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 certain 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.

Hywel Morse MRICS FAAV
Laws & Fiennes
On behalf of Andrew Charles Peake
18 March 2024

The Schedule – Mr Peake’s list of documents

The following is a list of the documents Mr Peake intends to refer to or put into evidence at the Public Inquiry.

Reference	Document
Peake-1	Objection to the application dated 26 January 2024
Peake-2	Applicant’s letter dated 1 March 2024