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Our Ref: TWA/17/APP/03  
Your Ref: HXA/18136/633

29 October 2020

Dear Sirs,

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

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the report of the Inspector, Ms Heidi Cruickshank BSc (Hons), MSc, MIPROW who held an inquiry from 28 November 2017 to 20 December 2017 when it was adjourned and which re-opened on 22 February 2018 until 23 February 2018, into the application made by your clients, Network Rail Infrastructure Limited (“NR”) for:

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

(b) a direction as to deemed planning permission provided for in the Order, to be given under section 90(2A) of the Town and Country Planning Act 1990 (“the Planning Direction”).

2. The Order would authorise NR to close or downgrade 25 level crossings of the railway line in the county of Cambridgeshire. The Order would also authorise the carrying out of works including the removal of level crossings and the diversion or re-designation of the status of certain public roads, footpaths, bridleways, restricted byways or byways open to all traffic, private rights of way and the creation of new public and/or private rights of way. The Order would also authorise the construction of footbridges and a bridleway bridge to carry out new public and private rights of way over drains or watercourses. The Order would also permit NR to acquire land and interests in land in connection with the construction of the scheduled and authorised works to be authorised by the Order.

3. Enclosed with this letter is a copy of the Inspector’s report. The Inspector’s conclusions are set out in chapters 7 to 12 of her Report. The Inspector’s recommendations are set out in paragraphs 13.1 to 13.4 of the report.

### **Summary of Inspector’s recommendations**

4. The Inspector recommended that the Order should be made, subject to modifications, and that deemed planning permission be granted for the works authorised by the Order, subject to conditions.

### **Summary of Secretary of State's decision**

5. 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 B to this letter.**

### **Secretary of State's consideration**

6. 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. All paragraph references, unless otherwise stated, are to the Inspector's report ("IR").

7. In response to the application, the Secretary of State received 52 objections, 3 representations and 4 letters of support. Of the objections 2 were withdrawn prior to the opening of the inquiry. There were some objections relating purely to the withdrawn level crossings mentioned in paragraph 15 below which the Inspector did not consider as part of the proceedings. Out of the interested parties, 3 interested parties were included as representations during the inquiry process and there was an additional letter of support.

8. The Secretary of State issued a screening opinion letter on 24 January 2017, which confirmed that an Environmental Impact Assessment was not required in respect of the application.

### **Aims and need for the proposed scheme**

9. The Secretary of State notes that NR are responsible for the maintenance, repair and safe operation of the railway, with a duty to enhance and improve the operational railway network (IR 3.19). The Secretary of the State notes that the Office of Rail and Road have required NR to seek significant reductions in level crossing risk. They have expressly endorsed the level crossing closures as part of NR's output in the current "control period" and have provided ring-fenced funding for reducing risk at level crossings including through closure. The detail for delivery was left to NR and is also a matter for the Secretary of State in relation to this Order, through which NR is seeking to that which it has been told to do by its Regulator (IR 3.20).

10. The Secretary of State notes the aims and need for the Order scheme as set out in IR 3.175 to 3.184. As stated in paragraph 15 below, when the inquiry opened 4 of the 29 level crossings were withdrawn from the Order. This means that the Order is now required to close or downgrade 25 level crossings in the County of Cambridgeshire as part of NR's objective to remove passive level crossings from the rail network by 2040 to address concerns over the risks posed by such crossings (IR 3.175). The Secretary of State notes that the Statement of aims submitted with the application sets out the benefits sought by NR and these objectives were supported by rail users, operators and recognised by the Cambridgeshire County Council ("CCC") (IR 3.176).

11. The Secretary of State notes that there was considerable disagreement between NR and some objectors, including the Ramblers Association, about whether the use of the TWA procedure was appropriate in relation to these level crossing closures rather than an application to the local highway authority under sections 118A or 119A of the Highways Act 1980 (“HA80”). NR’s case for the use of the TWA procedures is set out in IR 2.18 to 2.30. The Secretary of State notes that the matters being pursued fall within section 1 of the TWA, being matters ancillary to the construction or operation of a transport system (IR 2.87). The Secretary of State also notes that the objectives of the Order are ones which the HA80 does not fully take into account. The basis for closure under section 118A or 119A is directed to the safety of users of the crossing. This is an important part of the objectives of this Order, but does not take into account the other objectives of operational efficiency and future capacity. These objects could not be achieved under the HA80 (IR 2.25). The Secretary of State notes the view of the Inspector that there was “tension” in NR’s case seeking to justify the closures partly for safety reasons but not wishing to rely on that entirely due to question over whether the Order was made under the appropriate legislation (IR 3.177).

12. The Secretary of State notes that clearly level crossings are a risk factor and this risk reduction lies behind the strategy that NR are taking forward. It is further noted that the Inspector did not think it necessary to deal with the arguments regarding NR’s licence and statutory duties except to agree that it leaves NR to devise their own strategy to deliver the expected outcomes. The Secretary of State notes the Inspector’s view that on the evidence as a whole a reduction in the number of level crossings would lead to a reduction in risk and an improvement in safety (IR 3.178). Overall, the Secretary of State concurs with the Inspector that the aims of the scheme would be met by the Order proceeding. These are: improving the safety of level crossing users, railway staff, and passengers; creating a more efficient reliable railway; reducing the ongoing operating and maintenance cost of the railway; reducing delays to trains, pedestrians, and other highway users; and facilitating capacity and line speed increases on the network in the future (IR 3.183).

### **The main alternatives considered by NR and the reasons for choosing the proposals comprised in the scheme**

13. The Secretary of State notes that in terms of overall process, the starting point in relation to the aims of the scheme was to remove as many level crossings as possible from the network (IR 3.11, 3.18, 3.127 and 3.185). The Secretary of State notes a number of objectors queried the use of an application under the TWA as an appropriate means of doing so rather than making an application to the local highway authority under sections 118A or 119A of the HA80. The Secretary of State notes that NR were confident that it would be appropriate to address these level crossings closures under the regime established by the TWA. The Secretary of State notes the Inspector’s view that Rail Crossing Diversion or Extinguishment Orders under the HA80 may only be used in the interests of public safety and have a limited remit but, by contrast, a TWA Order can take into account not only safety but the wider context in which the railway is managed and operated. It can also confer the powers over land necessary to implement the requisite works which is outside the scope of the HA1980 (IR 2.18 to 2.21).

14. The Secretary of State notes that NR have put forward an Order which they feel can be justified as a whole under the TWA. He notes the Inspector’s view that putting aside arguments as to the appropriateness of this legislation, there is a benefit in terms of the

railway network, users, operators and the public in general from the potential outcomes of the Order (IR 3.202). The Secretary of State notes the Inspector's consideration that there must be a balance, taking account of the wider benefits of closing crossings, including potential improved safety for the rights of way network, and the other affected interests who may experience a negative impact (IR 3.204). The Secretary of State notes that the Inspector's recommendation to go ahead with the Order, but not to include certain crossings, has been made with that balancing act in mind, taking account of the competing interests arising from that interface of the railway line with public and/or private rights (IR 3.205).

### **Procedural Matters**

15. In making this application, NR should have complied with the publicity requirements (IR 4.27 and 4.28) 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 ought to have served notice on those whose rights over land would be extinguished under the Order. The Order as initially drafted affected 29 public and private level crossings. Prior to the inquiry it was discovered that there had been an error in notification of some with land interests in relation to 4 of the crossings: C03 West River Bridge, C08 Ely North Junction, C09 Second Drove and C13 Middle Drove. In order to proceed with the inquiry NR requested the withdrawal of those crossings from the Order. The Inspector was satisfied that this was reasonable and these crossings were removed, leaving 25 crossings to be considered (IR 2.10 to 2.14).

### **Public Sector Equality Duty**

16. The Secretary of State notes there was some question as to the way in which equalities issues have been dealt with and in particular the extent to which the Public Sector Equality Duty ("PSED") has been met (IR 5.1). The Secretary of State notes the Inspector's view that the Diversity Impact Assessment ("DIA") is a systematic assessment of the likely or actual effects of policies or proposals on social groups with protected characteristics as defined by the Equality Act 2010 (IR 5.39). The Secretary of State notes that the Inspector, in providing her advice, has had due regard to the totality of the evidence submitted which included the DIA Scoping Report and the individual DIAs, as well as the information from the CCC, the concerns of the Ramblers, individual evidence and taking account that physical barriers may include making a route longer than previously (IR 5.41).

17. The Secretary of State notes that for each crossing the Inspector has provided a recommendation as to whether the proposed alternative route is suitable and convenient in comparison with the existing level crossing route having due regard to the three aims of PSED. He notes that for some crossings the Inspector expressly addressed the impacts of the proposal on persons with the relevant protected characteristics and weighed her findings on those impacts in the overall balance (IR 5.43).

**Consistency with the National Planning Policy Framework (NPPF), national transport policy, and local transport, environmental and planning policies.**

18. The Secretary of State notes the National Planning Policy Framework (NPPF), nation transport policy, local transport, environmental and planning policies and local transport, environmental and planning policies with which the proposals in the TWA Order scheme are required to be consistent (IR 6.86 to 6.98). The Secretary of State notes that the NPPF puts an emphasis on sustainable transport. He notes that Train Travel is part of that picture and whilst the NPPF indicates that priority should be given to pedestrian and cycle movements, this is primarily in the context of transport and travel (IR 6.89). The Secretary of State notes that the NPPF gives weight to health and well-being, which were part of the wider strategic matters referred to by CCC and the Cambridge Local Access Forum. He notes these matters are relevant across the application and relate to CCC policies (IR 6.90). The Secretary of State notes that highway safety has been included within the NPPF and would clearly contribute to issues of economic and social objectives and, where these matters have been raised in relation to crossing proposals, they have been considered. (IR 6.93). The Secretary of State notes that the overarching objective of the NPPF for sustainable development to be achieved by meeting economic, social and environmental objectives, is argued to have been met (IR 6.95).

19. The Secretary of State notes the Inspector's view that there is a general consistency with the policies although, there was a feeling that "railway-centric" stance had been taken in relation to the application as a whole. He notes the Inspector's view that making decisions needs to balance wider policy matters, as indicated by other parties. He further notes that in providing advice in relation to each level crossing the Inspector has aimed to balance those interests as appropriate, bearing the relevant policies in mind (IR 6.100).

### **Level Crossings Considerations**

20. The table at Annex A sets out a description of each crossing (IR 7.1.1)

### **C01 Chittering, C02 Narins No. 117, C33 Jack O'Tells (Adam's Crossing) and C34 Fysons**

21. The Secretary of State notes that four crossings (C01 Chittering, C02 Nairns No 117, C33 Jack O' Tell (Adam's Crossing) and C34 Fysons) are situated on land belonging to, and/or farmed by FC Palmer & Sons ("FCPS") (IR 7.1.1).

21. The Secretary of State notes that the original proposal was to close the three private vehicular crossings (i.e. C02, C33, and C34) to vehicular users but that proposal altered through the course of the inquiry and the intention is now that C34 would be closed to all users with the extinguishment of private rights (IR 7.1.8).

22. The Secretary of State notes that, of the remaining two vehicular crossings, C02 and C33, the intention would be for one to remain open so that farm vehicular traffic would be able to continue using a private internal farm access over the railway line. However, he notes that at the close of the inquiry the question as to which crossing would remain open was still the subject of discussion due to the requirement for third-party negotiation. He further notes that an assurance has been provided by NR that only one of the vehicular crossings would be closed. (IR 7.1.10).

23. The Secretary of State notes that the Order proposes to close crossing C01, extinguishing the public footpath rights associated with Waterbeach footpath FP18. He further notes that the Order would confer powers to close the level crossing to all users and extinguish the existing public rights of way over the crossing and users would be diverted to cross the railway at C33, Jack O'Tell to the north (IR 7.1.17).

24. The Secretary of State takes note of the Inspector's consideration of the likely impacts on land owners, tenants and local businesses and other users (IR 7.1.77 to 7.1.89 and IR 7.1.91 to 7.1.93). The Secretary of State agrees with the Inspector's conclusions that by reducing the number of private vehicular crossings from three to one would reduce the potential conflict points between agricultural vehicular use and rail users, avoid the introduction of greater conflict on the local road network and reduce the potential effect on the farm business (IR 7.1.85). He is further satisfied that CCC and FCPS have the benefit of assurances from NR that notwithstanding the terms of the Order, it would not close both C02 and C33, and it would close neither until the relevant rights over third party land have been secured (IR 7.1.11, 7.1.49, 7.1.59 and 7.1.86).

25. The Secretary of State notes the Inspector's view regarding flood risk and drainage and agrees with her view that there is no reason for the drainage board not to continue using C33 or C02 as required to carry out their required works (IR 7.1.94). The Secretary of State also notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed (IR 7.1.96 to 7.1.105).

26. **The Secretary of State concurs with the Inspector that these proposals should be included in the Order (IR 7.1.106).**

#### **C04 No Name No. 20<sup>1</sup>**

27. The Secretary of State notes that Meldreth Footpath 10 ("FP10") crosses the King's Cross to Cambridge railway line to the southwest of the village of Meldreth, with the larger village of Melbourn lying to the south and east. The villages are connected via Station Road, which passes over the railway line a little to the north-east of the crossing C04 and then under the A10, Cambridge Road (IR 7.2.1).

28. The Secretary of State notes that it is proposed to close C04 extinguishing the public footpath rights. On the north-west side of the railway users would be diverted via a new 2m wide unsurfaced footpath, approximately 400m in length. He further notes that on the east side of the railway the section FP10 running east from C04 would be extinguished with a new 2m wide unsurfaced footpath, approximately 100m in length, created along the eastern field boundary adjacent to Station Road to link Byway Open to All Traffic ("BOAT") 12 and the existing footway. Users would be required to use Station Road as an alternative to FP10 (IR 7.2.5 and 7.2.6).

28. The Secretary of State takes note of the Inspector's consideration of the likely impacts on land owners, tenants, local businesses and the public (IR 7.2.116 to 7.2.125). The Secretary of State notes that the Inspector considers that there are likely to be some negative impacts in relation to land owners, tenants, local businesses and the public with

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<sup>1</sup> The Secretary of State notes that C04 No Name No. 20 is also referred to as C04 No Name 20 (Meldreth) and C04 Meldreth No 20 in the Inspector's Report.

an adverse impact on their ability to carry on their businesses and/or access their properties, however, some could be dealt with through compensation and detailed design matters (IR 7.2.123).

29. The Secretary of State notes the Inspector's consideration of the suitability of the diversionary route proposed for each right of way proposed to be closed (IR 7.2.128 to 7.2.135). He notes that the creation of a field margin route, improving the potential crossing of the road to the south, would be welcome but fails to address the wider issue of the narrow footway alongside Station Road and in particular over the bridge itself which was the main issue arising here. (IR 7.2.128). The Secretary of State further notes that the proposal increases the distance for users and the Inspector considers that this is more significant when account is taken that this route is a link between two villages and provides access to and from retail facilities to the south (IR 7.2.133). The Secretary of State notes that there would be an effect on enjoyment of the route, moving people from a countryside route to walking alongside an industrial estate and roadway (IR 7.2.134).

30. The Secretary of State notes the Inspector considers that the proposed changes are not suitable and convenient so far as existing users are concerned. He notes that the Inspector does not consider that the displacement of users from a straightforward countryside route, perceived to be relatively safe, onto a roadside route, on a narrow footway, provides a suitable and convenient alternative to the existing rail crossing (IR 7.2.135).

31. The Secretary of State notes the criteria set out in the PSED section were used in the scoping exercise to inform the decision-making process about which crossings would require a DIA (IR 7.2.136 to 7.2.139). The Secretary of State notes that the evidence indicates reduced access would arise for those with mobility impairments, such that including the crossing in the Order would fail to advance equality of opportunity or to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. He notes that the Inspector considers that there is a likelihood that the PSED would not be met, which adds weight to the Inspector's recommendation not to include this crossing in the Order (IR 7.2.140).

**32. The Secretary of State concurs with the Inspector's recommendation that the crossing should not be included in the Order (IR 7.2.143).**

### **C07 Harston No.37**

33. The Secretary of State notes that Harston Footpath 4 crosses the King's Cross to Cambridge Railway line to the south-east of the village of Harston. The village of Hauxton lies to the north-east, with Little and Great Shelford ("the Shelfords") to the east-north east, Whittlesford to the south-east and the smaller village of Newton to the south (IR 7.3.1).

34. The Secretary of State notes that NR proposes to close C07 to all users, extinguishing the existing public footpath rights. The Secretary of State notes that on the western side of the railway, users would be diverted via a new 3m wide unsurfaced footpath, approximately 460m in length, heading north east along a field boundary to the B1368. The diversion would continue south along a new 3m wide unsurfaced footpath in the field margin adjacent to the eastern side of the B1368, for approximately 160m, crossing BOAT3 and continuing as a 2m wide unsurfaced footpath for approximately 120m (IR 7.3.7).

35. The Secretary of State notes that stepped access would be provided from the new footpath on the north side of the railway to the footway on the existing road bridge on London Road, providing the crossing of the railway. Stepped access would also be provided on the south side of the bridge connecting into a new 2m wide unsurfaced footpath heading south for approximately 120m in the field adjacent to the western side of the B1368 (IR 7.3.8).

36. The Secretary of State takes note of the Inspector's consideration of the likely impacts on land owners, tenants and local business and the public. (IR 7.3.59 to 7.3.63). The Secretary of State notes that in relation to the land owners, tenants and occupiers of the farmland the addition of the proposed route would be offset to some extent for the majority of the interested parties by the extinguishment of the existing route. He notes the proposed route would follow generally similar field-edged locations and discussions regarding any further need for mitigation would be included at the design stage (IR 7.3.59). The Secretary of State notes that there was discussion over use of the roadside verges and the inquiry evidence indicated the difficulties in utilisation of the roadside verges to a greater extent than as proposed. He further notes that there does not appear to be impacts in this respect which could not be dealt with through detailed design and compensation (IR 7.3.60 and 7.3.61).

37. The Secretary of State notes the Inspector's consideration of impacts on other users (IR 7.3.62) and the suitability of diversionary routes proposed for each right of way proposed to be closed (IR 7.3.66 to 7.3.73). The Secretary of State notes that the main issue arising related to the steps required for access to and from the London Road bridge (IR 7.3.66). He notes the issue of steps was recognised in the DIA which found that the existing route was already potentially challenging to those with limited mobility, due to its general nature and the existence of kissing gates on either side of the railway line. The Secretary of State notes that, as at other crossings, it appears that NR, or another party, has altered the access from pedestrian gates to kissing gates or stiles without permission from the highway authority and, as a result, users may have been denied access to which they were entitled prior to any census of current use (IR 7.3.67). The Secretary of State notes that, in cross-examination, NR accepted that the steps would be likely to stop some people using the route but the DIA recognised that, due to the location, the numbers of people using the route who might subsequently find the proposed route more difficult due to the steps would be likely to be at a low level (IR 7.3.70).

38. The Secretary of State notes the criteria set out in the PSED section were used in the scoping exercise to inform the decision-making process about which crossings would require a DIA (IR 7.3.75 to 7.3.77). The Secretary of State notes the Inspector's view that there are issues with access on the alternative route as the steps would be likely to limit the use by some existing users, who would not find the wicket gates on the existing route an issue (IR 7.3.77). He further notes her consideration that there is a likelihood that the PSED would not be met, which adds weight to her recommendation to not include this crossing in the Order (IR 7.3.78).

**39. The Secretary of State agrees with the Inspector's view that C07 should not be included within the Order as the proposed route is not a suitable and convenient alternative (IR 7.3.80).**

## **C10 Coffue Drove**

40. The Secretary of State notes that Coffue Drove is recorded as BOAT 44 and situated to the east of the village of Little Downham. It runs north from BOAT 44 and 48 to BOAT 43, crossing the Ely to Peterborough railway line (IR 7.4.1). The table at Annex A sets out the description for the crossing.

41. The Secretary of States notes it is proposed that the Order would confer powers to close the crossing, extinguishing the existing public rights. He notes that users would be diverted to a proposed BOAT, with appropriate traffic regulation or other limitation, on an existing private track to the underpass immediately to the northwest of the crossing (IR 7.4.4 and 7.4.5).

42. The Secretary of State takes note of the Inspector's consideration of the likely impact on land owners, tenants and local businesses and other users. The Secretary of State agrees with the Inspector's view that as there was no objection to the closure of the crossing it is reasonable to assume that users were content in relation to the proposed provision. He is also satisfied that the strategic case sets out the way in which rail users would benefit from the proposed alterations, removing level crossings from the rail network (IR 7.4.11 to 7.4.14). The Secretary of State accepts the Inspector's view that there is no evidence to suggest any impact on flood risk or drainage in the area and there were no matters raised with regard to any other environmental impacts (IR 7.4.15 and 7.4.16).

43. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed. The Secretary of State notes the Inspector's view that the alteration is minimal in terms of distance and appears to already be a preferred route for some users. The Secretary of State notes that for vehicular users there may be a greater distance to travel as the underpass is limited in height and not capable of accommodating large vehicles but the diversion is not of such significant distance that it would be likely to be unsuitable to users. The Secretary of State also notes that non-motorised users (NMU) would be well catered for by the underpass and there would be improvements with the provision of mounting blocks (IR 7.4.17 and 7.4.18). The Secretary of State notes the Inspector's conclusion that there is no indication that people with protected characteristics would be disproportionately affected and that the inclusion of this crossing would not appear to lead to a likelihood that the PSED would not be met.

**44. The Secretary of State concurs with the Inspector's view that taking account of these matters the proposal should be included in the Order (7.4.21)**

## **C11, A Furlong Drove**

45. BOAT 33 runs along A Furlong Drove in a north-west – south-east direction and crosses the Ely to Peterborough railway line at about the halfway point of the BOAT. The long distance promoted route the Hereward Way runs along A Furlong Drove (IR 7.5.1). The Table at Annex A sets out a description for the crossing (IR 7.5.3).

46. The Secretary of State notes that it is proposed to close C11 to all users, extinguishing the existing public right of way. He notes to the north of the railway, users would be diverted via the route of the existing FP8, which would be upgraded to the status

of bridleway and diverted slightly to the south at its eastern end to move users further from the property. This route would be approximately 390m long (IR 7.5.6).

47. The Secretary of State notes the Inspector's consideration of the likely impacts on land owners, tenants, local businesses, and the public (IR 7.5.62 to 7.5.68). The Secretary of State notes the Inspector's understanding that the proposed new bridleway to the south was introduced to address concerns initially raised by CCC in relation to the use of Dunkirk Corner, to the west, to link to BOAT 34 (IR 7.5.62). The Secretary of State notes there is a Thirty Foot Drain, which runs on the eastern side of the affected field(s), and is used for irrigation of the land. He notes that NR suggested that there may be ways to minimise the effect of the bridleway on the irrigation system and/or the effect of the irrigation system on the bridleway. The Secretary of State notes that those using the equipment gave clear evidence of the way in which the system was used which led others to question the appropriateness of this part of the proposal so far as users were concerned (IR 7.5.63).

48. The Secretary of State notes that it was argued that a BOAT should be provided here to reflect the recorded status of the existing route over the crossing and so cater for existing users. He notes that the proposed width of 3m would not be unreasonable for a BOAT, but if it was the case that on detailed design a wider route was required that matter could be dealt with by compensation (IR 7.5.67). The Secretary of State notes that there was some discussion at the inquiry about historical changes to the ability of farmers to use the level crossings in the area. The Secretary of State notes that it seems that C11 has also not been available for agricultural vehicle use from around 1997 but there was no evidence of complaints to the highway authority until very recently (IR 7.5.68).

49. The Secretary of State notes the Inspector's consideration that there are likely to be some negative impacts in relation to land owners, tenants, local businesses and the public, with an adverse impact on their ability to carry on their business in relation to the proposed bridleway to the south. He further notes that the Inspector considers that by balancing the removal of potential enforcement action to reinstate the right of way in the area against the provision of a public right way of different status, there would not be an overall negative impact on the owners or occupiers in relation to the route to the north-east of the crossing (IR 7.5.69 and 7.5.70).

50. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed (IR7.5.76 to 7.5.86). The Secretary of State notes that in relation to the southern bridleway, the idea that NMUs needing to walk, ride or cycle in an area with noisy pumps, even on an irregular basis, was not seen as a suitable route (IR7.5.76). The Secretary of State notes that whilst the proposed bridleway would provide a link to FP22, the continuation of the Hereward Way to the south, that route currently makes use of the road to link back to BOAT 33 (IR7.5.77).

51. The Secretary of State notes that in relation to the provision for existing users, NR argued that if certain users were not currently using the crossing then there was no need to make provision for them. The Secretary of State notes the Inspector's view that existing users should be taken to include those legally entitled to use the route, whether or not they can, or have been shown to, exercise those rights as to do otherwise would be at odds with Defra Circular 1/09 which sets out that in considering extinguishment and diversion of PROW under the HA80 temporary circumstances must be disregarded (IR 7.5.79 and 7.5.81).

52. The Secretary of State notes that a main concern relates to the change to the promoted long distance route, the Hereward Way. He notes that although the promoted route could be altered the Inspector considers that insufficient weight has been given to the importance of this particular BOAT as part of the overall route providing, as it does, views of Ely Cathedral when travelling generally north to south. He further notes that whilst the view does remain available in part, and other views are available, the route was chosen as part of a promoted route for a reason; Main Drove and BOAT 34 were available at the time and were not designated as part of the route. The Secretary of State notes the Inspector's consideration that the proposed changes are not suitable and convenient so far as the existing users are concerned. He notes that some improvement for some users might be available in providing a route to the north of the crossing with the status BOAT but this would not overcome the overall impact on the rights of way network (IR 7.5.86 and 7.5.87).

53. The Secretary of State notes that no DIA was carried out following scoping of this proposal and the Ramblers raised concerns regarding the potential impact of roadside walking on those with protected characteristics. The Secretary of State notes that the Inspector agrees with the findings of the Equality and Diversity Overview that the existing route has limited accessibility in terms of uneven surfaces in the first instance. He notes that the diversion requires users to walk in the carriageway on Main Drove, which may reduce the safety benefits of closing the crossing as it forces users to share the carriageway with vehicles. The Secretary of State notes the Inspector's consideration that there would be some disadvantages arising for certain persons with protected characteristics, such as those with mobility impairments. He notes that in balancing this against the existing barriers for these persons in using the route and the changes which would affect all users the Inspector does not consider that this would necessarily affect those with protected characteristics such that the PSED would not be met (IR 7.5.88 and IR 7.5.89).

54. The Secretary of State notes that there was an issue with the service of notices in relation to one owner and occupier regarding these plots of land who claimed that they had not received notification. In addition, the Secretary of State notes that the Ely Drainage Board were not identified in the Book of Reference as occupiers of the relevant land and so unlikely to have been served notice as required but they did submit late representations to the application. The Secretary of State further notes that although the identified owner gave evidence to the inquiry and the late representation by the Ely Drainage Board were taken into consideration, there are compulsory purchase issues involved in relation to this level crossing and he is not satisfied that the statutory procedures have been followed correctly (IR 7.5.91 to 7.5.94).

55. The Secretary of State agrees with the Inspector's concerns that there may be unidentified parties in connection with this crossing and with her view that given the negative impact the proposed route would give to users, it would be appropriate to remove the crossing from the Order for later consideration to ensure compliance (IR 7.5.95 and 7.5.96).

## **C12, Silt Drove**

55. The Secretary of State notes that Silt Drove is a public road lying on the western edge of the town of March. It runs north from B1099, Upwell Road, to Silt Drove level crossing on the Ely to Peterborough railway line (IR 7.6.1). The crossing is a public highway

user worked crossing with a telephone. It is proposed that the Order would confer powers to downgrade the existing public rights over C12 to bridleway status. Bridleway gates, mounting blocks and vehicular turning heads would be provided on both sides of the railway (IR 7.6.2 and 7.6.4). The Table at Annex A sets out a description of the proposals.

56. The Secretary of State takes note of the Inspector's consideration of the likely impacts on land owners, tenants, local businesses and other users. The Secretary of State notes the concern of the National Farmers Union ("NFU") that the changes could lead to agricultural vehicles having to travel through a housing estate. He notes that no objection was raised from the potentially affected farms, or other neighbouring properties (IR 7.6.21 and 7.6.22). He further notes that the strategic case sets out the way in which rail users would benefit from the proposed alterations, removing level crossings from the rail network but in this case the level crossing would not be closed entirely but the use of vehicles would be restricted (IR 7.6.25).

57. The Secretary of State accepts the Inspector's view that no evidence was submitted to suggest any impact on flood risk or drainage in the area or on any other environmental impacts (IR 7.6.26 and 7.6.28). The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed and concurs with her view that the proposal provides suitable provision of alternatives routes for public vehicular users (IR 7.6.29 to 7.6.32).

58. The Secretary of State agrees with the Inspector's view that the inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met and that this proposal should be included in the Order (IR 7.6.34 and 7.6.35).

#### **C14, Eastrea Cross Drove**

59. The Secretary of State notes that Footpath 50 ("FP50") crosses the Ely to Peterborough railway line to the east of the market town of Whittlesey, where there is a railway station. He notes that the Cathedral city of Peterborough lies further to the east, with the village of Eastrea north-west of the crossing and Coates to the north-east. He further notes that as the residential areas are situated generally to the north, the surrounding area and land to the south appears to be as ditched and farmed fenland with individual farms, properties and minor roads (IR 7.7.1). The Table at Annex A sets out a description for the crossing.

60. The Secretary of State notes that it is proposed to confer powers to close the level crossing to all users and extinguish PROW over the crossing. He notes to the north of the railway FP50 would be diverted to run generally east-west parallel to the railway as a 2m wide unsurfaced field margin route of approximately 70m length. He further notes that a steel footbridge of more than 8m would be provided across a drainage ditch along the proposed route. Users would be able to head south-east on Wype Road using existing verges to cross the railway at Eastrea level crossing. Approximately 350m of FP50 to the south of the railway would be extinguished (IR 7.7.4 and 7.7.5).

61. The Secretary of State notes the Inspector's consideration of the likely impacts on land owners, tenants, local businesses and the public (IR 7.7.32 to 7.7.36). He notes the proposed route would have some effect on the agricultural land, removing it from production and requiring management of the land taking account of the right of way in that location (IR

7.7.32). He further notes that there was concern that the provision of the route would be likely to increase vehicular use in connection with both the agricultural and Internal Drainage Board (IDB) uses of the area and so increase the maintenance burden on CCC (IR 7.7.34). The Secretary of State notes that there would be some impact on land owners, tenants and local businesses, but as a field-edge route the effect would be minimised and there are compensation provisions (IR 7.7.37).

62. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed (IR 7.7.43 to 7.7.46). The Secretary of State notes that it has been suggested that the proposed route is unnecessary with just 2 users recorded in the nine-day census so the crossing falls into the lower third of the affected crossings when considering the level of pedestrian use (IR 7.7.43). The Secretary of State notes that there was some concern about vehicular use affecting the route, but even if the route was used by vehicles it seems unlikely that walkers would be unable to use the entire 2.5m width proposed (IR 7.7.44). The Secretary of State notes the proposed route would not be significantly longer, given the connection to be provided at Eastrea level crossing (IR 7.7.45). The Secretary of State notes the Inspector considers that whilst there may have been a better route had there not been limitations to the western end, the proposed route would be suitable and convenient in terms of the matters raised (IR 7.7.47).

63. The Secretary of State notes that was an issue with the service of notices in relation to one owner and occupier regarding this plot of land. The Secretary of State notes the Inspector's view that there were problems around the service of notices in relation to the Order which led to the removal of some crossings and as such it was unfortunate to find more issues arise in this respect. The Secretary of State notes that in relation to this level crossing there are compulsory purchase issues involved. While the Secretary of State is not satisfied that the statutory procedures have been followed correctly he notes the owner and occupier gave evidence to the inquiry, and that the NFU spoke on his behalf. However, the Secretary of State is satisfied that as a result any potential prejudice has been overcome and agrees with the Inspector's view that in balancing all the relevant matters, that it would be appropriate to include the crossing in the Order (IR 7.7.48 to 7.7.50).

### **C15, Brickyard Drove**

64. The Secretary of State notes that Whittlesey Footpath 48 ("FP48") crosses the Ely to Peterborough railway line to the east of the market town of Whittlesey, where there is a railway station. To the north of the crossing FP48 links to bridleways ("BR60/61") which run generally east-west, parallel to the railway, and are part of a promoted cycle route (IR 7.8.1 and 7.8.2). The Table at Annex A sets out a description for the crossing.

65. The Secretary of State notes that it is proposed to confer powers to close the crossing to all users and extinguish PROW over the crossing. To the south of the railway FP48 would be diverted north east along an existing track towards the Eastrea level crossing via a new 2m wide unsurfaced footpath, including crossing a field around Jamwell Farm (IR 7.8.5). The Secretary of State also notes the proposed footpath would be approximately 460m in length heading east and then northeast to Wype Road, with a new footbridge required to cross a small water feature. Users would cross the railway via Eastrea level crossing using existing verges (IR 7.8.6).

66. The Secretary of State takes note of the Inspector's consideration on the likely impacts on landowners, tenants, local businesses (IR 7.8.47 to 7.8.49). The Secretary of State notes the Inspector's assessment that there would be some impact on land owners, tenants and local businesses. He notes that additional time and cost would arise in relation to the management of land where the cross-field section is proposed to be introduced. He further notes that there may be opportunities to compensate some points (IR 7.8.50).

69. The Secretary of State notes the Inspector's view that there was no indication that any impacts would arise on flood risk and drainage (IR 7.8.53). He further notes that alteration from an earlier field edge proposal for the section east of P001 related to the discovery of potential for badger activity on part of the proposed diversion route. He notes however, that no further work or survey was carried out to determine whether badgers were still using the area (IR 7.8.54 and 7.8.55).

70. The Secretary of State notes the Inspector's consideration on the likely impacts on other users (IR 7.8.51). The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed (7.8.56 to 7.8.60). The Secretary of State notes that it has been argued that the route is unnecessary but that this crossing falls into the middle range of the affected crossings when considering the level of pedestrian use in relation to a nine-day census (IR 7.8.56). The Secretary of State notes that there was evidence in relation to cross-field routes that they were not as easy for the public to use in this particular area. The Secretary of State notes the Inspector's consideration of this and the way in which the PROW have come into use in the area the cross-field path would not be as convenient for the public as the existing route (IR 7.8.57). He notes that whilst changes in length and direction are not significant the Inspector considers that weight should be given to those who work and walk the land in question with regard to the suitability of the proposal. He further notes the Inspector's view that taking that evidence into account the proposed route would not be suitable and convenient in terms of maintenance and accessibility (IR 7.8.60).

71. The Secretary of State notes there would be a negative effect on owners and occupiers, particularly in relation to the cross-field section. He notes that this section would be unsuitable for public use and, therefore, inconvenient. He concurs with the Inspector that balancing the strategic matters against the local impact C15 should not be included in the Order (IR 7.8.62).

### **C16, Prickwillow 1 and C17 Prickwillow 2**

72. The Secretary of State notes that the small village of Prickwillow lies to the north-east of the City of Ely on the banks of the River Lark. The Ely to Norwich railway line crosses the river on a bridge approximately 370 metres to the north of the village Main Street (IR 7.9.1). The Table at Annex A sets out a description for the crossing.

73. The Secretary of State notes that it is proposed to close the crossings to all users, extinguishing the existing public footpath rights. He further notes that both footpaths would be diverted to pass underneath the railway bridge on the existing roads with steps provided to provide access up and down the embankments from the footpaths (IR 7.9.5). Crossing infrastructure would be removed and fencing installed to prevent trespass on the railway (IR 7.9.6).

74. The Secretary of State notes the Inspector's consideration on the likely impacts on land owners, tenants, local businesses and the public (IR 7.9.16 and 7.9.17). The Secretary of State notes that the crossings themselves appear unlikely to be used for business purposes (IR 7.9.16). He also notes the withdrawn objection from CCC concerning the lack of safe refuge for pedestrians at the bottom of the banks either side of the bridges as Padnal Bank and Branch Bank are used by commercial agricultural vehicles (IR 7.9.17).

75. The Secretary of State notes that the Environment Agency ("EA") objected as these crossings lie adjacent to the River Lark and requested alterations to Schedule 16 of the Order. The Secretary of State notes that NR have proposed changes within the filled Order which provide additional opportunities for the EA to ensure that there were no unacceptable impacts on this Main river. The Secretary of State notes that as the EA have provided no additional comments on these proposals as it would appear that their concerns have satisfactorily been resolved (IR 7.9.21). The Secretary of State notes that no matters were raised in respect of any other environmental impacts. (IR 7.9.22).

76. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed (IR 7.9.23 to 7.9.25). The Secretary of State notes there would a small additional distance up and down the embankments to resume use of the footpaths. He notes the length would not be significant, but the embankments are quite steep and so the gradients will need to be carefully considered during construction (IR 7.9.23). He further notes the addition of steps will actually mean that there are shorter routes available to users on each side of the bridges which may encourage additional use from some people who would not wish to follow the existing routes from beginning to end due to time or ability constraints. (IR 7.9.24). The Secretary of State notes that no DIA was carried out following scoping of this proposal and further notes the Inspector's views that the impact of the steps might be an issue for some users but, taking account of the routes as a whole, there should be no disproportionality introduced by the proposed changes (IR 7.9.26). The Secretary of State notes the Inspector's conclusion that taking account of these matters and all other matters raised, that C16 and C17 should be included in the Order and he concurs with this assessment (IR 7.9.27).

### **C20, Leonards**

77. The Secretary of State notes that Soham Footpath 101 ("FP101") is an unsurfaced footpath running north-easterly through agricultural field from Mill Drove, a public road, to join Footpath 100 ("FP100"), which provides access to the south-western side of the village of Soham (IR 7.10.1). The Table at Annex A sets out a description for the crossing.

78. The Secretary of State notes that it is proposed to close the level crossing to all users, extinguishing the public right of way. 190m of FP101 between Mill Drove and a point of 90m to the east of Leonards level crossing would be extinguished, along with a section of FP114, approximately 110m long, to the West of Mill Drove (IR 7.10.5).

79. The Secretary of State notes the Inspector's consideration of the likely impacts on land owners, tenants, local businesses and the public (IR 7.10.43 to 7.10.47). He notes that no objection or comment has been made by the affected land owners or occupiers and

it is reasonable to assume that they were content with the requirements that a public right of way would place on the land in question. He further notes that article 16 of the filled Order sets out the requirements for completion of the new highway, initial and ongoing maintenance and the application of section 28 of the HA80, which would allow relevant owners and occupiers to apply for compensation. The Secretary of State agrees with the Inspector's consideration that this would not adversely impact the business (IR 7.10.47).

80. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed and the likely impact on other users (IR 7.10.54 to 7.10.62). The Secretary of State notes that the main concern related to the changes in direction that would be introduced and how that might affect future use (IR 7.10.55). The Secretary of State notes that the Inspector does not consider it likely that the proposed changes would stop use for those taking a short circular walk from Soham as the overall distance would be similar and the changes in direction would not be of such significance (IR 7.10.56).

81. The Secretary of State notes for longer routes north-east/south-west the lack of availability of FP114 has led to users following Mill Drove south of FP101 to join BOAT 113. He notes that the proposed route east of the railway would not provide a natural flow of direction, even taking account of the intention to open up FP114 to the west of Mill Drove, allowing users to reach BOAT 113 without needing to follow Mill Drove. The Secretary of State notes the Inspector considers that following this route and Mill Drove would provide a similar link to following BOAT 113 and the existing route FP101. The Secretary of State notes that whether following FP114 or BOAT113 the proposed route of FP101 would be a relatively short distance in terms of an overall longer route, although the change in direction does not provide a natural continuation of the desire line which may leave it unused or less in this context (IR 7.10.57).

82. The Secretary of State notes it is likely that there would be greater use of Mill Drove by pedestrians and whilst this may not be favoured by some, the Inspector considered the overall layout and use, in terms of volume, type of traffic and speed, as not incompatible with pedestrian access (IR 7.10.59). The Secretary of State notes that users would be diverted to Mill Drove and, if then travelling south, would use an existing Automated Half Barrier (AHB) crossing the railway. The Secretary of State notes that whilst there are shorter sightlines to the north-west of the Mill Drove crossing in comparison to those at C20 there are AHB and lights at this crossing to stop people when trains approaching (IR 7.10.61). The Secretary of State notes the Inspector considers that taking all these points into account the proposed changes are not ideal any may lead to some users altering their routes and potentially taking less exercise (IR 7.10.63).

83. The Secretary of State notes the Inspector's consideration of the Public Sector Equality Duty (IR 7.10.64 to 7.10.67). The Secretary of State notes that the local Heartbeat Group who use the route contribute towards CCC policies but there would be limited accessibility on the existing route for certain types of user (IR 7.10.65). The Secretary of State notes that CCC advise that changes might affect use which could lead to less walking and so less health benefits, which may fail to advance equality of opportunity for those in the Heartbeat Group, who are likely to be persons with protected characteristics, relating to long term medical conditions (IR 7.10.65).

84. The Secretary of State notes that in this case some inconvenience as a result of the proposal has been identified for all users. He notes that the census data shows this to be the most used of the footpath only crossings with only C12, Silt Road, having greater pedestrian use. He further notes that C12 would remain open to pedestrian use under the proposals and so changes to C20 would affect the greatest number of walkers from all the proposals (IR 7.10.66). The Secretary of State notes that there is a fine balance as to whether the proposal would be likely to lead to a failure to advance equality of opportunity. He notes the Inspector's view that it seems likely that there are those with protected characteristics who would be disproportionately affected and the likelihood that the PSED would not be met adds weight to her recommendation not to include this crossing in the Order (IR 7.10.67).

85. The Secretary of State concurs with the Inspectors view not to include this crossing in the Order (IR 7.10.69).

### **C21, Newmarket Bridge and C22, Wells Engine**

86. The Secretary of State notes that the River Great Ouse runs past the eastern side of the City of Ely and the two footpaths concerned run on the eastern and western banks of the river, the western route off-set from the river in this location (IR 7.11.1). He notes the routes begin on Station Road, the A142, running south-east from the City of Ely, which has footway providing access to footpaths. He further notes the western route is Footpath 23 ("FP23") which is part of the Cawdle Fen Walk, a circular route from either Ely or Little Thetford, and the Ouse Valley Way and Fen Rivers Way, which are long distance paths (IR 7.11.2).

87. The Secretary of State notes it is proposed to close the public footpaths with users to the west, C21, using the existing metalled route under the bridge, a diversion of approximately 50m. He notes that users to the east, C22, would be diverted onto a new route under the bridge resulting in a diversion of around 190m (IR 7.11.8).

88. The Secretary of State notes the Inspector's consideration of the likely impacts on land owners, tenants, local business, the public and other users (IR 7.11.35 to 7.11.40). The Secretary of State notes that the private rights would be unaffected by the proposals and there would be no impact in relation to such existing access and use (IR 7.11.35). The Secretary of State notes that in addition to the pedestrian use of C21 it is also available to cyclists. He notes that the closure of C21 would result in greater pedestrian use of the route underneath the bridge. The Secretary of State notes the opinion of the Inspector that there may be some potential for conflict between users. He notes that the route of FP24 north and south is already shared by these users and this section of the route involves changes of direction likely to slow users and so assist in minimising the possibility of incidents. The Secretary of State notes the Inspector considers that the impact of this additional shared area would not be significant to either walkers or cyclists (IR 7.11.36 and 7.11.38).

89. The Secretary of State notes the Inspector's consideration of the impacts on flood risk and drainage. The Secretary of State notes that the private access required by the IDB and the EA would not be affected and so there would be no impact on inspection and maintenance in connection with flood risk (IR 7.11.41). The Secretary of State notes that no flood risk assessment was made by NR even though the proposed routes would be

moved from the top of the flood banks onto land adjacent to the main river (IR 7.11.42). The Secretary of State notes the proposal would result in chain link fencing to BS1772, height 1.8m, on both routes, use of the existing tarmac surfaced route on C21 and for C22 a gravel/stone surface footpath. The Secretary of State notes that fencing within the flood plain could affect the volumetric flow rate of water in or flowing to and from any drainage work (IR 7.11.43). The Secretary of State notes the Inspector considers that there is a potential effect on flood risk and drainage in particular for C22, where there is no existing structure and the proposal would affect a greater proportion of the flood plain (IR 7.11.44).

90. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed (IR 7.11.47 to 7.11.55). The Secretary of State notes that the routes would be fenced and so there would not appear to be a risk from walking near the river itself. The Secretary of State notes in relation to vandalism under the railway bridge that the Inspector noticed graffiti on the bridge of the proposed route in connection with C21 and that it was likely that similar issues would arise in relation to C22 once it became more accessible. The Secretary of State notes the Inspector does not consider that misuse of the existing routes is relevant to whether current legitimate users would find using a more enclosed area, with evidence of anti-social behaviour evident, and so discourage their use (IR 7.11.47 and 7.11.48).

91. The Secretary of State notes that neither route adds significantly to the length of the existing rights of way as they stand. He notes, however, that if a flood event meant that the proposed route was unavailable then the required diversion could be substantial and further notes she agrees with the point raised at the inquiry that users travelling from Ely to the north would realise quickly that there was an issue and be able to turn back but those travelling south to north may travel some distance (IR 7.11.49). The Secretary of State notes that in relation to C21, Newmarket Bridge, the proposed route would follow the existing cycle route, which is already part of a national route. He further notes that the provision and promotion of this route suggests that it is a suitable alternative to the route over the crossing (IR 7.11.53). The Secretary of State notes that in relation to C22, there is no existing route on this western floodplain and the area is greater than the eastern area (IR 7.11.54).

92. The Secretary of State concurs with the Inspector's consideration that in relation to C21 the proposed route would be suitable and convenient for the proposed use and should be included in the Order. He further notes that for C22 the lack of information on the likely flooding events does not assist the Inspector in determining that the route would be suitable and convenient for users and agrees with the Inspector's view that it should not be included in the Order (IR 7.11.55 and 7.11.57).

### **C24, Cross Keys**

93. The Secretary of State notes that Footpath 50 ("FP50") runs in a north-easterly direction from bridleway 25 ("BR 25") and crosses the Ely to King's Lynn railway line to the north-east of the City of Ely. He notes that it is proposed to close C24 to all users, extinguishing the existing public footpath rights (IR 7.12.1 and 7.12.4). The Table at Annex B sets out the description of the crossing.

94. The Secretary of State takes note of the Inspector's consideration of the likely impacts on land owners, tenants and local businesses and other users. The Secretary of

State notes the proposed route would have an effect on agricultural land, requiring management to take account of a right of way in that location. The Secretary of State notes that many PROW across the country co-exist with arable land use and that there are already bridleways and footpaths on the farm and so there is familiarity with the requirements (IR 7.12.28).

95. The Secretary of State notes that the IDB made a representation setting out the importance of their work in controlling flood risk in the area. The Secretary of State notes that it was said that the siting of part of the proposed route adjacent to the Redmoor Main Drain would restrict maintenance and future flood risk reduction works (IR 7.12.34). The Secretary of State notes that although it may be that there would need to be a change to working practices to take account of a right of way alongside part of the drain it is unlikely that a feature of this type would prevent this type of access or maintenance, which is typical in the countryside (IR 7.1.2.35). The Secretary of State notes that, on the basis of the available information, it does not seem that the proposed route would prevent maintenance and so there would be no alteration to flood risk or drainage matters (IR 7.12.36).

96. The Secretary of State notes the financial losses in relation to the Environmental Stewardship mid-tier scheme would be covered by compensation as would temporary construction matters. He further notes that what cannot be compensated directly are the potential environmental losses arising from the possible loss of diverse habitat in this area (IR 7.12.29 and 7.12.37). The Secretary of State notes the Inspector has taken account of Natural England's standing advice for local planning authorities to assess the potential impacts of the development on wild birds. The Secretary of State notes that bearing in mind the location of the relevant field margin lying between the railway line and actively farmed fields it is unlikely that there would be ground nesting birds in this area. The Secretary of State notes the Inspector considers that there would be no significant environmental impacts as a result of this proposal (IR 7.12.39 and 7.12.41).

97. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed (IR 7.12.42 to 7.12.44). The Secretary of State notes that the existing route provides a picturesque environment but with the link back to the Fen Rivers Way, to continue this walk, the location of this part of the route within the agricultural landscape, would not be likely to discourage users (IR 7.12.44). The Secretary of State notes the Inspector considers that there would be small impact on landowners, tenants, local businesses and the IDB but concurs with her view that C24 should be included within the Order (IR 7.12.47).

### **C25, Clayway**

98. The Secretary of State notes that Littleport Footpath 11 ("FP11") crosses the Ely to King's Lynn railway line on the eastern edge of the village of Littleport. He also notes that the route crossed the railway line within the residential area from an estate road to join Footpath 21 ("FP21") which runs north along the western side of the Great River Ouse adjacent to and within gardens backing onto the river (IR 7.13.1).

99. The Secretary of State notes that it is proposed to close C25 to all users, extinguishing the existing public footpath rights. He notes on the western side of the railway, users would be diverted onto Padnal Road with a new 2m wide asphalt footway created next to the highway on Victoria Street, west of the Sandhill level crossing. He notes

the diversion route on the east side of the crossing would make use of FP21 or the existing track along Sandhill to connect users to Sandhill level crossing (IR 7.13.5 and 7.13.6).

100. The Secretary of State takes note of the Inspector's view regarding the likely impacts on land owners, tenants, local businesses (IR 7.13.40 to IR 7.13.44). The Secretary of State notes there was no indication of use of this route for access to property except in relation to travel to and from school for one user. He notes that the proposed diversion would be likely to result in greater public use of FP21 which passes through the gardens of properties sitting between Sandhill and the River Great Ouse. He further notes that there is already a public right of way in that location which is part of a promoted route and the Inspector's view is that she does not consider that the impact would be significant (IR 7.13.40 and 7.13.42). The Secretary of State notes that there was no indication that any impacts would arise on flood risk and drainage from this proposal and that no matters were raised in regard to any other environmental impacts (IR 7.13.47 and 7.13.48).

101. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed (IR 7.13.49 to IR 7.13.54). The Secretary of State notes that in relation to distance, for users traveling from the south on the Fen Rivers Way and wishing to reach the village centre, there would be a long walk if choosing to return back to the off-road route offered by FP 10 (IR 7.13.49). The Secretary of State notes that a main concern was an increase in the amount of time walking beside roads, rather than off-road, which might affect health directly or indirectly. The Secretary of State notes the Inspector considers that NR are correct in their assessment that the alternative roads used have, or would have, footways provided so walkers would not be in direct conflict with traffic (IR 7.13.52).

102. The Secretary of State notes that following the scoping exercise the decision was taken that no DIA was required for C25. He further notes that given the route was identified as part of the Heartbeat Health Walks routes it was argued that a full DIA should be carried out as this group share a protected characteristic in terms of a long-term medical condition (IR 7.13.55). The Secretary of State notes that for this crossing there is a fine balance as to whether the proposed changes would be likely to lead to a failure to advance equality of opportunity. The Secretary of State notes the Inspector's opinion that it seems likely that there are those with protected characteristics who may be disproportionately affected (over and above the effects likely to be experienced by the rest of the population). The Secretary of State notes the Inspector's view that this likelihood that the PSED would not be met adds weight to her recommendations not to include this crossing in the Order.

103. The Secretary of State concurs with the Inspectors view that the crossing should not be included in the Order (IR.7.13.57).

### **C26, Poplar Drove and C27 Willow Row Drove / Willow Road**

104. The Secretary of State notes that these two crossings run parallel to each other running in a north-westerly direction from the public road at Ten Mile Bank to cross the Ely to King's Lynn railway line (IR 7.14.1). The Secretary of State notes that in relation to C26, Poplar Drove, the Order seeks to downgrade the public rights from public road to a BOAT, with a width restriction of 1.525m and, in relation to C27, Willow Row, all public rights would be extinguished over it and the level crossing infrastructure is proposed to be removed, and

fencing provided to prevent trespass onto the railway (IR 7.14.6). The Table at Annex B sets out a description for the crossing.

105. The Secretary of State takes note of the Inspector's consideration of the likely impacts on land owners, tenants and local businesses (IR 7.14.48 to 7.14.55). The Secretary of State notes that the nine-day census indicates a similar level of use at each of the crossings with both falling in the mid-range in terms of the crossings affected by the Order (IR 7.14.48). The Secretary of State notes that the crossing provides access to approximately half of the area of Willow Row Farm and the proposed closure of the crossing, without provision of private vehicular rights, would result in increased time and cost to the farm (IR 7.14.49). The Secretary of State notes that it was argued that a BOAT should be provided here, to reflect the recorded status of the existing route over C27 and so cater for existing users. He further notes that the proposed width of 3m would not be unreasonable for a BOAT, particularly if subject to a Traffic Regulation Order, but if it was the case that on detailed design a wider route was required, that matter could be dealt with through compensation (IR 7.14.54). The Secretary of State concurs with the Inspector's view that there would be negative impacts in relation to land owners, tenants, local businesses and the public. The Secretary of State notes, in particular, there would be interference with access to land and property for Willow Row Farm, directly impacting on the ability to carry on their business. He further notes there would also be an impact on the public and other business due to increased agricultural traffic on Ten Mile Bank during busy periods (7.14.56).

106. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed (IR 7.14.61 to 7.14.66). The Secretary of State notes that in terms of walkers wishing to follow Willow Row Drove there would be a significant detour. The Secretary of State notes that this route appears to be relatively well-used with twice as many walkers making use of it in January than of C26 in June during the nine-day census (IR 7.14.62). The Secretary of State notes that, with regard to horse riders, it was suggested that the proposed linking route would be dangerous and so should not be provided. The Secretary of State notes that this matter was not raised by riders, who might use the route, and fails to take account of the other users of bridleways; walkers and cyclists. The Secretary of State notes that the Inspector does not consider that a case has been made to remove a link between these crossings if one of the crossings was closed. (IR 7.14.63).

107. The Secretary of State notes that concerns were raised regarding the movement of all users onto the same crossing point which may have some negative effect. The Secretary of State notes that the Inspector considers the main problem with this proposal in terms of safety is that NR have indicated that C26 does not meet the minimum sighting distance required, whereas C27 does. He further notes that C26 is one of only two of the crossings affected by the Order where sighting is not compliant from every direction. The Secretary of State notes that moving all users to this crossing would not improve safety for anyone, including railway users. The Secretary of State notes that the Inspector considers that the proposal would not be suitable and convenient for users, whether public or private (IR 7.14.65 and 7.14.67).

108. The Secretary of State notes that there was an issue with the service of notices in relation to one owner and occupier regarding the land affected by the proposal who indicated that she was not made aware of the proposed creation by way of an appropriate

notice (IR 7.14.68). The Secretary of State notes that although the owner and occupier made an objection and had the opportunity to give evidence to the inquiry, and although the NFU spoke on this matter at the inquiry, there is a compulsory purchase issue involved in relation to this level crossing and he is not satisfied that the statutory procedures have been followed correctly. The Secretary of State notes the Inspector's view that there were problems around the service of notice in relation to the Order which led to the removal of some crossings and as such it was unfortunate to find more issues arise in this respect.

109 In any event, the Secretary of State notes that the Inspector considers that the effect of the proposal on existing users, public and private, in relation to C27 in particular would be significant and recommends that C26 and C27 are not included in the Order. The Secretary of State concurs with that recommendation.

### **C28, Black Horse Drove**

110. The Secretary of State notes that Black Horse Drove is a public road in Littleport Parish. The public road user worked level crossing has miniature stop lights and telephones, with vehicular access gates and wicket pedestrian gates on the railway boundary fence. He further notes that to the north-west of the railway Black Horse Drove continues for approximately 240m, beyond which it becomes a private road (IR 7.15.1 and 7.15.2). The Table at Annex B sets out a description for the crossing.

111. The Secretary of State notes the Inspector's consideration of the likely impacts on land owners, tenants and local businesses and other users (IR 7.15.18 to 7.15.21). The Secretary of State notes that following discussion on matters such as access and maintenance an amendment to the Order was proposed which would deal with the concerns raised by objectors and he notes those objections were subsequently withdrawn (IR 7.15.19). The Secretary of State notes the Inspector's view that given that all those requiring access to the west of the railway would be granted to it there appears to be no impact on land owners, tenants, local businesses, utility providers and statutory undertakers (IR 7.15.21).

112. The Secretary of State notes the representation from the IDB that they would require access to flood risk assets and the Inspector's view that if Black Horse Drove provides the only highway access to the relevant land then, as occupiers, the IDB would be able to apply to NR for a permit to continue using the route and as such there would be no alteration to flood risk or drainage (IR 7.15.23 and 7.15.24). The Secretary of State notes that there were no issues raised in relation to any other environmental impacts (IR 7.15.25). The Secretary of State notes there would appear to be no need for a diversionary route for those who require access to property (IR 7.15.26). The Secretary of State is satisfied that the PSED would be met in this case (IR 7.15. 29). The Secretary of State agrees with the Inspector's view that the potential very small reduction in use, would be just sufficient to meet the strategic aims of the Order and as such should be included in the Order (IR 7.15.32).

### **C29, Cassells Crossing**

113. The Secretary of State notes that Brinkley Footpath 1 ("FP1") crosses the Cambridge to Ipswich railway line east of the hamlet of Six Mile Bottom, just north of St George's Church. FP1 runs through a narrow strip of woodland between Brinkley Road and Cassells

level crossing C29 (IR 7.16.1 and 7.16.2). C29 is a passive footpath level crossing with gates in the railway boundary fence and a stop, look, listen (SLL) sign (IR 7.16.4). It is proposed to close C29 to all users, extinguishing the existing public footpath rights, including the approximately 100m that links Brinkley Road to C29 and crossing infrastructure would be removed and fencing installed to prevent trespass on the railway (IR 7.16.7). The Secretary of State notes an alternative route would be provided along Brinkley Road incorporating a section of existing grass verge and a new 2m wide asphalt planings footpath, approximately 70m in length, within NR land adjacent to Brinkley Road, north of the level crossing (IR 7.16.8).

114. The Secretary of State notes that there are no private rights affected by this proposal and no indication of any effect on users other than in relation to the public right of way. The creation of a new section of public right of way on the south-eastern side of the informal carpark area does not appear likely to impact on any land owners, tenants, local business, utility providers or statutory undertakers (IR 7.16.22 and 7.16.23). The Secretary of State notes the Inspector's view that there is no evidence to suggest any impact on flood risk or drainage in this area and the use of asphalt planings should provide a permeable surface which would reduce any potential localised risk (IR 7.16.26). The Secretary of State notes that an existing road-side verge is proposed for use and further notes the Inspector's view that the potential impact of a small number of users diverted from the crossing should have no impact on the verge ecosystem (IR.7.16.27). The Secretary of State agrees with the Inspector's view that the increased distance of 180m in the context of the route used primarily for leisure purposes is not unreasonable (IR 7.16.28)

115. The Secretary of State agrees with the Inspector that, taking account of all the matters raised, the proposed alternative route (as described in IR 7.16.8) is necessary in order to provide a link from FP11 to FP1, via Brinkley Road and FP10, retaining connectivity in the rights of way network in the area (IR 7.16.31). The Secretary of State notes the Inspector agrees with NR that the existing route has limited accessibility and her view that there is no likelihood that PSED would not be met (IR 7.16.32). The Secretary of State concurs with the Inspector that this proposal should be included in the Order (IR 7.16.33).

### **C30, Westley Road**

116. The Secretary of State notes that Westley Bottom Road is a public vehicular highway recorded as a public road to the south-east and a BOAT to the north-west of the Cambridge to Ipswich railway line (IR 7.17.1). The Secretary of State notes that it is proposed to downgrade the crossing to the status of a BOAT. He further notes that vehicular passage would be provided for authorised users only, to whom private rights would be granted. Public access, other than with a vehicle, would remain, subject to a width restriction of 1.525m. New bridleway gates, with mounting blocks and a turning head for vehicles would be provided in addition to the existing gates, with the miniature stop lights and telephone being retained (IR 7.17.7).

117. The Secretary of State note the Inspector's consideration of the likely impacts on land owners, tenants and local businesses (IR 7.17.10 to 7.17.12). The Secretary of State notes no objection was raised from the potentially affected farms, businesses and properties situated on Westley Bottom Road which suggests that the proposed provision of private rights over the crossing would not impact on their properties or businesses (IR 7.17.11). The Secretary of State notes that no evidence was raised in relation to flood risk

and drainage nor were any matters raised in relation to any other environmental impacts (IR 7.17.16 and IR 7.17.17).

118. The Secretary of State notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed. The Secretary of State notes that the diversion is not of such significant distance that it would be likely to be unsuitable to users. He also notes non-motorised use would be well catered for by the underpass and there would be improvements with the provision of mounting blocks (IR 7.17.18 and IR 7.17.19). The Secretary of State notes that no DIA was carried out following scoping of this proposal and the Inspector's conclusion is noted that the impact of any additional travel for motorised users would be unlikely to be felt disproportionately and that there would be no change for NMUs. The Secretary of State agrees with the Inspector that there is no indication that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population) and that the inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met (IR 7.17.20 and 7.17.21). The Secretary of State agrees with the Inspector's conclusion for including C30 in the Order (IR 7.17.22).

### **C31, Littleport Station**

119. The Secretary of State notes that Littleport Station Private Access level crossing is located immediately north of Littleport station and connects the station access road on the west side of the railway to the up platform at Littleport station, on the Ely to King's Lynn railway line. The Secretary of State notes that it is proposed to close C31 to all users, extinguishing the existing private access rights and that NR are seeking powers to close the Lynn Road underbridge to vehicular traffic to enable its use as part of a route between platforms (IR 7.18.1 and 7.18.5). Closure of the station private access level crossing would enable platform extensions to accommodate proposed new 8-car trains under the King's Lynn Service Enhancement scheme (IR 7.18.7).

120. The Secretary of State noted the Inspector's comments that there has been no objection relating to any interference with private rights and there is no indication of any requirement for this access in order to reach property (IR 7.18.28). The Secretary of State notes the concerns of the Fen Line Users Group regarding the flooding/puddling in the underpass, but is satisfied that the provision of a raised walkway should provide protection from such events (IR 7.18.33 and 7.18.34).

121. The Secretary of State notes that, in relation to distance, users travelling on foot, bicycle or mobility assisted from the properties on the eastern side of the railway would have less distance to travel as access directly to the eastern platform would be provided. However, those travelling from the main residential area to the west would have an increased distance travelling via the underpass and then on the proposed new access to the eastern platform in comparison to accessing the western railway platform and then crossing the railway to the east (IR 7.18.36 and 7.18.37).

121. The Secretary of State notes that the main change which would arise is for those driving to the station carpark which is situated to the north-west of the station itself. He notes that these users would walk back along the station/car park access road, via the underpass and then along the proposed new link. He also notes that the DIA suggests that this would add approximately 160m to the journey, which may introduce an increased risk

of unauthorised access across the railway line if running late for trains on the outward journey. However, he notes in relation to safety that there would be a number of improvements including the fact that the public would not be crossing the railway line, so removing that risk. (IR 7.18.38 and 7.18.39).

122. The Secretary of State notes the Inspector's considerations in relation to PSED (IR 7.18.44 to 7.18.51). The Secretary of State agrees with her view that taking all the relevant factors into account that there is a possibility that the PSED would not be met if the amendments to ticketing and parking were not implemented but in the development of the station as a whole such matters would need to be addressed. The Secretary of State concurs with the Inspector that taking account of the matters raised C31 should be included in the Order (IR 7.18.51 and 7.18.52).

### **C35, Ballast Pit**

123. The Secretary of State notes that this is a private vehicular access track to lakes situated to the east and west of the Liverpool Street to Ely railway line. The Secretary of State notes that the land affected by this proposal is part of an area of land identified for development of the Waterbeach New Settlement (IR 7.19.1 and 7.19.5). He further notes that the Order would confer powers to close the crossing to all users and extinguish the existing private rights and, to cross the railway following closure, a combination of private farm tracks and adopted highway would be used to divert to Bannolds level crossing which lies to the north of Ballast Pit. The existing track west of Ballast Pit, approximately 290m in length, would become a private road with a culvert over the watercourse, to connect to BOAT 14 (IR 7.19.6 and 7.19.7).

124. The Secretary of State notes the Inspector's consideration of the likely impacts on land owners, tenants and local business and other users (IR 7.19.23 to 7.19.28). He notes that concerns were raised regarding agricultural, and general, security to the west of the railway line and the view of the Inspector that it is unlikely that there would be an increased likelihood of access in comparison to the current situation (IR 7.19.24). He further notes that no other users were identified on this private crossing and the Inspector's view that existing users would not be significantly disadvantaged by the potential increase in vehicular use on BOAT14 (IR 7.19.27).

125. The Secretary of State notes that no issues were raised in relation to flood risk and drainage or any other environmental impacts (IR 7.19.29 and 7.19.30). The Secretary of State also notes the Inspector's consideration of the suitability of diversionary routes proposed for each right of way proposed to be closed and agrees with her view that the proposed route may be longer, which would be likely to impact mostly on walkers. He further notes the Inspector's view that this relates to a private right associated with the lakes as well as farmland and neither the owner of the lakes nor the owner/occupier of the farmland to the west objected to the proposal. The Secretary of State agrees with the Inspector's view that the proposal meet their needs and is suitable and convenient for the existing users and, balancing all the relevant matters, C35 should be included in the Order (IR 7.19.31 and 7.19.32).

### **Non-Crossing Specific Objections/Representations**

126. The Secretary of State notes there was support for the scheme which reflects the matters raised by NR in their strategic case (IR 9.13). The Secretary of State also notes the concern from Royal Mail regarding disruption to the road network and the potential effect on mail deliveries. He agrees with the Inspector that provided an alternative route was found to be suitable and convenient for all existing users this should not impact on their undertaking (IR 9.14 and 9.15). The Secretary of State notes that concern was raised regarding the relationship between NR as the applicant and the Secretary of State as the decision-maker. The Secretary of State notes the Inspector's view that the application process has been open, fair and transparent, as appropriate in dealing with a matter of this type (IR 9.19).

## **Funding**

127. The Secretary of State notes that funding for the scheme has been secured in Control Period 5 by the National Level Crossing Risk Reduction Fund and Anglia Route signalling fund. He further notes that Anglia Route were to apply for funding in Control Period 6 (CP6) to enable implementation of works at level crossings after March 2019 (IR 10.1 and 10.2). The Secretary of State accepts the Inspector's findings that although the final outcome of the application for funding under CP6 was not before the inquiry the funding statement supports all other evidence from NR that funding to implement the scheme in full would be forthcoming (IR 10.11).

## **Case for Compulsory Acquisition Powers**

128. The Secretary of State notes that, under IR 11.21, the general matters relating to Compulsory Purchase powers have been set out under the Strategic case and Funding sections of the IR. He further notes the Inspector considers that, in relation to those crossings where a recommendation is made to include them in the Order, that there is:

- a compelling case for acquisition in the public interest;
- evidence that it justifies interfering with the human rights of those with an interest in the land;
- evidence that the acquiring authority has a clear idea of how the land is to be used;
- evidence that the acquiring authority can show all the necessary resources to carry out its plans are likely to be available in a reasonable time scale; and
- evidence that the scheme is unlikely to be blocked by any impediment to implementation.

129. The Secretary of State notes that NR has sought a number of rights and powers to avoid any impediment to implementation and that they remain in negotiation with landowners for acquisition by agreement such that the requirement for the use of compulsory purchase would be limited (IR 11.1, 11.3 to 11.6). The Secretary of State notes the Inspector's view that where there is an impact on private land and rights, compensation would be paid and where she has recommended that a crossing should, or should not, be included in the Order, account has been taken of the compensation provisions alongside all other relevant matters (IR 11.23). The Secretary of State agrees with the Inspector that, as set out in the Strategic case, the scheme is in the public interest and therefore, with the exception of the crossings which are recommended not to be included in the Order, a

compelling case in the public interest exists, sufficient to justify compulsory purchase where required (IR 11.24).

### Proposed Planning Conditions

130. The Secretary of State notes that CCC raised five objections to NR’s request for deemed planning permission relating to bridge design, landscaping, haul routes, archaeology and ecology (IR 12.1). The Secretary of State further notes that in consideration of the Side Agreement and other negotiations which resulted in amendment to the archaeology and ecology planning conditions, agreement was reached on all these areas and a revised planning request was agreed (IR 12.2). The Secretary of State agrees with the Inspector’s conclusions that condition 10 (working hours) should apply generally rather than just to land not in NR ownership, noting that condition 11 (approval and implementation under these conditions) would allow NR to apply to the local planning authority for a revision to the condition, where required (IR 12.11).

131. The Secretary of State agrees with the Inspector that these conditions are necessary and accord with the tests set out in the NPPF, being also relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (IR 12.9).

### Secretary of State’s overall conclusion and decision

132. For the reasons given above, the Secretary of State agrees with the Inspector’s view that the case for making the Order has been shown. 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 as set out in relation to each crossing in section 7 of the IR. The table below summaries the Inspector’s recommendation for each crossing with which the Secretary of State agrees.

Crossing Number	Crossing name	Recommendation	
		Include	Do not include
C01	Chittering	Include	
C02	Nairns No. 117	Include*	
C04	Meldreth No. 20		Do not include
C07	Harston, No. 37		Do not include
C10	Coffue Drove	Include	
C11	Furlong Drove		Do not include
C12	Silt Road	Include	
C14	Eastrea Cross Drove	Include	
C15	Brickyard Drove		Do not include
C16	Prickwillow 1	Include	
C17	Prickwillow 2	Include	
C20	Leonards		Do not include
C21	Newmarket Bridge	Include	
C22	Wells Engine		Do not include
C24	Cross Keys	Include	
C25	Clayway		Do not include
C26	Poplar Drove		Do not include
C27	Willow Road/Willow Row		Do not include
C28	Black Horse Drove	Include	
C29	Cassells	Include	
C30	Westley Bottom Road	Include	

C31	Littleport Station	Include	
C33	Jack O'Tell (Adams Crossing)	Include*	
C34	Fysons	Include*	
C35	Ballast Pit	Include	

\*One of these two crossings to remain open to private use

## Modifications to the Draft Order

133. The further modifications that the Secretary of State has made to the Order which do not affect the substance of the Order as it was considered at the inquiry are;

- in article 2(1) (interpretation) the definition of “electronic submission” has been expanded to include an explanation of what is meant by an “electronic communications network”. The modification reflects the Secretary of State’s position going forward.
- in article 18 (power to survey and investigate land) modifications have been made to incorporate more fully the notice provisions setting out in the Housing and Planning Act 2016.
- the modifications set out by the Inspector in paragraph 13.2 of the Report have been reflected in the Order.
- in Schedule 14 (modification of compensation and compulsory purchasing enactments for creation of new rights), paragraph 6, which deals with the application of the Compulsory Purchase (Vesting Declarations) Act 1981 to the acquisition of new rights, has been removed. The Secretary of State’s view is, that unless there is sufficient justification for the need for this provision, such modification is unnecessary

## Notice under section 14 of the TWA

134. 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

135. The circumstances in which the Secretary of State’s decision may be challenged is set out in the note attached to Annex C to this letter.

## Distribution

136. 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,

*N. Kopala*

Natasha Kopala

## Annex A

Crossing Name	Description
C02 Nairns No 117 ("C02") (IR 7.1.3)	This is the northernmost crossing and is a private user worked vehicular crossing with telephone. It is a private accommodation crossing with an agricultural track passing east to west.
C33 Jack O'Tell ("C33") (IR 7.1.4)	This is a passive user worked crossing with stop, look, listen (SLL) signs. The crossing is vehicular and a public footpath, FP16, crosses the railway here.
C01 Chitterning ("C01") (IR 7.1.5)	This is a passive footpath level crossing with stiles in the railway boundary fence and SLL signs. There are no private rights of way at the level crossing. The south Waterbeach Footpath 18 crosses the rail via C01.
C34, Fysons ("C34") (IR 7.1.6)	This crossing provides access to farmland on each side of the railway via unmade farm tracks crossing agricultural land, linking to London Drove approximately 500m to the east of the level crossing. This is a passive private user worked crossing with SLL.
C04, No name No 20 ("C04") (IR 7.2.2)	C04 is a passive footpath level crossing with stiles in the boundary fences on both sides of the railway line.
C07, Harston No.37 (IR 7.3.6)	C07 is a passive footpath level crossing, with wicket gates in the railway boundary fence and SLL signs.
C10, Coffue Drove (IR 7.4.2)	The crossing is a user worked crossing with a telephone.
C11 Furlong Drove (IR 7.5.3)	The crossing is a passive level crossing with a gate in the railway boundary fence, which is not wide enough for vehicular access
C12, Silt Drove (IR 7.6.2)	The crossing is a public highway user worked crossing with a telephone. There are also stiles in the boundary fence.
C14, Eastrea Cross Drove (IR 7.7.3)	Footpath 50 is an unmade route with a passive footpath level crossing, stiles in the railway boundary fence and SLL signs.
C15, Brickyard Drove (IR 7.8.4)	Whittlesey Footpath 48 ("FP48") is an unmade route with a passive footpath level crossing, stiles in the railway boundary and SLL signs.
C16, Prickwillow 1 and C17 Prickwillow 2 (IR 7.9.2)	Footpath 57 and Footpath 17 cross the railway line as passive (footpath) crossings with SLL.
C20, Leonards (IR 7.10.2)	The passive (footpath) level crossing has kissing gates in the railway boundary fence with SLL.
C21 Newmarket Bridge and C22, Wells Engine (IR 7.11.5)	Footpath 24 is a passive (footpath) level crossing with wicket gates in the railway boundary fence and SLL. Footpath 23 is a passive user worked crossing with a telephone and kissing gates in the railway boundary fence with SLL.
C24, Cross Keys (IR 7.12.3)	This is a passive footpath level crossing, with stiles in the boundary fences on both sides of the railway line and SLL signs.

<b>Crossing Name</b>	<b>Description</b>
C25, Clayway (IR 7.13.4)	C25 is a passive footpath level crossing, with stiles in the boundary fences on both sides of the railway line and SLL signs.
C26, Poplar Drove (IR 7.14.2) and C27 Willow Row Drove/Willow Road (IR 7.14.4)	C26 is a public tarmacked road to the east of the level crossing, with an unsealed surface to the west. C27 is an unsurfaced BOAT and is a user worked crossing.
C28, Black Horse Drove (IR 7.15.1)	Black Horse Drove is a public road in Littleport Parish. The public road user worked level crossing has miniature stop lights and telephone, with vehicular access gates and wicket pedestrian gates in the railway boundary walls.
C29, Cassells Crossing (IR 7.16.4)	C29 is a passive footpath level crossing with gates in the railway boundary fence and a SLL sign.
C30, Westley Road (IR 7.17.1 and 17.1.3)	Westley Bottom Road is a public vehicular highway recorded as a public road to the south-east and a BOAT to the north-west of the Cambridge to Ipswich railway line. The level crossing is a user worked crossing with miniature stop lights on a public road and a telephone. The crossing has wicket gates in the railway boundary fence.
C31, Littleport Station (IR 7.18.3)	The crossing is an ungated footpath crossing with miniature stop lights accessed from the platform end ramps.
C35, Ballast Pit (IR 7.19.2)	This is a passive private user worked crossing with SLL signs.

**TOWN AND COUNTRY PLANNING ACT 1990**

**NETWORK RAIL (CAMBRIDGEHSIRE LEVEL CROSSING REDUCTION) ORDER AND DEEMED PLANNING PERMISSION**

**CONDITIONS WHICH THE SECRETARY OF STATE INTENDS TO ATTACH TO THE DIRECTION AS TO DEEMED PLANNING PERMISSION**

**Interpretation**

In the following conditions:–

“the development” means the development authorised by the Order;

“the local planning authority” means East Cambridgeshire District Council, Fenland District Council or South Cambridgeshire District Council as respects development in their respective areas;

“Network Rail” means Network Rail Infrastructure Limited;

“the Order” means the Network Rail (Cambridgeshire Level Crossing Reduction) Order 201[ ];

“the Precautionary Method of Works” means the document entitled “Precautionary Method of Works: Legally Protected Species December 2017”, a copy of which is attached to these conditions at Appendix 1, as it may be amended from time to time by agreement with Cambridgeshire County Council.

**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 the development and to avoid blight.*

**Detailed design approval**

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

*Reason: To ensure compliance with agreed details and satisfactory external appearance for the development.*

**Landscaping scheme**

3. No development shall commence until the details of all proposed soft landscaping works including:

(a) the location, number, species, size and planting density of any proposed planting;

(b) the cultivation, importing of materials and other operations to ensure plant establishment; and

(c) the details of any existing trees to be retained, with measures for their protection during the construction period

has been submitted in writing to and approved 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 scheme approved under condition 3 by the local planning authority.

5. Any tree or shrub planted as part of any 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 until:

(i) a timetable for surveys in accordance with the timeframes for protected species and at the locations specified within the Precautionary Method of Works has been submitted and approved in writing by the relevant local planning authority;

(ii) surveys have been carried out in accordance with the approved timetable; and

(iii) for those locations where the surveys undertaken in accordance with subparagraph (ii) identify the requirement for a protected species licence, an Ecological Design Strategy has been submitted and approved in writing by the relevant local planning authority; such Strategy to include the following.

(a) detailed design(s) and/or working method(s)(including details for disposal of any waste arising from works);

(b) persons responsible for implementing the works, such as Ecological Clerk of Works; and

(c) details of any mitigation or compensation required, including any relevant monitoring and remedial measures reflecting ecological best practice.

*Reason: To protect the ecological value of the area.*

### **Archaeology**

7. No development in relation to crossings C10, C11, C14, C15 and C22 shall take place until a written scheme of investigation for an archaeological programme of works identifying:

(i) the statement of significance and research objectives;

(ii) the programme and methodology of site investigation and recording;

(iii) the nomination of a competent person(s) or organisation to undertake the agreed works; and

(vi) the programme for post-excavation assessment and subsequent analysis, reporting, publication, dissemination and deposition of the resulting archive

is submitted and approved by the local planning authority in writing.

8. The condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the written scheme of investigation.

9. In this condition “crossings C10, C11, C14, C15 and C22” means the development relating to the level crossings at Coffue Drove, Furlong Drove, Eastrea Drove, Brickyard Drove and Wells Engine.

*Reason: To ensure that the significance of historic environment assets is conserved in line with NPPF section 16.*

### **Working hours**

10. Construction of the development will only be carried out between the hours of 8.00 am and 6.00pm, Monday – Friday, excluding Bank Holidays, and 8.00am to 1.00pm, Saturday. A revision to this condition may be agreed in writing with the local planning authority.

*Reason: To protect the amenity of the locality.*

### **Approval and implementation under these conditions**

11. Where under any of these conditions the approval or agreement of the local planning authority is required, that approval or agreement must be given in writing. The development must be carried out in accordance with any such approval or agreement, or any subsequent revisions that have been submitted to, and approved by, the local planning authority.

*Reason: To provide for certainty in the approvals and implementation*

*processes.*

## **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, on the grounds that—

- it is not within the powers of the TWA; or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge made 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 three working days of the date of this decision letter.

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